

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County LUCAS	District Hearings Section TOLEDO	Assistance Group Name		Assistance Group Number
Place of Hearing LUCAS CDJFS	Initial Hearing Date 02/05/2002	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Kevin O'Connor - Work Manager/VNS; Christine Ferrante - RN/HSF Supervisor

Date Notice Mailed 12/30/1899	Date Received by Local Agency	Date Received by ODHS 11/27/2001	Date Appeal Summary Received 12/24/2001	Date Scheduling Notice Mailed 01/25/2002
Appeal Number(s)/Program(s) 1045975/MED				

Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please telephone the hearing supervisor at the TOLEDO District hearing section at 1-800-686-1572.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Job and Family Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414 or FAX (614) 752-8298. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request must be received by the Office of Legal Services within 15 calendar days from the date this decision is issued. *(If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.)* During the 15-day administrative appeal period you may request a free copy of the tape recording of the hearing by contacting the district hearings section.

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

ISSUE

The appellant receives Medicaid waiver services under the Ohio Home Care Waiver. The Home Service Facilitator, VNS (Visiting Nurse Services), determined that the appellant's caregiver, who is a half-sister to the appellant, was not eligible to be a caregiver under the Ohio Home Care Waiver due to the relationship between the appellant and the caregiver. VNS proposed to withdraw the caregiver's authorization as an independent service provider, effective 12/28/01. Notice was sent to the appellant's mother on 11/28/01. The issue under appeal is whether the agency's (VNS) determination was correct. The agency's determination is found to be correct. The appeal is **OVERRULED**.

BLC

Appeal(s) OVERRULED 1045975	Date Issued 02/06/2002	Compliance
------------------------------------	----------------------------------	------------

Distribution: Original to appellant, one copy to local agency; one copy to district Hearing section; one copy to district office; two copies to State Hearings. *(Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)*

Appeal Number(s) 1045975

PROCEDURAL MATTERS

The appellant is an 8-year old child who receives Ohio Home Care Waiver services. She was represented at this hearing by her mother (REP). The appellant was not present for this hearing.

A termination notice was sent to the REP on 11/28/01. The REP requested a State Hearing on 11/27/01. The hearing was scheduled for 02/05/02, with the scheduling notice being mailed to the REP on 01/25/01. The delay in scheduling the hearing was to arrange a date and time with VNS and Ohio Home Care Waiver personnel. Medicaid waiver services are continuing at the former level pending this hearing decision. The Appeal Summary was received on 12/24/01.

SUMMARY

Agency

The agency representative from VNS stated that the appellant has been receiving Medicaid waiver services since 11/28/97. Since 05/05/00, one of her independent daily living providers/caregivers has been Sarah, who is a half-sister to the appellant. The relationship between the two girls was initially mistaken and Sarah was approved as an independent daily living provider. During a State QA review of the appellant's case, the mistake was discovered. At that time, VNS proposed to withdraw authorization for Sarah to be a daily living provider for the appellant. Ohio Home Care Waiver regulations stipulate that a family member of a minor child cannot be an independent daily living provider. A half-sister is considered as a sibling, according to the OAC Rule and the definition of a sibling, i.e. individuals having the same parents or only one parent in common with each other. The appellant and Sarah have the same biological mother.

Appellant

The REP presented testimony by reading her prepared summary (Exhibit E) into the record. The REP stated the appellant has Autism and has many problems and difficulties related to her diagnosis. The REP has been unable to locate many individuals who are trained or qualified to handle or work with an Autistic child. Only after talking with many different agency representative and her family members did her oldest daughter agree

Appeal Number(s) 1045975

to help with the appellant. She has adapted very well according to the REP and gets along very well with the appellant. The REP stated that when Sarah was first certified, the representative from VNS told her as long as Sarah did not live with the appellant at the same residence it was acceptable for her to be a provider. Sarah does not live with them.

The REP stated that they are all trying very hard to keep the appellant at home. Without having Sarah's help, she will be unable to care for the appellant and placement at some facility will have to occur. She does not want this to happen. She believes it is in the appellant's best interest to keep her at home as long as possible. Any slight disruption in the appellant's routine affects her quite profoundly.

The REP stated she has contacted every service agency within three (3) counties of her home to see if Sarah could become a provider through their agency. All pay considerably less than she receives from Medicaid. Sarah cannot afford to lose this much money. None of the service agencies have any individuals who are trained to work with Autistic children. She also contacted the independent service providers within a three (3) county radius of her home, but again none are trained to work with Autistic children. The REP stated her daughter's needs are quite different than most developmentally disabled children. Most providers have never worked with or been trained to work with Autistic children.

The REP is requesting an exception be made in the regulations to provide for the appellant in her home. Placement at any type of facility will benefit no one. The REP presented letters from the appellant's pediatrician and psychologist to support the appellant's need to remain at home.

