

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

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5068828119	MAHONING	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1317598	MED	SUSTAINED
Compliance Required		
Decision Date:	02/06/2007	
Request Date:	11/09/2006	
Hearing Officer:	TWILA D'AMICO	

State Hearing Decision

ISSUE SECTION:

Appeal #1317598:

On October 18, 2006 the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) notified the Appellant's guardian/cousin/provider that her prior authorization request for 24 hour paid care for the Appellant at an amount of \$97,121.44 per year was denied. It was determined by the ODMR/DD that the Appellant's needs can be met with a total of 34 hours per week of homemaker/personal care and 150 miles each week for transportation for a total cost of \$29,220.16. The Appellant's cousin did not request \$97,121 per year; she would like to continue to receive \$57,000 per year to care for the Appellant in her home which consists of a rate paid for 24 hour care. At issue in this appeal is whether the ODMR/DD's determination that the Appellant requires 34 hours per week of homemaker/personal care services was correct.

Based on an analysis of the facts as presented in this hearing and after a review of the controlling policy, the Hearing Officer points out that the hearing is not for the Appellant's cousin and the amount of money she wishes to be paid per year to care for her cousin; she is not a Medicaid recipient. The hearing is to address the amount of homemaker/personal care hours required by the Appellant. Over the course of several months, meetings and phone conversations the Appellant's cousin and the ODMR/DD were unable to agree upon the amount of homemaker/personal care services required for the Appellant. The ODMR/DD failed to substantiate how they arrived at 34 hours per week and the Appellant's cousin failed to establish how many hours of personal care/homemaker services she provides. It is clear that she does not provide 24 hour care. The Appellant's cousin presented medical documentation during the hearing that was not previously considered by the ODMR/DD. Therefore, it is recommended the appeal be sustained with compliance for two reasons, the Appellant's cousin must show an hour-by-hour accounting of the personal care/homemaker services provided to the Appellant. The ODMR/DD shall re-review the Appellant's cousin's request and make a new determination including how they arrived at the amount of hours of personal care/homemaker services that are required for the Appellant's personal care and safety.

PROCEDURAL MATTERS:

STATE HEARING DECISION CONTINUATION

The Appellant's cousin requested a hearing on the Appellant's behalf on November 9, 2006. By letter dated December 26, 2006 the Appellant's cousin was notified of an evidentiary hearing to begin on January 2, 2007. A request for reschedule was received and by letter dated January 19, 2007 the hearing was rescheduled and went forward on January 30, 2007. Present for the Appellant was his cousin, her husband, their daughter and the Attorney for the guardian. Present for the ODMR/DD was Toni Scurpa, Supervisor; Yvonne Baduck, Supervisor; and Margaret Burkey, Supervisor. Present for the County Board of MR/DD was Laura Leach.

FINDINGS OF FACT:

1. The Appellant, age 64, has been diagnosed with severe to moderate mental retardation. He is unstable on his feet and has a history of seizure disorder. His seizures are controlled with medication. The Appellant lives in the home of his cousin/guardian/provider. Also in the home is the Appellant's cousin's husband. Their daughter is also a paid provider, but over the past few months the Appellant's cousin's daughter has provided minimal to no care to the Appellant.
2. The Appellant is enrolled in the MR/DD Individual Options Waiver (IO Waiver). His cousins were paid \$54,000 per year to provide 24 hour care. In approximately June 2006 meetings with the Appellant's cousin began which included reviewing an assessment. The Appellant's cousin did not agree with some of the answers.
3. On August 30, 2006 the Appellant's cousin requested prior authorization for the following Waiver services: 97 hours weekly homemaker/personal care and 42 hours weekly of on-site/on all services at a cost of \$97,121.44 per year; this amount is the amount using the new rate according to ODMR/DD. This request provided no natural supports by the Appellant's cousins.
4. On September 25, 2006 the county board of MR/DD re-assessed the Appellant at which time the cousin's opinions were noted. Based on the assessment the ODMR/DD determined that the Appellant's needs placed him in Level 1 with a funding range of \$5,001 and \$19,205. The ODMR/DD found that the request exceeded the funding range, and as a result they developed an alternative plan that was seen as meeting the Appellant's service needs while assuring his safety and welfare. The ODMR/DD determined that the Appellant required 34 hours of weekly homemaker/personal care and 150 miles each week of transportation for a total cost of \$29,220. This amount exceeded the funding range. This plan costed out lower than the prior authorization request but still above the funding range.
5. The ODMR/DD determined that the Appellant attended the county board of MR/DD Adult Retirement Center on Monday through Friday from 7:41 a.m. through 4:34 p.m. The previous and current plan showed that the providers were paid for hours when the Appellant was not in the home.
6. The Appellant's cousin did not request to be paid at \$97,000 per year. She requests that she and her husband continue to be paid at the current rate of \$57,000. The Hearing Officer pointed out that the hearing rights were not afforded to the cousin and her husband regarding the amount they wish to be paid by Medicaid for services through the Waiver program. The issue on appeal was the amount of personal care/homemaker hours needed to ensure the health and safety of the Appellant. The Appellant's cousin proceeded to state that the Appellant requires 24 hours of supervision, that he likes to start fires and that he falls. They have to stay awake most of the night to ensure that he does not get out of bed and fall.

