

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County ATHENS	District Hearings Section COLUMBUS	Assistance Group Name		Assistance Group Number
Place of Hearing ATHENS CDHS	Initial Hearing Date 01/29/2004	Rescheduled Postponed to 03/02/2004	Rescheduled Postponed to 03/02/2004	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Don Sabol, Peggy Smith, Office of Ohio Health Plans Ray Strischek, Income Maintenance Worker

Date Notice Mailed	Date Received by Local Agency	Date Received by ODHS 12/23/2003	Date Appeal Summary Received	Date Scheduling Notice Mailed 02/20/2004
Appeal Number(s)/Program(s) 1153287/MED, 1153288/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

Appeal No.1153288 Medicaid: On 11/17/03, the Ohio Department of Job and Family Services (ODJFS) mailed notice to the Appellant, informing him that as of 1/1/04, the department would not longer pay for Chiropractic services to persons 21 years or older, nor for services delivered by independent psychologists. The Appellant mailed a state hearing request, received by the department on 12/23/03, objecting to these restrictions of medical service. The Appellant is a member of a group affected by a change in the Ohio Administrative Code (OAC). State hearing decisions are based on applicable OAC rules and may not deviate from the policies contained therein. Therefore, the Hearing Officer recommends the appeal be overruled.

Appeal No.1153287 Medicaid: In his 12/23/03 state hearing request, the Appellant objected to the department's new requirement, effective 1/1/04, that prescription medications, that must be prior approved, require a three dollar copayment by the Medicaid recipient. The Appellant, who is currently maintained on

GNB

Appeal(s) OVERRULED 1153287, 1153288	Date Issued 03/09/2004	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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several prescription drugs which require prior approval, objected to the co-payment requirement. The Appellant is a member of a group affected by a change in the Ohio Administrative Code. State hearing decisions are based on applicable OAC rules and may not deviate from the policies contained therein. Therefore, the Hearing Officer recommends the appeal be overruled.

PROCEDURAL MATTERS

This appeal was received by the Bureau of State Hearings on 12/23/03. The hearing was scheduled to be held at the local Agency on 1/29/04, but was postponed at the Appellant's request and rescheduled for 2/2/04, was postponed a second time, and finally rescheduled for 3/2/04, when it was duly conducted. The Appellant attended the hearing and represented himself. The County Department of Job and family Service (CDJFS) was represented by an Income Maintenance Worker. The ODJFS Office of Ohio Health Plans was represented by two Health Systems Analysts who participated by telephone conference call. The state Hearing Officer conducted the proceeding by speaker telephone from the Columbus Regional Hearings Unit. All parties were sworn in by the Hearing Officer. Testimony was taken and documents were accepted and identified as Exhibits. Based on the evidence presented, the Hearing Officer made the following findings of fact.

FINDINGS OF FACT

- (1) The Appellant, a fifty-five year old man, is disabled and in receipt of Medicaid for the disabled (MA-D).
- (2) The Appellant receives both Chiropractic and psychological services. In the past, Medicaid has paid the cost of these services.
- (3) The Appellant is currently maintained on prescription medications, some of which require prior approval from ODJFS.
- (4) The Appellant is not currently enrolled in a Medicaid managed care plan (MCP).

CONCLUSIONS OF POLICY

Policy

(1) Ohio Administrative Code (OAC) 5101:6-7-01, "State Hearing Decisions," states in paragraph (C), "Basis," that "The hearing officer's conclusions of policy and recommendations shall be based solely on published [ODJFS] regulations, or local agency policy adopted pursuant to options authorized in state law, except where these regulations are silent and reference to the Revised Code or other statutory source is necessary to resolve the issue."

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(2) On 10/3/03, ODJFS issued Medical Assistance Letter (MAL) 454. The letter stated that Ohio's biennial budget did not include funding to retain Chiropractic services as part of Ohio's Medicaid benefit package for adults age 21 and over. Therefore, effective 1/1/04, Medicaid would no longer pay for these services. In addition to children, the letter noted that consumers enrolled in Medicaid managed care plans (MCPs) may remain eligible if their plan continues covering Chiropractic services. Importantly, the letter also specified that claims for individuals with dual Medicare and Medicaid eligibility would continue to be paid as "crossover" services.

(3) OAC 5101:3-8-11, "Covered Chiropractic physician services and limitations," effective 1/1/04, states in paragraph (G) that "The following services are not covered . . . (8) Services for adults twenty-one years of age and older when provided by a Chiropractic physician."

(4) On 11/18/03, ODJFS issued Medical Assistance Letter 453. The letter announced the elimination of Medicaid coverage of psychological services provided to adults by independent psychological practices. The letter further states that independent psychology practitioners or practice groups can continue to provide services to Medicaid recipients under 21 years of age, and notes that those recipients who receive such services as part of their MCP coverage may remain eligible for services under their plan. For adults who are dually eligible for Medicare and Medicaid, and for adults who are qualified Medicare beneficiaries (QMBs), Medicaid will continue to pay the deductible and coinsurance payments for psychological services covered by Medicare.

