

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County HAMILTON	District Hearings Section CINCINNATI	Assistance Group Name		Assistance Group Number
Place of Hearing HAMILTON CDJFS	Initial Hearing Date 02/08/2005	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Angela Finney, Manager, ODMH; Shannon O'Toole, Agency

Date Notice Mailed	Date Received by Local Agency	Date Received by ODHS 11/26/2004	Date Appeal Summary Received 02/07/2005	Date Scheduling Notice Mailed 01/27/2005
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Appeal Number(s)/Program(s) 1204127/MED

Notice to Appellant

This is the state hearing decision in your case. All papers and materials introduced at the hearing or otherwise filed make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services.

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) 728-9574. Your request should state why you think the hearing decision is wrong. You can complete the appeal request form included with this decision. Your written request or appeal form 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, or your representative, may request a free copy of the hearing record and recording of the hearing by calling the Bureau of State Hearings at 1-866-635-3748 (select option 1 from main menu).

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:

Issue #1 - 1204127 (PASSR):

The Ohio Department of Mental Health (ODMH) must complete the pre-admission screening process when applicants for nursing home placement have serious mental illness. On 11-15-04, ODMH denied the Appellant's request for placement in a nursing facility because the Appellant required specialized services for serious mental illness. The Appellant receives Medicaid through the Hamilton County Department of Job and Family Services (Agency).

The hearing decision finds that there was inadequate information to determine if the denial was correct because the evaluation did not state what specialized services the Appellant requires.

TMD

Appeal(s) SUSTAINED 1204127	Date Issued 02/24/2005	Compliance 1204127
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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:

On 11-15-04, the Agency mailed prior notice. On 11-26-04, the Bureau of State Hearings received the written request for a state hearing from Appellant's guardian. The hearing was scheduled for 2-8-05, and conducted on that date. The Appellant's guardian, case manager and an Agency representative were present; a representative from the Ohio Department of Mental Health (ODMH) participated by conference call. All participants were sworn in by the hearing officer.

FINDINGS OF FACT:

1. The Appellant, age 48 is currently a patient at a psychiatric hospital run by the Ohio Department of Mental Health (ODMH). She is diagnosed with schizophrenia - paranoid type, post-traumatic stress disorder, mild mental retardation, insulin-dependent diabetes, goiter, hypertension and abnormal electrocardiogram.
2. The Appellant was hospitalized in April 2003. Prior to that she lived in a group home for ten years.
3. A mental health evaluator conducted an evaluation of the Appellant on 10-12-04. He completed a mental health evaluation summary on 10-12-04, and recommended that the Appellant could try placement in a nursing facility (exhibit D).
4. On 11-15-04, the Ohio Department of Mental Health (ODMH) denied the Appellant's request for nursing home admission because the Appellant required specialized services for serious mental illness that are available in an inpatient psychiatric hospital. The need for specialized services was determined because Appellant's behavior appears to represent a substantial risk of physical harm to herself. (exhibit J)
5. The Appellant is able to perform all activities of daily living with some supervision. The Appellant requires 24-hour supervision.

CONCLUSIONS OF POLICY:**Policy**

When an individual seeking admission to a nursing facility has serious mental illness, the Ohio Department of Mental Health is required to complete a pre-admission screening, Ohio Admin. Code § 5122:21-03 (1999). The rule requires the Department to have a qualified individual complete an evaluation of the individual, §(C)(2). The evaluation must include a determination of whether the individual requires specialized services

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for serious mental illness, §(C)(1)(a). If the specialized services are required, the evaluator must, in his written evaluation, identify the specific mental health services required to meet the evaluated individual's need, §(D)(1)(e).

The hearing officer's findings of fact must be based only on the evidence presented at the hearing, per Ohio Admin. Code § 5101:6-7-01(C)(1) (2003). The Agency must show, by a preponderance of the evidence, that its action or inaction was correct according to Ohio rules § (C)(1)(c).

Analysis

The PASSAR representative essentially stated that they denied the Appellant admission to a nursing facility because they determined that her needs for treatment exceed what a nursing facility can provide. Specifically, she contended that the Appellant requires specialized services for mental illness. The PASSAR representative contended that per Ohio Admin. Code 5101:3-3-061, a nursing facility is not an appropriate placement for the care of individuals whose primary health problem is mental illness and that the need for specialized services for serious mental illness precludes nursing home placement.

