

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County HAMILTON	District Hearings Section CINCINNATI	Assistance Group Name		Assistance Group Number
Place of Hearing HAMILTON CDHS	Initial Hearing Date 03/08/2000	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Michael Owens, Husband of Appellant

Date Notice Mailed 12/30/1899	Date Received by Local Agency	Date Received by ODHS 01/12/2000	Date Appeal Summary Received	Date Scheduling Notice Mailed 02/25/2000
Appeal Number(s)/Program(s) 9934007/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 Human Services. If you would like a copy of the official record, please telephone the hearing supervisor at the CINCINNATI District hearing section at 1-800-686-1571.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Human Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43266-0423. 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:

Whether the denial of the appellant's application for Home & Community Based Services Medicaid (MA J) because there are no waiver openings available, was correct.

AGENCY'S TESTIMONY:

The Bureau of Community Services (BCS) representative read the following appeal summary:

[The appellant] applied for the Ohio Home Care Waiver and was denied because the waiver had closed for the fiscal year.

ELG

Appeal(s) OVERRULED 9934007	Date Issue 03/09/2000	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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Ohio Administrative Code (OAC) 5101:3-12-04 (c)(6), requires that waiver openings be available in order for consumers to be enrolled on the Ohio Home Care Waiver. The number of waiver openings available for each fiscal year is agreed to by ODHS and the Health Care Financing Administration at the time the waiver is approved and it cannot be exceeded.

The Bureau of Community Long Term Care Services (BCLTCS) is maintaining a contact list of consumers who are denied because the waiver has reached capacity and will notify them by mail when the waiver reopens.

APPELLANT'S HUSBAND'S TESTIMONY:

Note: The appellant was represented at the hearing by her husband.

At the beginning of the hearing, the hearing officer read a portion of the appellant's husband's request for a state hearing (the denial notice was not attached): "[the appellant] applied for the waiver program and she was approved on 9-20-99. ... We received a denial on 11-16-99 for lack of slots".

The appellant's husband stated that [worker at the Bureau of Community Long Term Care Services] told him that if he requested a state hearing, a slot might become available. He said that his wife's spirits have gone downhill since she was told there were no slots until 7-00. He is willing to rearrange his work schedule to assist his wife in her rehabilitation [she was injured in a 1-98 automobile accident].

EXHIBITS:

Agency's:

A. Appeal Summary

Appellant's:

B. Medical Statement

FINDINGS OF FACT:

The appellant applied for the Ohio Home Care Waiver. Based on her medical condition she is eligible, however, the Bureau of Community Long Term Care Services denied the application because there are no waiver slots available.

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CONCLUSIONS OF POLICY:

Ohio Administrative Code (OAC) Rule 5101:3-12-04 states the following concerning eligibility for the Ohio Home Care Waiver Program:

OAC 5101:3-12-04 Consumer Eligibility for Ohio Home Care Benefits

Before a consumer can receive home care services through the Ohio home care program, the consumer must be eligible for one of the ODHS-administered home care benefit packages, or be enrolled in one of the HCBS waiver programs administered by the Ohio department of aging or the Ohio department of mental retardation and development disabilities (ODMR/DD). Consumers are not eligible for home care benefits if they are receiving hospice services through medicare or medicaid or services through the program of all inclusive care for the elderly (PACE) reimbursed by medicaid. ...

(C) To be eligible for services for under the ODHS-administered waiver benefit package, the following criteria must be met: ...

(6) The designated ODHS-administered HCBS waiver program has not reached the HCFA-authorized limit participants for the current fiscal year. ...

Testimony and evidence submitted at the hearing reveal that the Bureau of Community Long Term Care Services (BCLTCS) denied the appellant's application for Home & Community Based Services Medicaid because there are no waiver openings available.

The appellant applied for Home & Community Based Services Medicaid. The BCLTCS representative testified that the application was denied because there are no waiver openings available. There are no waiver openings available because the authorized limit of participants has been reached for the fiscal year. For this reason, the above cited regulation indicates that the BCLTCS determination is correct and is, therefore, affirmed.

HEARING OFFICER'S RECOMMENDATIONS:

Based on the conclusions of policy, testimony and evidence cited above it is recommended that the appeal be **OVERRULED**.

FINAL ADMINISTRATIVE DECISION AND ORDER

Appeal Number(s) 9934007

The Hearing Officer's recommendations are adopted.

Appeal **OVERRULED**

Date Issued: 03/09/2000