

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>HANCOCK</b>	District Hearings Section <b>TOLEDO</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>HANCOCK CDJFS</b>	Initial Hearing Date <b>01/14/2002</b>	Rescheduled Postponed to <b>03/06/2002</b>	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation

Date Notice Mailed <b>12/30/1899</b>	Date Received by Local Agency	Date Received by ODHS <b>12/20/2001</b>	Date Appeal Summary Received <b>03/06/2002</b>	Date Scheduling Notice Mailed <b>02/22/2002</b>
Appeal Number(s)/Program(s) <b>1049585/MED</b>				

### 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

Appellant is a resident of St. Catherine's nursing facility due to an approval for a less than thirty (30) day convalescent stay. The nursing facility (NF) applied for long term placement for Appellant on 10/15/01. Appellant is diagnosed with having serious mental illness (SMI). The Ohio Department of Mental Health (ODMH) determined Appellant's needs do not meet the required criteria for a nursing home placement, and have denied the request for long term nursing home placement for Appellant.

Appellant's guardian (GDN) is appealing the denial of long term nursing home placement for Appellant. GDN believes Appellant needs nursing home placement as she needs hands on assistance with meal preparation, she cannot self-administer her medications, and she needs twenty-four (24) hour supervision due to a cognitive impairment.

DSM

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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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I find the denial of long term nursing home placement to be correct. Appellant does not require the level of services provided by a nursing facility as her needs may be met through a community setting or by a mental health treatment facility. This appeal should be **OVERRULED**.

### **PROCEDURAL MATTERS**

The request for Appellant's state hearing was received by the Bureau of State Hearings on 12/20/01. The state hearing was scheduled for 01/14/02 and then rescheduled and held on 03/06/02.

### **FINDING OF FACT**

1. Appellant was hospitalized at Flower Hospital's psychiatric unit in the month of 08/01. She was released from the Flower Hospital directly to St. Catherine's NF for a less than thirty (30) day convalescent stay.
2. St. Catherine's NF applied for long term placement on Appellant's behalf on 10/15/01.
3. Appellant has been diagnosed with SMI. Her diagnoses include schizophrenic disorder, paranoid type with exacerbation of psychotic symptoms, and history of poly dependence.
4. A Preadmission Screening/Resident Review (PASRR) was completed on Appellant by the ODMH.
5. The mental health evaluation identifies Appellant's major needs as : a safe place to live, help with medication, supervision by a psychiatrist, supervision of financial and legal affairs and supervision or hands on assistance with activities of daily living (ADLs).
6. The 3697 - Level of Care Assessment indicates Appellant needs supervision only with her ADLs.
7. Appellant does need supervision with her medication and twenty-four (24) hour supervision to prevent harm to self and others due to her SMI.
8. Long term nursing home placement is not the appropriate setting for meeting Appellant's needs as a nursing facility is not licensed by ODMH to provide mental health treatment in a residential setting.

### **CONCLUSIONS OF POLICY**

#### **Policy**

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Ohio Administrative Code (OAC) 5122-21-03 Pre-admission screening and resident review for nursing facility and passport waiver applicants and residents with serious mental illness.

(C) Review and determination process

(1) Required determinations:

(a) If an individual referred to the department for PAS is determined to have SMI, the department shall determine whether the individual requires the level of services provided in a NF and, if so, whether the individual requires specialized services for SMI.

(b) If an individual referred to the department for Resident Review is determined to have SMI, the department shall determine whether the individual requires the level of services provided in a NF and whether the individual requires specialized services for SMI.

(2) PASRR determinations shall be based on an independent physical and mental evaluation performed by an individual who is not a civil service employee of the department and who does not have a direct or indirect affiliation with a NF. The evaluation may use relevant evaluative data, obtained prior to initiation of the pre-admission screening or resident review, if the data are considered valid accurate and reflect the current functional status of the individual.

(F) Determinations.

Based on the information submitted, the department shall do all of the following:

(1) Determine whether the individual meets the criteria for serious mental illness in accordance with Paragraph (B) (12) of this rule.

(2) Determine whether the individual requires the level of services provided by a NF based on a comprehensive analysis of all data, consideration of the most appropriate placement such that the individual's needs for treatment do not exceed the level of services which can be delivered in the NF through NF services alone or, where necessary, through NF services supplemented with specialized services provided or arranged by the Department, and in accordance with the requirements specified in section 5101:3-3 of the Administrative Code.

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(4) Identify placement options. The placement options are as follows:

(a) Can be admitted to a NF. Any applicant for admission to a NF who has SMI and who is determined to require the level of services provided by a NF in accordance with paragraph (F)(2) of this rule, may be admitted to a NF.

(b) Cannot be admitted to a NF. Any applicant for admission to a NF who has SMI and who is determined not to require the level of services provided by a NF in accordance with paragraph (F)(2) of this rule, is inappropriate for NF placement and must not be admitted.

OAC 5101:3-3-06 Intermediate level of care (ILOC).

(A) This rule sets forth the criteria used to determine whether an individual who is seeking Medicaid payment for long term care services needs an intermediate level of care (ILOC).

(B) Definitions.

(1) "Activity of daily living (ADL)" means a personal or self-care skill performed, with or without the use of assistive devices, on a regular basis that enables the individual to meet basic life needs for food, hygiene, and appearance. For purposes of this rule, the term "ADL" may refer to any of the following:

(a) "Mobility" is the ability to use fine and gross motor skills to reposition or move oneself from place to place, with or without the use of assistive devices.

