

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
BUREAU OF STATE HEARINGS**

In the matter of:

<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1260209	MED	OVERRULED
Compliance Required		
Decision Date:	02/28/2006	
Request Date:	12/02/2005	
Hearing Officer:	LYNNE SOLAK	

State Hearing Decision

ISSUE:

I (APPEAL 1260209, MEDICAID)

The appellant has been a resident of a nursing facility for what was to be a convalescent stay. A request for a Resident Review was received in 9/05. As a result of the review, the Ohio Department of Mental Health determined the appellant did not meet an Intermediate Level of Care or Skilled Level of Care (LOC) and did not require nursing facility care as a result of his Serious Mental Illness (SMI). Is the determination that appellant does not meet the necessary level of care and does not require nursing facility services for his SMI correct?

The appellant does not meet the Intermediate or Skilled LOC criteria at this time. Additionally, it was not established that the appellant's needs with relation to his SMI cannot be met through other community support services rather than in the nursing facility.

PROCEDURAL MATTERS:

Notice of the level of care determination was issued in 11/14/05. The appellant's guardian disputes the determination and requested a state hearing. The state hearing request (Exhibit 1) was received by the Bureau of State Hearings on 12/2/05. The hearing was scheduled and heard on 1/26/06. An appeal summary (Exhibit A) was received from the agency on 1/26/06. The appellant's guardian, Sheila Williams, and his case manager, James Moon, attended the hearing; the agency was represented by Jeff Ryan, ODMH PASSR; Nancy O'Brien also from ODMH observed.

FINDINGS OF FACT:

1. The appellant is a 38 year old male.
2. The appellant was admitted to the nursing facility after a psychiatric hospital stay.
3. The nursing facility stay was to be a thirty day convalescent stay.
4. In 9/05 a PASARR evaluation for the appellant was requested.
5. The PASARR evaluation was completed in 10/05.
6. The PASARR evaluation summary (Exhibit B), PASARR Mental Health Evaluation (Exhibit C), Medication Administration Summary, Activity of Daily Living and Instrumental Activity of Daily Living Summaries, and Cognitive Impairment summary (Exhibit D), the Minimum Data Set (MDS) (Exhibit E), and physician's orders (Exhibit F) were presented at the hearing.
7. The appellant suffers from paranoid schizophrenia and has a history of substance abuse.

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8. The appellant has a serious mental illness.
9. The appellant has no orders for skilled nursing services.
10. The appellant takes medications for his mental illness.
11. The appellant requires supervision and verbal prompting with medication administration.
12. The appellant does require 24 hour supervision to prevent harm to himself or others.
13. The supervision is required due to his serious mental illness and not to any cognitive impairment.
14. The appellant is independent on all Activities of Daily Living (ADLs) including bathing, grooming, toileting and dressing, transferring, and eating.
15. The appellant requires assistance with his Instrumental Activities of Daily Living (IADLs) such as laundry, cooking, cleaning, and shopping.
16. The appellant has a case manager from an agency outside of the nursing facility working with the guardian to find suitable housing and other support services.
18. The main reason for requesting this hearing was because appropriate housing for the appellant's needs outside of the nursing facility has not been located.

CONCLUSIONS OF POLICY:

Policy:

In accordance with section 1919(e) (7) of the Social Security Act, no individual with a serious mental illness or MR/DD shall be retained as a resident in a nursing facility unless it has been determined, in accordance with rules 5122:21-03 and/or 5123:2-14-01 of the Administrative Code, that the individual needs the level of services provided by a nursing facility. Ohio Administrative Code (OAC) 5101:3-3-152

The PASRR evaluator must evaluate whether the nursing facility is the most appropriate setting, considering the individual's total needs and whether they can best be met in a more appropriate community setting; and if institutional care is appropriate, determine the most appropriate institutional setting for meeting those needs. Ohio Admin. Code § 5122:21-03

In order to be eligible for Medicaid payment for long term care, an individual must meet the criteria of a skilled level of care. An individual may be determined to require a skilled level of care (SLOC) only if both of the following conditions are met:

1. The individual's physical and mental condition and resulting service needs have been evaluated and compared to all of the possible levels of care (in accordance with rule 5101:3-3-15 of the Administrative Code) and it has been determined that: the individual requires services beyond the minimum of those of protective care (set forth in rule 5101:3-3-08 of the Administrative Code); and, the individual requires services beyond the minimum of those of intermediate care (set forth in rule 5101:3-3-06 of the Administrative Code); and/or the individual requires services beyond the minimum of those of an ICF-MR/DD LOC (set forth in rule 5101:3-3-07 of the Administrative Code); and,

2. At least one of the following applies: the individual's condition necessitates, and the individual's physician has ordered, that at least one skilled nursing service (as defined in paragraph (B)(4) of this rule) be provided at the skilled care level (as defined in paragraph (B)(3) of this rule); or, the individual's condition necessitates, and the individual's physician has ordered, that at least one skilled rehabilitation service (as defined in paragraph (B)(5) of this rule) be provided at the skilled care level (as defined in paragraph (B)(3) of this rule). Ohio Admin. Code § 5101:3-3-05

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An individual may be determined to require an intermediate level of care (ILOC) only if both of the following conditions are met:

1. The individual's physical and mental condition and resulting service needs have been evaluated and compared to all of the possible levels of care and it has been determined that: the individual requires services beyond the minimum required for a protective level of care; but, the individual's condition and/or corresponding service needs do not meet the minimum criteria for a skilled level of care set forth in rule OAC 5101:3-3-05; and,

