

IN THE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES  
BUREAU OF STATE HEARINGS

ADMINISTRATIVE APPEAL DIVISION

**IN RE APPEAL OF:**

DOCKET NO.	2005-AA-0202
APPEAL No(s).	1211305 / MED
AG No.	
HEARING REQUEST DATE:	01/19/2005
HEARING DECISION DATE:	02/18/2005
APPEAL REQUEST DATE:	02/24/2005
<b>Hamilton CDJFS</b>	

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Administrative Appeal Decision

The Appellant, a 7 year old Medicaid recipient is, through his mother, appealing a January, 2005, denial by the ODJFS Bureau of Home and Community Services (BHCS) of her November 1, 2004, application for Medicaid home and community based waiver (HCBS) services because all available waiver slots were reserved effective October 21, 2004. The hearing decision overruled the appeal, finding that BHCS has authority to deny new HCBS requests after October 21, 2004, and establish a waiting list on which the Appellant would be placed.

In her request for administrative appeal the Appellant asserts a Statement of Error that the decision is contrary to the weight of the evidence presented at the hearing that she attempted to apply for the services "long before 10/21/04 and was given false information." This allegation echoes her testimony at the hearing that she attempted to apply for service at the beginning of 2004 by talking to a county caseworker named "A. Coleman" but was "given the runaround."

Unfortunately, we are unable to evaluate the proposed error on the current record because there was no development of the issue by the hearing officer. Neither the county nor BHCS representative at the hearing responded to the Appellant's allegation, and there are no pertinent documents in the record such as a copy of the HCBS service application or running record comments from the beginning of 2004 or November, 2004. "In regulating the conduct of the hearing, the hearing officer is responsible for developing the fullest possible record upon which to base all necessary finding of facts...The hearing officer shall take an active part in questioning the parties and the evidence presented, insofar as that is necessary to develop the fullest possible record." [OAC 5101:6-6-02(C)(10)] Given the fact that, unlike most Medicaid services, OAC 5101:3-12-13 authorizes BHCS to limit available HCBS slots and establish a waiting list, the factual issue of when an application was filed is potentially the most compelling issue in an HCBS hearing.

To be sure, in the present case the hearing recording indicates that the hearing officer did a yeoman's job of stimulating the county and BHCS representatives to think about alternative assistance for the Appellant through either CORE home nursing services or consideration of the Individual Options (IO) waiver administered by the Ohio Department of Mental Retardation and Developmental Disabilities (ODMRDD). Even that discussion, however, was hampered by confusion regarding the relative roles of those two agencies in assisting applicants like the Appellant's mother, who has quit her job to concentrate on caring for the Appellant, the disabled Medicaid recipient, and his older brother. Moreover, it was not even clear whether the HCBS application also serves as an application for the IO waiver, which maintains an even longer waiting list.

#### Waiver Application Procedure

A review of the applicable rules helps to clarify the relative duties of the two agencies. OAC 5101:1-38-016 provides that in general the county determines Medicaid financial eligibility for waiver applicants, while BHCS determines if the applicant meets the service requirements for waiver programs. " As described in OAC 5101:3-12-11(B) and (F):

The entity (entities) designated by and under contract with ODHS to provide home services facilitation shall be referred to as the designee...

The eligibility determination process for the ODHS-administered HCBS waiver program is as follows:

(1) When a waiver applicant or authorized representative of a waiver applicant (e.g., family member, home health agency, hospital discharge planner, nursing facility social worker, physician, etc.) wants to apply for the ODHS-administered HCBS waiver program, the individual must begin the application process at the county department of human services (CDHS).

(a) If the waiver applicant is not currently enrolled in the Medicaid program the applicant must complete both the ODHS 2399 HCBS waiver referral form and the ODHS 7100 the common application form. The CDHS will determine, presumptively, if the waiver applicant meets the income eligibility for enrollment on the waiver program, and notify the designee that the waiver applicant appears to meet the income eligibility for the waiver program. The CDHS will proceed to determine and verify that the waiver applicant meets the income eligibility for enrollment in the ODHS-administered HCBS waiver program. Notification by a CDHS shall be done in accordance with paragraph (D) of rule 5101:1-39-94 of the Administrative Code.

(b) At the option of the CDHS, if the waiver applicant is currently enrolled on the Medicaid program and his/her Medicaid eligibility has been determined within the last ninety days,

the waiver applicant automatically meets the income eligibility for enrollment on the waiver and must only complete the ODHS 2399 HCBS waiver referral form. The CDHS will notify the designee that the waiver applicant meets the income eligibility for the waiver program and submit an application for enrollment on the waiver.

(c) If the waiver applicant is currently enrolled on the medicaid program and his/her medicaid eligibility has not been determined within the last ninety days, the procedure set forth in paragraph (C)(1)(a) of this rule applies.

(2) Upon notification from the CDHS by CRIS-E alert 678, the designee will contact the individual by telephone (or an alternative arrangement if so indicated on the application) to collect preliminary information and to set up an appointment for the face-to-face visit to collect the data necessary to determine waiver program eligibility.

(a) The preliminary information collected by telephone will assist the designee in determining if the waiver applicant is a likely candidate for the ODHS-administered HCBS waiver program and/or if the waiver applicant's home care needs can be met through the medicaid program (without the waiver), through one of the waiver programs administered by ODA or ODMR/DD, or through other programs available in the applicant's community. The designee is responsible for referring the waiver applicant to the most appropriate resources for accessing and receiving home care services at the earliest possible date of service.