The Appellant's guardian testified for her at the hearing. The guardian contended that this is a quality of life issue for the Appellant. ODMH's determination confines the Appellant to the most restrictive environment. A long-term care facility would be less restrictive for the Appellant and would increase her quality of life. In fact, she contended that the Appellant's condition might improve if the Appellant were in a more home-like facility. She asserted that she would not advocate for a level of care that was not appropriate for the Appellant. She agreed that the Appellant needs 24-hour supervision and could not live in the community.

On 1-20-04, a reviewer completed a pre-admission screening evaluation summary. He concluded that the Appellant needed to remain in-patient treatment to attempt to reduce her symptoms of psychosis which were severe because a nursing home could not manage her level of mental illness. He recommended continued specialized services based on Appellant's continued delusions, hallucinations and bizarre behavior (exhibit E).

The 10-14-04 the same reviewer concluded that the Appellant had "had little response to medications or psychotherapies." The reviewer found that the Appellant had continued symptoms of psychosis including delusions and hallucinations and was barely communicative. The evaluator concluded that the Appellant remained severely ill but somewhat stabilized. He concluded that while specialized services were "entirely appropriate, perhaps a trial in a nursing facility can be attempted."

On 11-10-04, a nursing level of care assessment was completed by a registered nurse. She noted that the Appellant has developed a goiter that concerns her doctors. The Appellant will not allow a biopsy. They have

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tried to perform the procedure and the Appellant will psychotically panic and refuse. The Nursing assessor concluded that the Appellant would benefit from continued specialized services especially that will address her paranoid psychosis as it relates to accepting treatment of thyroid goiter biopsy.

The hearing decision finds that a determination cannot be made based on the information in the record. The Hearing Officer agrees with ODMH that the evaluator's 10-14-04 recommendation for admission to a nursing facility is not reliable. First, it is somewhat qualified. Also, it is not entirely consistent. The evaluator concluded both that the Appellant had little response to medications or therapies, but was somewhat stabilized. He concluded that she needs specialized services, but does not list the exact services required.

The procedure for the pre-admission screening evaluation process, as cited above, specifies that the evaluator should determine if the applicant required specialized services for the mentally ill. If so, they should identify "the specific mental health services required to meet the evaluated individual's needs." Here the evaluator did not specify what specialized services the Appellant requires. This could make the difference in evaluating the proper placement for the Appellant. It is also noted that the Hearing Officer could not locate a rule that stated directly that the need for specialized services for the mentally ill, precludes a nursing home visit as contended by ODMH.

HEARING OFFICER RECOMMENDATIONS:

Issue #1 - 1204127 (PASSR):

Appeal number 1204127 should be SUSTAINED. ODMH should complete a new pre-admission screening review.

FINAL ADMINISTRATIVE DECISION AND ORDER:

Issue #1 - 1204127 (PASSR):

Finding the hearing officer's decision to be supported by the evidence, the recommendations shown above are adopted. The appeal is SUSTAINED. The Agency shall comply with each of the terms set forth in the hearing officer's recommendations above.

COMPLIANCE REQUIRED

Ohio Admin. Code § 5101:6-7-03 (2003) requires compliance with this decision within 15 calendar days from the date it is issued, but in no event later than 90 calendar days from the date of the hearing request.

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Exhibits:

Appellant:

None submitted

Agency:

- A - Denial notice, dated 1-26-04 - 2 pp
- B - PASSAR identification screen - 3 pp
- C - Nursing level of care assessment, dated 11-10-04 - 2 pp
- D - PASSARR evaluation summary, dated 10-14-04 - 3 pp
- E - PASSARR evaluation summary, dated 1-20-04 - 3 pp
- F - PASSAR mental health evaluation, dated 10-12-04 - 9 pp
- G - Transfer sheet, dated 10-8-04 - 4 pp
- H - Comprehensive psychiatric exam, dated 4-2-03 - 6 pp
- I - Level of care assessment, dated 11-10-04 - 4 pp
- J - Denial notice, dated 11-15-04 - 2 pp

Date Issued: 02/24/2005