

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>GREENE</b>	District Hearings Section <b>COLUMBUS</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>GREENE CDJFS</b>	Initial Hearing Date <b>02/04/2002</b>	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Linda Simpson, Sheila Pyle, Green CDJFS; Ella Jones, PASSPORT

Date Notice Mailed <b>12/18/2001</b>	Date Received by Local Agency	Date Received by ODHS <b>01/17/2002</b>	Date Appeal Summary Received	Date Scheduling Notice Mailed <b>01/25/2002</b>
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Appeal Number(s)/Program(s) <b>1052977/MED, 1052978/MED, 1052979/MED, 1052980/MED, 1052981/MED</b>
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### 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 1-800-686-1568.

**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) 752-8298.** 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 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 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.

### ISSUES SECTION:

By notice mailed to the Appellant on 12/17/01, Greene County Department of Job & Family Services (herein known as the Agency) denied the Medicaid application for Home & Community Based Services waiver due to excess income. The Appellant's gross income of \$2,319 exceeded the \$1,590 special income level standard. Appellant's representative does not dispute the income but disagrees with the denial of waiver services. The issue under appeal is whether the Agency's 12/17/01 denial of the HCBS waiver application is (Appeal 1052977)

Based on my analysis of the evidence, testimony and rules, I find that the Agency's denial of HCBS waiver services is not correct. Although the total gross income calculation is correct, the Agency did not prove that the community spouse is not entitled to a monthly income allowance. Therefore, the Agency is to reopen the application, redetermine eligibility and send proper notice to Appellant. Appellant reserves all rights to appeal

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Appeal(s) <b>SUSTAINED 1052977 WITHDRAWAL 1052978, 1052979, 1052980, 1052981</b>	Date Issued <b>04/08/2002</b>	Compliance <b>1052977</b>
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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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the Agency's new eligibility determination.

### **PROCEDURAL MATTERS**

1. On 1/17/02, the Ohio Department of Job & Family Services' (ODJFS) Bureau of State Hearings received the state hearing request. The state hearing was conducted on Monday, February 4, 2002 at 11:30am via telephone from the Columbus Regional Hearings Office. Appellant was represented by his daughter, Gloria Boyle who also serves as his Power-of-Attorney (POA). Greene CDJFS was represented by Linda Simpson, Eligibility Specialist and Sheila Pyle, Supervisor. The Passport Agency was represented by Ella Jones, Intake Supervisor.
2. The Agency properly submitted an appeal summary.
3. The Representative withdrew Medicaid appeals 1052978, 1052979, 1052980 and 1052981.
4. The hearing record was left open for the submission of evidence.

### **FINDINGS OF FACT:**

#### **Undisputed Facts:**

1. On 3/18/02, the 74 year old Appellant is a recipient was approved for Medicaid services by the Green County Department of Job & Family Services (CDJFS).
2. On 10/12/01, the Appellant's daughter (the Representative) filed a Medicaid Home & Community Based Services waiver through the Greene CDJFS. Due to the severity of the Appellant's medical condition, he was found to meet non-financial eligibility criteria and was determined to have a intermediate level of care (ILOC).
3. Appellant's total gross income is \$2,319. Less the \$50 Medicare premium deduction, the countable gross income is \$2,269.
4. Passport determined that the total monthly cost of care would be \$576.93. This reduces the countable income from \$2,269 to \$1,672.07.

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5. The Medicaid special income level is \$1,590.
6. Appellant has a wife who is also very ill.
7. Appellant's Representative reported that she cares for both her mother and father. The mother (community spouse, or CS) is diagnosed with Aphasia (front left lobe of the brain was removed). Neither the CS nor the Appellant can read and write.

### **CONCLUSIONS OF POLICY:**

1. **Ohio Administrative Code (OAC) Rule 5101:6-7-01(C)** provides that the hearing officer's findings of fact shall be based exclusively on the evidence introduced at the hearing, or after the hearing and subject to examination and rebuttal by both parties. It shall be the responsibility of the agency to show, by a preponderance of the evidence, that its action or inaction was inaccordance with ODJFS Rules.
2. **Ohio Public Assistance Manual (OPAM) Section 7224, HCBS Waiver Financial Eligibility and Patient Liability Determinations.**

The county agency shall determine Medicaid nonfinancial eligibility in accordance with OPAM Chapter 7000. Financial eligibility and resource eligibility shall be determined in accordance with the following subsections.

3. **Ohio Public Assistance Manual (OPAM) Section 7222.2, PASSPORT.**  
Effective July 1, 1990, Ohio implemented the PASSPORT Waiver which serves individuals who are sixty years old or older and who have a skilled or intermediate level of care. PASSPORT enrollment determinations are made by the local PASSPORT administrative agencies of the Ohio Department of Aging (ODA).
4. **OPAM Section 7224.1, Medicaid Financial Eligibility Determinations for the HCBS Waiver Applicant.** If countable income is equal to or less than the Medicaid need standard, the county agency shall approve regular Medicaid, if all other eligibility criteria in OPAM Chapter 7000 is met.

If countable income exceeds the Medicaid need standard and the spenddown obligation can be met, the county agency shall approve ongoing or delayed spenddown Medicaid (as appropriate), if all

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other eligibility criteria in OPAM Chapter 7000 is met.

If the assistance group does not meet Medicaid financial eligibility (regular, ongoing or delayed spenddown) the county agency shall pend the application until the HCBS enrollment determination is completed.