STATE HEARING DECISION CONTINUATION

7. The Appellant's cousin indicated that the Appellant urinates all over the bathroom, and that he does not wash his hands which results in feces on the toilet and door handle. She indicated that this takes time to clean. He requires supervision with all activities of daily living. The Appellant's cousin must prepare and serve his meals. The Appellant's cousin and her husband maintain that they should be paid 24 hours per day.

8. The ODMR/DD pointed out that Appellant is in the workshop eight hours per day and that there are no reports of the Appellant engaging in activity described by the Appellant's cousin. The ODMR/DD pointed out that through the entire process there were no incident reports filed to substantiate the Appellant's cousin's claim.

9. The Appellant's cousin indicated that she had information to submit. This information was shared with the ODMR/DD on the date of the hearing. The information provided by the Appellant's cousin was incident reports completed by her and reflected the testimony she provided in the hearing. A review of the medical evidence submitted shows that the Appellant lacks insight and has poor judgment. Doctors' reports dated December 15, 2006 and January 23, 2007 were submitted and there was no indication that these reports were reviewed by the ODMR/DD.

10. The ODMR/DD failed to provide an explanation as to how they arrived at 34 hours per week of personal care/homemaker services.

11. The Appellant's cousin failed to show an accounting of the amount of time providing personal care/homemaker services to the Appellant.

CONCLUSION OF POLICY:

Policy:

Ohio Administrative Code (Ohio Admin. Code) § 5101: 6-7-01(C)(1)(c) (2006) states that it shall be the responsibility of the Agency to show by the preponderance of the evidence that its actions are in accordance with ODJFS rules.

Ohio Admin. Code § 5123:2-9-06 (2005) provides that an "Individual funding level" means the total funds that result from applying the rates in appendix A to this rule to the units of all waiver services except for day habilitation and supported employment that have been determined through the individual service plan (ISP) development process to be sufficient in amount, duration and scope to meet the health and welfare needs of an individual. Unless prior authorization has been obtained in accordance with rule 5101:3-41-12 of the Administrative Code, the individual funding level for services reimbursed in accordance with this rule except supported employment shall be within or below a funding range assigned to the individual as the result of administration of the ODDP.

"Ohio developmental disabilities profile (ODDP)" means the standardized instrument utilized by the department to assess the relative needs and circumstances of an individual compared to others. The consumer-specific responses are scored and the individual is linked to a funding range, which enables similarly situated individuals to access comparable waiver services reimbursed in accordance with this rule on a statewide basis.

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"Prior authorization" means the process to be followed in accordance with rule 5101:3-41-12 of the Administrative Code to authorize an individual funding level that exceeds the maximum value of the funding range that is determined for an individual through the use of the ODDP.

ODJFS retains the final authority, based on the recommendation of the department, to establish payment rates for all waiver services included in HCBS waivers administered by the department. The services and payment rates for all waiver services other than day habilitation and transportation to access day habilitation are included in appendix A to this rule. The payment rates for day habilitation and transportation to access day habilitation are contained in rule 5123:2-9-12 of the Administrative Code.

A provider is eligible to be reimbursed for services when: based upon assessed and documented need, the ISP indicates the days of the week and the beginning and ending times each day when it is anticipated that an individual will require.

