

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>ERIE</b>	District Hearings Section <b>TOLEDO</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>ERIE CDJFS</b>	Initial Hearing Date <b>03/09/2005</b>	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation <b>Amy Steinem-Supervisor/PASSPORT; Angela Holbrook-Habeck / Supevisor; Pat Gearheart-Elig Wrk</b>

Date Notice Mailed	Date Received by Local Agency <b>11/05/2004</b>	Date Received by ODHS <b>11/08/2004</b>	Date Appeal Summary Received <b>02/18/2005</b>	Date Scheduling Notice Mailed <b>02/22/2005</b>
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Appeal Number(s)/Program(s) <b>1200786/MED</b>
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### 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, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 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 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 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

On 10/26/04, the agency, PASSPORT, issued a level of care for the appellant with an effective date of 10/08/04, the date all PASRR (pre-admission screening/resident review) requirements were met. The NF (nursing facility) requested a State Hearing as they request an effective date of 09/13/04, the date the appellant was admitted to the NF. The issue under appeal is whether PASSPORT's determination was correct. This Hearing Officer finds PASSPORT's determination was correct and recommends that the appeal be **OVERRULED**.

BLC

Appeal(s) <b>OVERRULED 1200786</b>	Date Issued <b>03/16/2005</b>	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.)

Appeal Number(s) 1200786
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### **PROCEDURAL MATTERS**

The appellant was represented for this hearing by a representative of the NF in which he resides (REP). The appellant was not present for this hearing.

An approval notice was sent to the appellant on 10/26/04. The REP requested a State Hearing on 11/05 04. The hearing was scheduled for 03/09/05, with the scheduling notice being mailed to the appellant and REP on 02/23/05. The delay in scheduling the hearing was to determine which agency needed to be included for this hearing and to arrange a date and time with that agency. The Appeal Summary was received from PASSPORT on 02/18/05.

### **FINDINGS OF FACT**

- 1.) The appellant was admitted to the NF from a hospital on 09/13/04.
- 2.) The initial PASRR was approved in error by a different PSA as the PASID (pre-admission screening identification) form completed by the hospital listed incorrect information
- 3.) The NF requested a level of care on 10/01/04.
- 4.) PASSPORT discovered the error on 10/01/04 and advised the NF to submit a correct PASRR form.
- 5.) The NF submitted the PASRR form on 10/26/04.
- 6.) PASSPORT approved a level of care for the appellant with an effective date of 10/08/04, the date all PASRR requirements were met.
- 7.) The correct level of care date is 10/08/04.

### **CONCLUSIONS OF POLICY**

Appeal Number(s) 1200786
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### **Policy**

ODJFS shall determine whether an 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 or arranged by the department.

Ohio Admin. Code § 5101: 2-14-01 (2003)

A PAS/ID must be completed prior to any new admission to a NF. PAS/ID must be initiated via the completion of a PASRR ID screen, ODJFS 3622, and a Patient Care and Plan of Treatment, ODJFS 3697. ODJFS, or its designee, shall review the ODJFS 3622 to determine whether the individual has an indication of MR/DD and/or indications of SMI (serious mental illness). Individuals determined to have indications of MR/DD shall be subject to further review by ODMR/DD. When an individual has been determined to have indications of SMI and/or MR/DD, ODJFS or its designee shall forward the ODJFS 03622 and the ODJFS 03697 to ODMR or ODMH as appropriate, so that it may be determined whether the individual does have SMI or MR/DD.

PAS/SMI and/or PAS-MR/DD must be completed prior to any new admission of an individual determined by ODMR and/or ODMH unless the individual is a long-term resident.

Ohio Admin. Code § 5101: 3-3-151 (1998)

"Resident review" means the resident review portion of the PASRR requirements which must be implemented. Resident review for MR/DD means the process by which ODMR determines whether, due to the individual's physical and mental condition, an individual who is subject to RR requires the level of services provided by a NF or another type of facility.

"Significant change of condition" has the same meaning used in administering the routine resident assessment requirement and when at least 1 of the following criteria is met:

- \* there is a change in the individual's current diagnosis that the individual who did not previously have indications of MR/DD now has such indications; or
- \* the change is such that it may impact the treatment or placement options of an individual previously identified as having MR/DD may result in a change in the specialized services needs of an

Appeal Number(s) 1200786
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individual previously identified as having MR/DD

For those individuals listed above, the RR must be initiated by the NF promptly upon identification of the significant change. When an RR is not initiated by the NF within the allowed time frames, but is performed at a later date, Medicaid vendor payment is not available for services from the date the RR was due through the 7th calendar day following the receipt of the ODJFS 03622 form by ODMR.