2. At least one of the following applies: the individual requires hands-on assistance with the completion of at least two activities of daily living; or, the individual requires hands-on assistance with the completion of at least one activity of daily living; and is unable to perform self-administration of medication and requires that medication administration be performed by another person; or, the individual requires one or more skilled nursing or skilled rehabilitation services at less than a skilled care level; or, due to a cognitive impairment, including but not limited to dementia, the individual requires the presence of another person, on a twenty-four-hour-a-day basis for the purpose of supervision to prevent harm. Ohio Admin. Code § 5101:3-3-06

An individual may be determined to require protective care, only if both of the following conditions are met:

1. The individual's physical and mental condition and resulting service needs have been evaluated and compared to all of the possible levels of care, and it has been determined that the individual's condition and/or corresponding service needs do not meet the criteria for skilled care, intermediate care, or for an ICF-MR level of care; and,

2. The individual requires either: both of the following: supervision of one activity of daily living or supervision of self-administration of medication; and, assistance with three instrumental activities of daily living; or, due to a cognitive impairment, including but not limited to dementia, the individual requires the presence of another person, on less than a twenty-four-hour-a-day basis for the purpose of supervision to prevent harm. Ohio Admin. Code § 5101:3-3-08

Analysis:

Based on the 9/05 and 10/05 assessments and testimony at the hearing, there is no indication that as a result of a cognitive impairment the appellant requires supervision to prevent possible harmful behaviors. The appellant's serious mental illness does require the appellant to have supervision, but his cognitive awareness and functioning are good. The appellant's guardian testified he is able to complete ADLs without any help, but sometimes need verbal prompting with some hygiene issues. He does require supervision and prompting with medications, and he does require hands-on assistance with his IADLs. The guardian further testified that her basis for requesting this hearing was the fact that appellant has no where to live other than the nursing facility at this time. The guardian and a case manager from outside of the nursing facility are working to locate housing appropriate to the appellant's needs, but are having difficulty locating such housing. The guardian agrees the nursing facility may not be the most appropriate situation for the appellant at this time, but she has been unable to locate any other acceptable/appropriate housing as of the date of this hearing.

In order to meet an Intermediate level of care to continue his placement with the nursing home, the appellant would have to need hands on assistance with two activities of daily living or hands

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on assistance with one activity of daily living and assistance with medications, or as a result of a cognitive impairment he would require 24 hours of supervision to prevent harm. Additionally, it must be determined that his needs are best met by the nursing facility rather than another less restrictive setting. He does not meet these requirements at this time. As a result, he does not warrant an Intermediate LOC necessary for continued nursing facility placement. Since his condition does not meet or exceed the Intermediate LOC criteria, he would not meet the Skilled Level of Care criteria either.

HEARING OFFICER'S RECOMMENDATIONS:

I (APPEAL 1260209, MEDICAID) Based on the record before me, I find the appeal should be OVERRULED. The determination of the appellant's Level of Care is correct. The appellant does not meet the Intermediate Level of Care or Skilled Level of Care necessary for continued nursing facility placement. The Ohio Department of Mental Health, however, should assist the legal guardian in obtaining appropriate community or mental health living arrangements for the appellant.

FINAL ADMINISTRATIVE DECISION AND ORDER:

I (APPEAL 1260209, MEDICAID) Finding the hearing officer's decision to be supported by the evidence, the recommendations above are adopted. **COMPLIANCE IS REQUIRED:** Ohio Admin. Code § 5101:6-7-03(B)(1)(a) requires compliance with this decision within fifteen calendar days from the date of this decision, but no later than ninety calendar days from the hearing request date. Compliance shall be promptly reported to ODJFS, Bureau of State Hearings, via JFS 04068, compliance form, accompanied by supporting documentation. (2003)

February 28, 2006

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, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 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 Bureau of State Hearings within 15 calendar days from the date this

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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.

Aviso a la Apelante

Esta es la decisión estatal administrativa de su caso. Todos los documentos y materiales presentados como prueba en la vista o de otra manera radicados componen el récord administrativo. El récord administrativo será mantenido por el Ohio Department of Job and Family Services.

Si usted cree que esta decisión estatal administrativa es errónea, usted puede solicitar una apelación administrativa escribiendo al: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 o facsímil (614) 728-9574. Su solicitud debe indicar por qué usted piensa que la decisión administrativa es errónea. Usted puede completar la solicitud de apelación incluida con esta decisión. Su solicitud escrita o formulario de apelación tiene que ser recibido por el Bureau of State Hearings dentro de los 15 días calendario desde la fecha en que esta decisión es expedida. (Si el 15to. día recae sobre un fin de semana o un día feriado, esta fecha límite es extendida al próximo día laborable). Durante el período de 15 días de apelación administrativa, usted o su representante pueden solicitar una copia gratuita del récord administrativo y de la grabación de la vista llamando al Bureau of State Hearings al 1-866-635-3748 (seleccione la opción 1 del menú principal).

Si usted quiere información sobre servicios legales gratuitos pero no sabe el número de su oficina local de servicios legales, usted puede llamar al Ohio State Legal Services Association, gratuitamente, al 1-800-589-5888, para el número local.

Appendix

Appellant's Exhibits:

1. Hearing request (2 pages)

CDJFS Exhibits:

- A. Appeal summary (3 pages)
- B. PASARR Evaluation summary (3 pages)
- C. PASARR Mental Health Evaluation (8 pages)
- D. Med administration, ADL, IADL, and Cognitive Impairment Summaries (4 pages)
- E. MDS (8 pages)
- F. Psychological notes and assessment (1 page)

Papers and Effects:

- Miscellaneous documents submitted by the ODMH (7 pages)
Miscellaneous documents submitted by the appellant (2 pages)