When an assignment of a funding range occurs, an ISP shall be reviewed, revised or developed with the individual. The county board shall apply rates for the units of each waiver service, other than day habilitation and transportation to access day habilitation services, resulting from the completion of the ISP planning process to calculate the individual funding level. Twelve months following the month in which this rule is effective, the rates applied to the units of supported employment services shall not be used to calculate individual funding levels for either individuals newly enrolled on a waiver or, at the point of their eligibility re-determination, for individuals currently enrolled on the waiver.

When an ISP change is made and a new funding level is determined, the providers of waiver services to the individual shall verify to the county board the numbers of units of each waiver service delivered during the individual's current waiver eligibility span so that the county board may accurately calculate the number of units of available service to be provided that is approved for the individual's use during the remainder of the waiver eligibility span. *The funding ranges shall consider: the unpaid care available to the individual; the individual's living arrangement; the individual's behavior support needs; the individual's mobility; the individual's ability for self care; and any other variable that significantly impacts the individual's needs as determined by the department through statistical analysis. (emphasis added)*

Analysis:

In present case the Appellant was receiving 24 hour paid care from his relatives with whom he resides, his cousin and her husband. The Appellant's provider/cousin/guardian asserted that Appellant required 24 hours care. There was no evidence of this. As he is living in the home with relatives the ISP shall be developed to include natural supports. Also, the Appellant's cousins were paid for eight hours a day when the Appellant was not in the home and attending a workshop. It is clear that the Appellant does not require 24 hour care. The ODMR/DD feels that the Appellant's needs can be met by 34 hours care per week, however, the ODMR/DD failed to show by the preponderance of the evidence how these hours were arrived at. Nor did the Appellant's cousin substantiate her hour-for-hour care provided to the Appellant. Stating the Appellant requires \$54,000 per year in care is not in and of itself justification that he requires care at this amount. As the ODMR/DD has not shown by the preponderance of the evidence how they arrived at 34 hours per week in personal care/homemaker services, the determination

STATE HEARING DECISION CONTINUATION

cannot be upheld. In addition the Appellant submitted medical documentation on the Appellant not previously considered by ODMR/DD.

HEARING OFFICER'S RECOMMENDATION:

Based upon the record before me I find the appeal should be sustained and the Appellant's cousin be directed to provide an hour-by-hour accounting of her care of the Appellant over a seven day period, and provide same to ODMR/DD in writing. Upon receipt, ODMR/DD is directed to:

*Review the medical documentation provided on behalf of the Appellant and review the Appellant's guardian/cousin/provider's account of documented need for services for the Appellant under the MR/DD waiver. The ODMR/DD shall clearly set forth how they arrived at the number of hours/units the Appellant requires for care each day and weekend; and

*The ODMR/DD shall notify the Appellant's cousin/provider of their determination via the appropriate State form and shall attach a copy of the notice to the State hearing compliance form.

FINAL ADMINISTRATIVE DECISION AND ORDER:

Finding the Hearing Officer's decision to be supported by the evidence, the recommendations above are adopted, and the appeal is sustained. Agency is required to comply with the Hearing Officer's recommendations. Ohio Admin. Code § 5101:6-7-03(B)(1)(a) requires compliance with this decision within 15 calendar days from the date of this decision, but no later than 90 calendar days from the request date. Compliance shall be promptly reported to ODJFS, Bureau of State Hearings, via JFS 04068, compliance form, with supporting documentation. (2003)

Hearing Authority

February 6, 2007

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 CANTON District hearing section at 1-866-635-3748.

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, OH 43218-2825 or fax: (614) 728-9574. 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 Bureau of State Hearings 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.

Aviso a la Apelante

STATE HEARING DECISION CONTINUATION

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

ODMR/DD Exhibits:

- A. Appeal summary, 2 pages
- B. Individual request form prior authorization of IO Waiver Services, 3 pages
- C. Summary of request for prior authorization on behalf of the Appellant, 2 pages
- D. Prior authorization criteria, ODMRDD verification of recommended action, 3 pages
- E. Notice of denial of Waiver services, 1 page
- F. Appendix A, funding source, 2 pages
- G. ODMRDD review sheet, 1 page
- H. Ohio Admin. Code rules, 19 pages

Appellant Exhibit:

- 1. Hearing Request, 1 page