

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 02/13/2002	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation P.Lammers-Putnam MRDD, D.Ward-Putnam MRDD., S.E.White-Sec.Chief OMRDD, T.Harom-OMRDD

Date Notice Mailed 09/07/2001	Date Received by Local Agency	Date Received by ODHS 12/03/2001	Date Appeal Summary Received 02/05/2002	Date Scheduling Notice Mailed 02/01/2002
Appeal Number(s)/Program(s) 1046879/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 SECTION

An application for Individual Option Waiver Services was filed on behalf of the appellant on 02/15/91. Appellant is number two on the waiting list for a slot to open for those services in Putnam County. In July 2001 additional waiver slots were granted to Putnam Board of MR/DD. Appellant requires 24-hour services and the cost of those services would be \$42,000. Putnam Board of MR/DD denied the appellant's application because his health and safety could not be ensured with the Supportive Living funds available. Appellant remains on the waiting list. The issue under appeal is whether Putnam Board of MR/DD's decision to deny the appellant's 02/15/91 application for Individual Options Waiver services was correct.

I find Putnam Board of MR/DD's decision to deny the appellant's 02/15/91 application for Individual Options Waiver services correct. This appeal is **OVERRULED**.

DCL

Appeal(s) OVERRULED 1046879	Date Issued 02/14/2002	Compliance
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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.)*

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PROCEDURAL MATTERS

State of Ohio received the a request through appellant's guardian for a state hearing on 12/03/01. The state hearing was scheduled to include representatives from Ohio Board of MR/DD and Putnam County Board of MR/DD; this caused a delay in the timely issuance of this decision. A state hearing was scheduled for 02/13/02 to which appellant's guardian, two representatives from Putnam Board of MR/DD and two representatives from Ohio Board of MR/DD attended and were sworn in. The hearing was conducted at Toledo Regional Hearing Office, appellant's guardian and Ohio Board of MR/DD representatives participated by telephone. Putnam Board of MR/DD provided an appeal summary to Toledo Regional Hearing Section; received 02/05/02. A copy of the appeal summary was forwarded to appellant's guardian.

FINDINGS OF FACT

1. An application was filed on behalf of the appellant on 02/15/91 for Individual Options Waiver services. Advocacy and Protective Services, Inc. (APSI) is the appellant's guardian.
2. Appellant is a 70 year old who has resided at Northwest Ohio Developmental Center since 04/25/80. Appellant has been on the waiting list for residential services in Putnam County since 02/15/91 and is number two on the waiting list.
3. Appellant requires twenty four (24) hour per day waiver services. The minimum cost of care is \$42,000.
4. Putnam Board of MR/DD receives on-going annual state funding which totals \$180,682. For the year 2001 Putnam Board of MR/DD has contracted waiver services which totals \$171,265. There remained \$9,417 for Supportive Living Funds.
5. During July 2001 Putnam Board of MR/DD was granted additional waiver slots. No additional state funding was provided for these slots.
6. Putnam Board of MR/DD has insufficient funds to meet the health and safety needs of the appellant.
7. Putnam Board of MR/DD mailed Notice of denial of Individual Options Waiver Services 09/07/01. Appellant remains as number two (2) on the waiting list.

CONCLUSIONS OF POLICY

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Policy**Ohio Administrative Code 5123:1-2-04****(D) Eligibility criteria**

(1) The individual's health and safety needs, met by formal supports, informal supports and home and community-based services must be assured.

(E) Approval of initial or continued HCBS waiver enrollment

(1) In the local administration of the Medicaid hcbs waiver, no county shall approve the initial or continued enrollment of any individual whose projected cost of waiver services will cause the county to exceed its county waiver service allocation.

Ohio Administrative Code 5123:1-2-10(G)

Upon authorization by the department to enroll an individual for an HCBS waiver, the county board shall:

(G)(1) Identify the individual on the waiting list with the earliest date of making application for HCBS waiver enrollment.

(G)(4) Determine whether or not sufficient monies exist to provide the services needed to address health and safety needs of

the individual and whether or not the projected cost of waiver services for the identified individual causes the county to

exceed the county waiver service allocation in accordance with rule 5123:1-2-04 or 5123:1-2-12 of the Administrative Code, as applicable.

(G)(4)(a) An individual whose projected cost of waiver services would cause the county board to exceed the county waiver service allocation or who is otherwise determined not eligible for enrollment shall be denied enrollment in accordance with department procedures.

Analysis

An application for Individual Option Waiver Services was filed on behalf of the appellant on 02/15/91. Appellant is number two on the waiting list for a slot to open for those services in Putnam County. In July 2001 additional waiver slots were granted to Putnam Board of MR/DD. Appellant requires 24-hour services and the cost of those services would be \$42,000. Putnam Board of MR/DD receives \$180,682 in on-going state funding. Of that amount, \$171,265 are committed toward current contracted services. This leaves a remainder of \$9,417 available for waiver services. Without sufficient funds to ensure the appellant's health and safety, Putnam Board of MR/DD denied the appellant's application.

Guardian/representative for the appellant raises issue to whether Putnam Board of MR/DD's decision to deny the appellant's application was proper. Guardian questions whether the "county waiver service allocation" as cited under OAC 51213:1-2-10 and 5123:1-2-4 provided sufficient funds to meet the appellant's waiver

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needs. Guardian asserts agency lacks evidence that their entire "county waiver service allocation" was "used up". Guardian points out 1) the agency used terminology in their testimony such as "Insufficient local match money available" and "insufficient funds" and 2) Putnam Board of MR/DD's financial breakdown does not establish the waiver service allocation amount. Guardian argues that considering this, it is not clear Putnam Board of MR/DD does not have sufficient funds in their county waiver service allocation to meet the appellant's needs and this benefit of the doubt should result in a decision in favor of the appellant.

Ohio Board of MR/DD allocates funds to the county boards of MR/DD. With this allocation, the funds for waiver services becomes the "county waiver service allocation". Putnam Board of MR/DD testified they receive an annual on-going state funding of \$180,682 which is the amount available for residential services under Individual Options Waiver services. Of that \$171,265 is utilized for contracted services. This leaves \$9,417 available for additional services. I find no reason to believe that these figures as reported by Putnam Board of MR/DD are any other than that as stated and Putnam Board of MR/DD has \$9,417 available for waiver services. Guardian asserts there lacks evidence to support Putnam Board of MR/DD does not have sufficient funds for county waiver service allocation however, there was no evidence to support this allegation. In the absence of evidence to substantiate the guardian's allegation, I find Putnam Board of MR/DD has \$9,417 available for waiver services. As the appellant requires \$42,000 in waiver services, Putnam Board of MR/DD can not ensure his health and safety. Therefore, I find Putnam Board of MR/DD's decision to deny the appellant's 02/15/91 application for Individual Options Waiver Services correct.

HEARING OFFICER'S RECOMMENDATION

Based on the record before me, I find this appeal should be **OVERRULED**.

FINAL ADMINISTRATIVE DECISION AND ORDER

Finding the Hearing Officer's decision to be supported by the evidence, the recommendation above is adopted and this appeal is **OVERRULED**.

EXHIBITS

- A. Notice of Denial of Your Application for Assistance
- B. 2001 Residential Fund income and expense report

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Date Issued: 02/14/2002