((b) If the preliminary information collected by the designee over the telephone indicates that the waiver applicant will not be eligible for the waiver or the designee is able to successfully arrange for appropriate services without the need for the waiver, the designee may request that the waiver applicant voluntarily withdraw their waiver application. If the waiver applicant withdraws the application the designee notifies ODHS to deny the waiver application. If the waiver applicant chooses not to withdraw the application, the designee will perform the face-to-face visit for data collection and will complete the ODHS-administered HCBS waiver program eligibility determination process. The applicant will be notified at a later date of their denial or approval of eligibility.

#### ODJFS Administered Home Care

“The Ohio home care program consists of three ODJFS-administered home care benefit packages: core, core-plus and ODJFS-administered waiver. The amount and/or scope of services covered, and the utilization management and service coordination are progressively more extensive and comprehensive in each of the three ODJFS-administered home care benefit packages. [5101:3-12-02(C)] “Core benefit package” is the home care benefit package which consists of the core home care services ... It is designed to meet the needs of consumers eligible

for medicaid who require no more than a combined total of fourteen hours of daily living and/or nursing services per week. Preapproval by ODJFS or its designee is not required before a consumer can access covered services. ..."Core-plus benefit package" is the home care benefit package which consists of the core home care services .... It is designed to meet the needs of consumers eligible for medicaid who require a total of more than fourteen hours per week of daily living and/or nursing services combined. Preapproval by ODJFS or its designee is required before a consumer can access covered services...."ODJFS-administered waiver benefit package" is the home care benefit package designed to meet the needs of consumers enrolled in an ODJFS-administered HCBS waiver. It consists of nursing services, daily living services, skilled therapy services and approved ODJFS-administered HCBS waiver services. [5101:3-12-01(I),(J),(GG)]

#### Home Care With Other Departments

"The Ohio home care program also includes three additional home care benefit packages: the Passport HCBS waiver program, which is administered by the Ohio department of aging (ODA) in accordance with chapter 5101:3-31 of the administrative code, and the Individual Options HCBS waiver program and the Residential Facility HCBS waiver program, which are administered by the Ohio department of mental retardation and developmental disabilities (ODMRDD) in accordance with chapters 5101:3-40 and 5101:3-43 of the administrative code....Consumers enrolled in waiver programs not administered by ODJFS will access all of their medicaid covered home care services through the waiver program under which they are enrolled in accordance with the agreements between ODJFS and ODA and between ODJFS and ODMRDD...ODJFS will assure that consumers enrolled in waiver programs not administered by ODJFS will receive core home care services from providers reimbursed by ODJFS when the services are appropriate and medically necessary as determined by ODJFS in accordance with the agreements between ODJFS and ODA and between ODJFS and ODMRDD". [5101:3-12-02(D)]

#### Present Case

Thus, in the present case it appears that the Appellant, already a Medicaid recipient, should have addressed his request for waiver services to the county and had a fairly quick referral to BHCS, or its designee, to determine if he was " a likely candidate for the ODHS-administered HCBS waiver program and/or if the waiver applicant's home care needs can be met through the medicaid program (without the waiver), through one of the waiver programs administered by ODA or ODMR/DD, or through other programs available in the applicant's community. The designee is responsible for referring the waiver applicant to the most appropriate resources for accessing and receiving home care services at the earliest possible date of service." The Appellant's mother

testified that she made this request at the county at the beginning of 2004; failing that, the rule seems to require that her November, 2004, application should have at least resulted in an evaluation by BHCS of not only the waivers administered by ODJFS or ODMRDD but also the possibility of Core or Core Plus services. As stated above, however, the current record does not provide us enough information to determine the weight of the evidence, as tested against the legal standards set forth herein.

### **DECISION**

Accordingly, we must ORDER that the state hearing decision be VACATED and the case REMANDED to the Cincinnati Hearings Supervisor to schedule a supplemental hearing in accordance with OAC 5101:6-8-01(H)(5) and with the participation of the county and BHCS, and any designees BHCS finds it necessary to include, in order to develop a full hearing record and issue a supplemental decision in accordance with this decision. In particular, BHCS and the county should be prepared to present any documentation and testimony which is relevant to the issue of the Appellant's requests for waiver services in 2004.

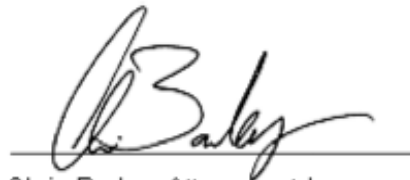


Robert J. Frankart  
Administrative Appeal Officer

**CONCUR:**



Margaret Adams  
Administrative Appeal Officer



Chris Barley, Attorney-at-Law  
Chief Administrative Hearing Officer

DATE OF ISSUANCE March 8, 2005

This Administrative Appeal Decision is the final administrative decision on your case from the Ohio Department of Job and Family Services. If you disagree with this decision, you may have the right to appeal to common pleas court pursuant to Section 5101.35 of the Ohio Revised Code. Your appeal must be filed within thirty days of the date this decision was issued to you. If you have questions about appealing to a court, contact your attorney, local legal aid society, or bar association. If you want information about free legal services, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888.

cc: Director, Hamilton County Department of Job and Family Services  
Hearings Supervisor  
Bureau of State Hearings  
MED: Ida Pritchett, Terri Dickerson  
Appellant