

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
BUREAU OF STATE HEARINGS**

ADMINISTRATIVE APPEAL SECTION

In Re Appeal of:

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|------------------------|------------------|----|
| Docket Number: | AA-861 | |
| Appeal No(s) | 1320860 | FS |
| AG No. | 5005854012 | |
| Hearing Request Date: | 12/05/2006 | |
| Hearing Decision Date: | 01/30/2007 | |
| Appeal Request Date: | 02/15/2007 | |
| Agency: | MONTGOMERY CDJFS | |

Administrative Appeal Decision

The appellant is appealing a January 30, 2007, dismissal of her December hearing request in regard to a November agency reduction of her monthly food stamp allotment from \$14 to \$10. The dismissal stemmed from the appellant's failure to appear for a January 18, 2007, hearing scheduled for her participation at home, following an initial hearing scheduled for December 26, 2006, at which the appellant also did not appear.

In her request for administrative appeal, the appellant asserts a Statement of Error that the hearing decision is contrary to the weight of the evidence in the record, in that she is disabled and home-bound; that she requested postponement of the first hearing in advance; that she was hospitalized from January 9 to January 16, 2007, and as a consequence was not aware of the scheduling of the January 18th hearing because she was not able to get to her mailbox.

"A request for a state hearing may be dismissed...(if the) request is abandoned," defined as "when the individual or authorized representative fails, without good cause, to attend the state hearing."¹ The rule defines good cause as "death in the immediate family, sudden illness or injury of the individual or a member of the individual's immediate family, or other circumstances which reasonably prevented attendance at the hearing."² Further, we are required to apply the good cause standard in a manner that favors the right to a hearing in order to assist an appellant in obtaining justice.³

On the other hand, the hearing supervisor "shall have final authority to deny repeated requests for postponement."⁴ One way to avoid the need for postponement is for the "agency...(to) assist the

¹ OAC 5101:6-5-03(E)(2)

² OAC 5101:6-5-03(E)(2)(e)

³ OAC 5101:6-1-01(B)

⁴ OAC 5101:6-5-02(A)(1)(d)

individual in naming a responsible party (guardian, relative, legal aid attorney, etc.) to act as authorized representative and receive a copy of notice in addition to the original to the individual.”

In this case, there is an abundance of evidence in the record that the appellant, a recipient of Medicaid for the Disabled, does have a medical basis for her inability to easily leave her home. Further, it is plausible that after a week’s hospitalization she was unaware of the rescheduled hearing two days after her return. We therefore hold that she had good cause for her second postponement request. But we also find that in her situation another rescheduling should await an attempt by the agency to assist her in naming an authorized representative to aid her participation in the next hearing.

DECISION

We therefore ORDER that the hearing dismissal is VACATED and the case REMANDED to the Columbus Hearings Supervisor to request the agency to assist the appellant in naming an authorized representative, and then reschedule the hearing.

Administrative Appeal Officer

CONCUR:

Administrative Appeal Officer

Chief Administrative Hearing Officer

Date of Issuance: March 2, 2007

Notice to Appellant

This Administrative Appeal decision is the final decision on this appeal from the state department of job & family services. It is binding on the department and agency, unless it is reversed or modified on appeal to the court of common pleas.

An Appellant who disagrees with this decision may appeal it to the court of common pleas pursuant to sections 119.12 and 5101.35(E) of the Revised Code. The Appellant shall mail the original notice of appeal to the department at the following address:

**Ohio Department of Job & Family Services
Office of Legal Services
30 E. Broad Street, 31st Floor
Columbus, OH 43215-3414**

The Appellant must also file a copy of the notice of appeal with the court of common pleas in the county in which the Appellant resides (Franklin County, if the Appellant does not reside in Ohio). Please note: Both the mailing to the department and the filing with the court must occur within thirty (30) calendar days of the date of issuance of this decision.

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, MONTGOMERY CDJFS
ZIVICD, Bureau of State Hearings