

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

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5047996680	LICKING	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1390453	MED	SUSTAINED
Compliance Required		
Decision Date:	03/18/2008	
Request Date:	12/27/2007	
Hearing Officer:	BRUCE WOLFF	

State Hearing Decision

ISSUE SECTION

Medicaid for the disabled (MA-D), Appeal No.1390453

The appellant requested a state hearing because the State of Ohio's Department of Job and Family Services' Office of Health Plans' (Medicaid) disability determination area (DDA) did not preserve the original date of application (because the county department of job and family services was attempting to submit new medical evidence to the DDA). During the state hearing, the Licking County Department of Job and Family Services (CDJFS), known as the agency, concluded that the DDA had previously denied the appellant's Medicaid case, on 10/15/07, because the appellant's alleged medical conditions were not severe enough.

But, the agency also testified to the fact that the CDJFS never sent a denial notice to the appellant. After reviewing the facts of the case and the regulations, the hearing officer concluded that the agency's determination was unsupported. Therefore, it was recommended that the appellant's appeal be sustained.

PROCEDURAL MATTERS

The Bureau of State Hearings received the appellant's hearing request on 12/27/07. Prior to the state hearing, the hearing officer did not receive a copy of the DDA's Appeal Summary.

FINDINGS OF FACT

- (1) The appellant did not receive an Appeal Summary drafted by the Disability determination area (DDA).
- (2) The hearing officer did not receive a copy of the DDA's Appeal Summary, before the state hearing or at the conclusion of the state hearing, to support the denial.
- (3) The agency never sent a notification to the appellant informing the appellant the DDA denied the appellant's allegations of a disability.
- (4) The agency never provided a copy of the deferrals to the hearing officer to support the allegation that the DDA was requesting additional medical evidence.

STATE HEARING DECISION CONTINUATION

(5) The original date of application was not established in the state hearing.

(6) At the state hearing, the appellant alleged diabetes as a new allegation. Also, the appellant indicated that she had new information concerning her thyroid.

(7) After the agency denied the appellant's case, the agency accepted a new application from the appellant, dated 11/13/07.

CONCLUSIONS OF POLICY

Ninety days to request hearing

(1) Ohio Admin. Code section 5101:6-3-02 (B) (1) states that the individual shall be allowed 90 calendar days to request a state hearing on any action or inaction. Under paragraph (B) (2) of the Admin. Code section 5101:6-3-02, the ninety-day period begins on the day after the date the notice of action is mailed. The date of the hearing request is the date it is received by either the agency or the state. Under paragraph (B)(3) of Admin. Code section 5101:6-3-02, of the rule states the 90 day rule does not apply unless the client has received the notice of the hearing rights relative to the specific action or inaction being appealed, specific to this rule.

(2) Ohio Admin. Code section 5101:6-3-02 (B)(2) states the ninety-day period begins on the day after the date the notice of action is mailed. The date of the hearing request is the date it is received by either the state or local agency.

(3) Ohio Admin. Code section 5101:6-7-01 (C)(1)(c) states it shall be the responsibility of the agency to show, by a preponderance of the evidence, that its action or inaction was in accordance with ODJFS rules. (ODJFS, September 29, 2006)

ANALYSIS

Paragraph (B)(3) of Admin. Code section 5101:6-3-02 states the 90 day rule does not apply unless the client has received the notice of the hearing rights relative to the specific action or inaction being appealed, specific to this rule. Here, there was no testimony or written evidence introduced, at the state hearing, to support the fact the appellant was notified in writing, by the agency, that the DDA denied the appellant's original Medicaid application, for Medicaid for disabled (MA-D). Therefore, the DDA's previous denial was appealable and the DDA was responsible for supporting their determination.

Ohio Admin. Code section 5101:6-7-01 (C)(1)(c) states it shall be the responsibility of the agency to show, by a preponderance of the evidence, that its action or inaction was in accordance with ODJFS rules. Although the DDA testified that they: deferred this case on two occasions; denied the thyroid allegation as insufficient; and, the appellant's psychological allegations did not meet the Social Security Administration's disability criteria, the hearing officer did not receive the DDA's written evidence to support the denial. Therefore, according to Admin. Code section 5101:6-7-01, the DDA did not support their allegation.

HEARING OFFICER'S RECOMMENDATION

Based on the record and Agency policy before me, I recommend the appeal for Medicaid for the disabled (MA-D) should be sustained. Appeal No.1390453

STATE HEARING DECISION CONTINUATION

Compliance – The agency shall: remove the second application date, preserve the original date of application, accept all the appellant’s medical evidence and submit it to the DDA. The agency should notify the appellant that they submitted the medical evidence to the DDA. Once the agency takes the above steps, they shall consider compliance achieved.

FINAL ADMINISTRATIVE DECISION AND ORDER

Finding the hearing officer's decision to be supported by the evidence, the recommendations above are adopted, and the Appeal No.1390453 is SUSTAINED. The agency is required to comply with the terms set forth in the hearing officer's recommendation above. OAC Rule 5101:6-7-03(B)(1)(a) requires compliance with this decision within fifteen calendar days from the date the decision is issued, but in no event later than ninety calendar days from the date of the hearing request. Compliance shall be promptly reported to the Bureau of State Hearings, ODJFS, via "State Hearing Compliance", ODJFS 4068, accompanied by appropriate documentation.

APPENDIX

Appellant’s Exhibits:

- (1) Hearing request
- (2) Dr. Vernon’s clinical notes

Agency’s Exhibits:

- (A) Appeal Summary (DDA), only offered
- (B) Sequential Evaluation, entire medical and psychological records, only offered
- (C) CDJFS’ Appeal Summary
- (D) DDA Tracking screen, AEICM, old & new
- (E) Notice history
- (F) Mental Functional Capacity Assessment, 7308

Hearing Authority

March 18, 2008

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 COLUMBUS District hearing section at 1-866-635-3748.

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, OH 43218-2825 or fax: (614) 728-9574. 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 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 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.

STATE HEARING DECISION CONTINUATION

Aviso a la Apelante

Esta es la decisión estatal administrativa de su caso. Todos los documentos y materiales presentados como prueba en la vista o de otra manera radicados componen el récord administrativo. El récord administrativo será mantenido por el Ohio Department of Job and Family Services.

Si usted cree que esta decisión estatal administrativa es errónea, usted puede solicitar una apelación administrativa escribiendo al: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 o facsímil (614) 728-9574. Su solicitud debe indicar por qué usted piensa que la decisión administrativa es errónea. Usted puede completar la solicitud de apelación incluida con esta decisión. Su solicitud escrita o formulario de apelación tiene que ser recibido por el Bureau of State Hearings dentro de los 15 días calendario desde la fecha en que esta decisión es expedida. (Si el 15to. día recae sobre un fin de semana o un día feriado, esta fecha límite es extendida al próximo día laborable). Durante el período de 15 días de apelación administrativa, usted o su representante pueden solicitar una copia gratuita del récord administrativo y de la grabación de la vista llamando al Bureau of State Hearings al 1-866-635-3748 (seleccione la opción 1 del menú principal).

Si usted quiere información sobre servicios legales gratuitos pero no sabe el número de su oficina local de servicios legales, usted puede llamar al Ohio State Legal Services Association, gratuitamente, al 1-800-589-5888, para el número local.