FINDINGS OF FACT

- 1.) The appellant is an 8-year old child who receives Ohio Home Care Waiver services since 11/28/97.
- 2.) Sarah has been certified/authorized as an independent daily living service provider for the appellant since 05/05/00.
- 3.) Sarah and the appellant are half-sisters. They have the same biological mother.
- 4.) Ohio Home Care Waiver regulations do not allow natural siblings to be an independent daily living service provider to any recipient of the Ohio Home Care Waiver program.

Appeal Number(s) 1045975

- 5.) Half-siblings are considered to be natural siblings as they share a common, biological parent.
- 6.) Sarah cannot be authorized to be an independent daily living service provider for the appellant.

CONCLUSIONS OF POLICY

Policy

According to OAC Rule 5101: 3-12-02, effective 07/01/98, the Ohio Home Care program was implemented. The Ohio Home Care program represents an integration of traditional Medicaid home health services, ODHS home and community-based waiver services, and private duty nursing services. The Ohio Home Care program consists of the following benefit packages: Core, Core-Plus, and ODHS-Administered Waiver [administered by ODHS, also know as the Ohio Home Care Waiver]; PASSPORT Home and Community-Based Services (HCBS) Waiver (administered by Ohio Department of Aging); the Individual Options HCBS Waiver [administered by the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD)], and the Residential Facility HCBS Waiver (administered by ODMR/DD). All benefit packages include core services: nursing, daily living, and skilled therapy.

The ODHS-Administered Waiver Benefit package is designed to meet the home care needs of consumers whose medical condition and/or functional abilities would otherwise require them to live in a nursing home or another type of institution.

Per OAC Rule 5101: 3-12-05 (E)(2), independent daily living providers must certify that they shall not provide services to his or her family member as defined in Section (N) of OAC Rule 5101: 3-12-01.

As stated in OAC Rule 5101: 3-12-01 (N), "family member" is defined as a consumer's or provider's immediate relative or member of the family, including:

- * husband or wife
- * natural or adoptive parent, child, or sibling
- * stepparent, stepchild, stepbrother, or stepsister
- * father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law
- * grandparent or grandchild, or

Appeal Number(s) 1045975

* spouse of grandparent or grandchild

Analysis

The only dispute for this hearing concerns whether Sarah can continue to provide independent daily living services for the appellant. There was no disagreement during this hearing that the appellant requires extensive, individualized care. Nor was there any disagreement that Sarah has been providing excellent care for the appellant. The only problem exists with the fact that she is the appellant's half-sister. The Medicaid Ohio Home Care Waiver regulations, as written, do not allow a family member to be an independent daily living service provider for another family member. A half-sister is considered to be a natural sibling, as they share a common biological parent. Although the regulation does not specifically list a half-sibling, they do include a step-sibling, which has less of any sense of natural sibling relationship than that of a half-sibling.

The Hearing Officer understands the REP's frustration in this situation. It must be quite difficult having a child with such extensive problems. I'm sure that anyone who has not been in this situation personally cannot fully fathom all of the ramifications of the situation. It does seem that the logical and perhaps most compassionate solution would be to allow Sarah to continue as the appellant's caregiver. However, the regulations simply do not allow this. The REP's request that an exception be made is reasonable, but there are no exceptions written into the regulation. Therefore, this Hearing Officer finds that the agency's determination was appropriate.

HEARING OFFICER'S RECOMMENDATIONS

This Hearing Officer recommends that this appeal be **OVERRULED**. The agency was correct to determine that the appellant's half-sister, Sarah, can no longer be authorized as an independent daily living service provider under the Ohio Home Care Waiver program. The agency, VNS, is directed to disenroll the appellant's half-sister, Sarah, as an independent daily living service provider, as proposed, effective the first of the month following receipt of this hearing decision.

Appeal Number(s) 1045975

FINAL ADMINISTRATIVE DECISION AND ORDER

The Hearing Officer's recommendation is adopted.

Appeal # 1045975 -- **OVERRULED**

APPENDIX

Agency Exhibits

- A.) Prepared Summary
- B.) Termination Letter, dated 11/28/01, and attachment, inclusive of two (2) pages
- C.) Ohio Medicaid Provider Enrollment Application
- D.) Letter from VNS to REP, dated 12/19/01

Appellant Exhibits

- E.) Prepared Summary, inclusive of three (3) pages
- F.) Statewide List of Independent Service Providers, inclusive of six (6) pages
- G.) Statewide List of Ohio Home Care Service Provider Agencies, inclusive of six (6) pages
- H.) Letter from Appellant's Pediatrician, dated 01/31/02
- I.) Letter from Appellant's Psychologist, dated 02/01/02
- J.) Letter from REP's Physician, dated 02/04/02

Appeal Number(s) 1045975

Date Issued: 02/06/2002