Ohio Admin. Code § 5101: 3-3-152 (1998)

For a resident who has experienced a significant change in status that requires a comprehensive assessment upon reentry from a hospital stay, the NF shall submit a significant change assessment with 14 days of reentry.

Ohio Admin. Code § 5101: 3-3-40

The entire PASRR process must be completed prior to the performance of the LOC review. Authorization of payment to a nursing facility shall correspond with the effective date of the LOC determination. If the individual was required to undergo a PASRR review and failed to do so prior to admission to the nursing facility, the effective date of the LOC determination shall be the date of the PASRR determination that the individual required the level of services available in a nursing facility. The LOC date may not precede the date the PASRR requirements are met.

Ohio Admin. Code § 5101: 3-3-15 (1993)

### **Analysis**

In the appellant's specific situation, he was admitted to the NF from a hospital stay on 09/13/04. The PAS/ID process was completed at that time. However, the PAS/ID form completed by the hospital did not list an indication of the appellant's diagnosis of MR. This was evident from the hospital records and his previous medical records. PASRR was approved by a different PSA than is currently responsible for the appellant's situation. Since the appellant's diagnosis of MR was evident, the NF should have submitted the RR paperwork within 14 days, or by 09/26/04. However, this was not done. Upon the NF submitting the request for a level of care, the current PSA, i.e. PASSPORT, noticed the error on the previous PAS/ID and notified the NF that they would need to submit new forms so a referral could be made to ODMR, since the appellant has a diagnosis of MR. PASSPORT notified the NF of this on 10/01/04. The NF submitted the forms to ODMR on 10/01/04. The results from ODMR were received on 10/26/04 and the level of care was issued on 10/26/04, with an effective date of 10/08/04, 7 days following the receipt by ODMR of the

Appeal Number(s) 1200786
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corrected paperwork.

The REP stated that their facility has a lot residents with behavior diagnosis. They generally review each new resident to determine what behavioral needs they have. She stated they have a difficult time getting the proper PAS/ID paperwork from this particular hospital and didn't realize at the time of the appellant's admission that there was a problem. When PASSPORT called and notified them of the potential problem, they called the hospital immediately and received and faxed the paperwork, the same date, 10/01/04. The REP stated that although they may not have been within the 14 days time frame, they were within a timely fashion of being notified there was a problem by PASSPORT.

Based on testimony and evidence presented for this hearing, this Hearing Officer finds that PASSPORT's determination was correct. The proper paperwork was submitted to ODMR on 10/01/04. ODMR made their determination on 10/26/04, at which time the level of care was approved by PASSPORT, with an effective date of 10/08/04, the 7th day following the submission of the proper paperwork to ODMR. While I can understand the REP's testimony that they take many residents with behavioral problems and generally focus on those needs, this does not excuse them from reviewing the paperwork on all newly admitted residents to ensure that the proper paperwork is completed. It was pointed out during this hearing that the appellant's information had been faxed to the NF on 09/10/04, prior to his actual admission on 09/13/04. This should have given the NF ample time to review the paperwork for it's correctness. Had this been done, the proper paperwork could have been resubmitted in a timely fashion and this situation could have been avoided. However, since this was not done, I find that the correct date of the level of care for the appellant is 10/08/04, as determined by PASSPORT.

### **HEARING OFFICER'S RECOMMENDATIONS**

This Hearing Officer recommends that this appeal, #1200786, be **OVERRULED**. The agency was correct to determine the level of care date of 10/08/04 for the appellant's stay at the NF.

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

The Hearing Officer's recommendation is adopted.

Appeal Number(s) 1200786
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**APPENDIX**

**Agency Exhibits**

- A.) Appeal Summary, dated 02/16/05, inclusive of 3 pages
- B.) Packet of Documentation for Initial PASRR, inclusive of 13 pages
- C.) Medical/Hospital Records, inclusive of 2 pages
- D.) PASRR Screen, dated 09/10/04, inclusive of 3 pages
- E.) Packet of Resubmitted PASRR from NF, dated 10/01/04, inclusive of 6 pages
- F.) ODMR's Determination, dated 10/26/04, inclusive of 4 pages
- G.) Level of Care Determination, dated 10/26/04
- H.) ODJFS 09401, NF/CDJFS Transmittal, dated 11/01/04, inclusive of 2 pages

**Appellant Exhibits**

- 1.) Hearing Request, dated 11/08/04

Date Issued: 03/16/2005