(5) OAC 5101:3-8-05, "Covered psychology services and limitations," effective 1/1/04, states that "For dates of service beginning on or after January 1, 2004, psychology services specified in paragraphs (C) to (F) of this rule will no longer be covered Medicaid services for adults twenty-one years of age and older when services are provided by an independent psychologist and independent group psychologist practices. Psychology services not provided by independent psychologists (for example, services provided in an outpatient hospital facility) will continue to be covered Medicaid services . . . 'Independent psychologist' means a psychologist licensed under chapter 4732 of the Revised Code who provides such services on his/her own, free of administrative and professional control of an employer such as an institution, physician, or agency."

(6) OAC 5101:3-9-09, "Consumer co-payments for certain pharmacy medications (except for consumer who are members of a Medicaid managed care program)," effective 1/1/04, states in paragraph (A) that "Beginning January 1, 2004, consumers eligible for the Medicaid program (except consumers who are members of a Medicaid managed care program) as defined in paragraph (B) of this rule, and consumers eligible for the disability medical assistance program . . . will pay a \$3.00 co-payment for prescription medications not found in appendix A of rule 5101:3-9-12 of the Administrative Code . . . (B) Consumers

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subject to co-payment . . . are identified as adults eligible under the medicaid and disability medicaid programs, age twenty-one and over."

(7) Paragraph (E) of OAC 5101:3-9-09 states that "No provider of pharmacy services may deny services, to a consumer who is eligible for the services, on account of the consumer's inability to pay the co-payment. Consumers who are unable to pay their co-payment may declare inability to pay and obtain their medication without paying their cost sharing amount; they remain however, liable for the co-payment. The provider may bill the consumer for the co-payment or may request payment for a prior uncollected co-payment, however the consumer may not be denied subsequent services based on their failure to pay an outstanding co-payment."

Analysis

In the present case, the Appellant is a member of a large group of Medicaid program recipients affected by changes in the Administrative Code. The rule cited above in item (1) requires that state hearing decisions be based on published ODJFS regulations, and in the current case, those regulations are found in the OAC. There is no question that the applicable rules, cited above in items (2) through (5), for Chiropractic and psychological services changed effective 1/1/04, nor is there any question that a limited prescription co-payment requirement, cited in item (6), went into effect on the same date. The Appellant, like other Medicaid recipients, is subject to the rules of the Administrative Code, and his appeals must therefore be overruled. However, there is some question as to whether the rule changes in question will actually have an adverse effect on the Appellant. In regard to the prescription co-payment requirement, the Appellant appeared to be unaware that pharmacies are required by the rule cited above in (7) to provide his medication regardless of whether he can make the co-pay or not, and further that they are barred from denying him subsequent service for this reason. The Appellant should, therefore, be able to obtain his needed medications, whether he can meet the co-payment requirement or not.

It was not ascertained at the hearing whether the Appellant has Medicare coverage or not, but if he does, he may very well be eligible for so-called "crossover" payments for Chiropractic and psychological services. This means that if the services are reimbursable under Medicare, Medicaid will go ahead and pay the deductible and co-pays. Finally, the Appellant himself was uncertain as to whether the psychological services receives are delivered by an independent practice, or whether they were billed through a community mental health center. It is therefore possible that there will be no adverse impact on the Appellant's counseling services. In short, the Appellant is subject to the rules, but the actual effect of the rules may be considerably softened, depending upon the Appellant's Medicare status and the type of practice where he receives psychological services.

HEARING OFFICER'S RECOMMENDATIONS

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Appeal No.1153288 Medicaid (MA-D): Based on the record before me, I find the appeal should be overruled. The Appellant is a member of a group affected by changes in the Administrative Code.

Appeal No.1153287 Medicaid (MA-D): Based on the record before me, I find the appeal should be overruled. The Appellant is a member of a group affected by changes in the Administrative Code.

FINAL ADMINISTRATIVE DECISION AND ORDER

Finding the hearing officer's decision to be supported by the evidence, the recommendations above are adopted.

Medicaid appeals are overruled.

APPENDIX

Exhibits

- (1) JFS 4069, State Hearing Request, three pages.
- (2) County Appeal summary, three pages, including DHS 4067.
- (3) Appeal Summary, Office of Ohio Health Plans.
- (4) Fax cover sheet from Psychologist.
- (5) Note, dated 2/14/04, from Psychologist.
- (6) Letter, dated 9/18/03, from Appellant's M.D.
- (7) Pharmacy order for Appellant for month of February.
- (8) Two pages of CRIS-E (computer case record) screen-print, "Notice History" and "Running Record Comments."
- (9) CRIS-E "View Flash Bulletin."

Date Issued: 03/09/2004