(b) "Bathing" is the ability to cleanse one's body by showering, tub or sponge bath, or any other generally accepted method, and may be performed with or without the use of assistive devices.

(c) "Grooming" is the ability to perform the tasks associated with oral hygiene, hair care, and nail care.

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(d) "Toileting" is the ability to appropriately eliminate and dispose of bodily waste, with or without the use of assistive devices or appliances.

(e) "Dressing" is the ability to put on, fasten, and take off all items of clothing, including the donning and/or removal of prostheses;

(f) "Eating" is the ability to feed oneself. Eating includes the processes of getting food into one's mouth, chewing, and swallowing, and/or the ability to use and self-manage a feeding tube.

(2) "Assistance" means the hands-on provision of help in the initiation and/or completion of a task.

(4) "Medication administration" means the ability to prepare and self-administer all forms of over the counter and prescription medication.

(5) "Supervision" means either of the following:

(a) Reminding an individual to perform or complete an activity; or

(b) Observing while an individual performs an activity to ensure the individual's health and safety.

(C) 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 (in accordance with rule 5101:3-3-15 of the Administrative Code) and it has been determined that:

(a) The individual requires services beyond the minimum required for a protective level of care (set forth in rule 5101:3-3-08 of the Administrative Code); but,

(b) The individual's condition and/or corresponding service needs do not meet the minimum criteria for a

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skilled level of care set forth in rule 5101:3-3-05 of the Administrative Code; and,

(c) The individual's condition and/or service needs do not meet the criteria for 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:

(a) The individual requires hands-on assistance with the completion of at least two activities of daily living;

(b) 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;

(c) The individual requires one or more skilled nursing or skilled rehabilitation services (as defined in paragraphs (B)(4) and (B)(5) of rule 5101:3-3-05 of the Administrative Code) at less than a skilled care level (as defined in paragraph (B)(3) of rule 5101:3-3-05 of the Administrative Code); or

(d) Due to a cognitive impairment, including but not limited to dementia (as defined in rule 5101:3-3-151 of the Administrative Code), the individual requires the presence of another person, on a twenty-four-hour-a-day basis for the purpose of supervision to prevent harm.

### **Analysis**

Appellant has SMI and is being evaluated for long term placement into St. Catherine's NF. The evaluation completed by the ODMH must consider both the appropriate placement for the individual as well as the level of care criterion. The evaluation concluded that Appellant did not need nursing home placement; rather she needs a protective living environment and supervision of her psychiatric medication. Should Appellant become a danger to herself or others, then inpatient psychiatric hospitalization is necessitated.

The licensed social worker (LSW) from St. Catherine's NF testified Appellant needs hands on assistance with meal preparation, laundry tasks, and mobility due to the strength in her knees. In her opinion Appellant needs supervision for administration of medication and grooming, and needs twenty-four (24) hour supervision to prevent harm.

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Hands on assistance with meal preparation and laundry are instrumental ADLs used for a determination of a protective level of care. An intermediate level of care uses the ADLs of mobility, bathing, grooming, toileting, dressing, and eating for the determination. LSW testified Appellant is having problems with strength in her knees. The ADL of mobility speaks directly to the ability to move to and from a lying position in bed, the ability to transfer between surfaces, and locomotion, the ability to move between locations by ambulation or other means. While Appellant may have some problems with strength in her knees, she is able to ambulate from place to place, and would not meet the hands on assistance for mobility.

Appellant does need supervision with her medication and a protective living environment, as GDN has not known of Appellant's whereabouts for periods of time in the past. However, the NF is not an appropriate facility designed to meet the needs of an individual with SMI. The NF is not licensed to provide mental health treatment in a residential setting. The responsibility for Appellant's care belongs with the community mental health system. Should Appellant become a danger to herself or others, inpatient psychiatric hospitalization is available. I find ODMH has correctly determined that the NF is not an appropriate long term placement for Appellant.

### **HEARING OFFICER'S RECOMMENDATION**

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

### **FINAL ADMINISTRATIVE DECISION AND ORDER**

Finding the Hearing Officer's decision to be supported by the evidence, the recommendations above are adopted, and **appeal 1049585 is OVERRULED**.

### **APPENDIX**

#### **Exhibits**

- A. PASRR Identification (A1-A3)
- B. Evaluation Summary (B1-B3)
- C. Mental Health Evaluation (C1-C8)
- D. Level of Care Worksheet (D1-D4)
- E. Flower Hospital evaluation (E1-E2)
- F. ODHS 3697 - Level of Care Assessment (F1-F5)
- G. Request for Guardianship
- H. Statement of Expert Evaluation dated 01/01/00 (H1-H2)
- I. Statement of Expert Evaluation dated 03/26/01 (front & back page)
- J. Pre-application form (J1-J12)

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- K. Informed Consent for Medications from Riverside Hospital dated 03/01/01
- L. Informed Consent for Medications from Riverside Hospital dated 02/25/00
- M. Fax from Flower Hospital dated 08/27/01 (M1-M7)
- N. Statement of Expert Evaluation dated 03/04/02 (N1-N2)
- O. Notes prepared by LSW
- P. Enhanced Evaluation dated 02/04/02 (front & back page)
- Q. Patient Transfer Form dated 11/19/01 (Q1-Q2)
- R. State hearing Decision issued 10/26/01 (R1-R9)

Date Issued: 03/15/2002