Upon approval of HCBS waiver enrollment by the ODJFS Bureau of Community & Long Term Services, local PASSPORT administrative agency, or local county board of MRDD, the county agency shall authorize the approval of Medicaid (MA-J) and the HCBS waiver eligibility in accordance with OPAM Section 7224.4. The ODJFS Bureau of Community & Long Term Services, local PASSPORT administrative agency, or local county board of MRDD shall provide appropriate notification of the approval of HCBS Waiver eligibility. The county agency shall provide appropriate notification of the approval of Medicaid, QMB, etc.

Upon denial of HCBS waiver enrollment by the ODJFS Bureau of Community & Long Term Services, local PASSPORT administrative agency, or local county board of MRDD, the county agency shall authorize the denial of the pending application. The county agency shall provide appropriate notification of denial for Medicaid, HCBS Waiver, QMB, etc.

#### 5. **OPAM Section 7224.4, HCBS Waiver Income Eligibility Computations**

Income of a spouse or parent is not deemed available to the HCBS applicant. An HCBS eligible individual who is also a community spouse of an institutionalized spouse (IS), may continue to receive a monthly income allowance (MIA) from the IS. The MIA shall be treated as unearned income for the HCBS applicant/recipient. If both spouses are eligible for HCBS the MIA is not provided to either spouse.

The gross unearned and gross earned income are combined to determine the total gross income. The total gross income is compared to the special income level. If the total gross income is equal to or less than the special income level, financial eligibility is met.

If the total gross income is greater than the special income level, the county agency shall continue the financial eligibility determination if income, after appropriate deductions, meets the Medicaid need standard. For individuals whose gross income exceeds the special income level the HCBS Waiver cost of care will be determined by the HCBS worker and used in lieu of the Medicaid cost of care.

The unearned and earned income disregards applied to determine QMB and SLMB status are the

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same disregards for the Medicaid need standard financial eligibility computation. However, additional disregards may be deducted from the countable income prior to comparison to the Medicaid need standard. The additional deductions to be applied are the medical insurance premiums, remedial/recurring medical expenses, past medical expenses and the HCBS Waiver cost of care. After the deduction of each additional disregard, the subtotals are rounded down to the nearest whole dollar. The total countable income is then compared to the Medicaid need standard.

If the countable income is equal to or less than the medicaid need standard, financial eligibility is met and patient liability shall be computed.

If the countable income exceeds the Medicaid need standard, there is no eligibility for a patient liability computation. However, this does not preclude eligibility for spenddown Medicaid. The county agency shall determine spenddown Medicaid eligibility in accordance with OPAM Section 7467.

\*Policy originally issued via ACT NO. 137 eff. 2/1/95

The HCBS waiver income eligibility computations are determined as follows:

**6. OPAM Section 7224.42, Patient Liability Computation for an Individual With a Community Spouse [OAC 5101:1-39-95]**

The following deductions shall be made from the countable income:

(a) a personal needs allowance of \$30; The personal needs allowance for the HCBS individual is \$30 unless he is employed. A HCBS individual who receives earnings from employment has special needs related to that employment such as clothing, shoes, supplies, and transportation. Individuals who are employed and receive earned income as a result of that employment shall have a personal needs allowance of at least \$30 up to \$95.

The method for determining the amount of the personal needs allowance for an employed HCBS individual shall be to add the gross earnings to the \$30 base. That amount shall be used as the personal needs allowance unless the total exceeds \$95 at which time \$95 will be used.

(b) the community spouse's monthly income allowance (MIA), if applicable,

(c) the family allowance (FA), if applicable;

Please note: If an IS is providing a FA to an applicable family member, the HCBS waiver eligible CS

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may also need to provide a FA. When determining the FA payable from the CS, the FA provided from the IS shall be treated as unearned income in the FA budget computation.

- (d) medical insurance premiums;
- (e) recurring medical expenses;
- (f) past medical expenses.

The remainder is the patient liability which must be applied to the cost of the waiver services. The ODJFS Bureau of Community & Long Term Services, the local PASSPORT administrative agencies, or the local county board of MRDD will assign the service(s) that will have the patient liability applied. The county agency shall not collect the patient liability.

**ANALYSIS:**

OPAM Section 7224.42 explains that deductions from income include describes deductions from income, including a \$30 personal needs allowance; (b) the community spouse's monthly income allowance (MIA), if applicable; (c) the family allowance (FA), if applicable; (d) medical insurance premiums; (e) recurring medical expenses; and (f) past medical expenses.

The hearing officer did not see any of the above deductions from the countable income except the medical insurance premium. The Agency did not show that the Appellant is not entitled to any other deductions from income.

Therefore, the denial of the Medicaid HCBS waiver is not correct at this time.

**HEARING OFFICER'S RECOMMENDATIONS:**

Based on my analysis of the evidence, testimony and rules, I find that the appeal should be Sustained. The Agency's denial of the HCBS waiver application was not proven by the preponderance of the evidence. Therefore, the Agency shall reopen the application, redetermine eligibility and send proper notice to Appellant. Appellant reserves all rights to appeal the Agency's new eligibility determination.

**FINAL ADMINISTRATIVE DECISION AND ORDER:**

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Finding the hearing officer's decision to be supported by the evidence, the recommendations shown above are adopted, appeal number 1052977 is Sustained. The agency is required to comply with each of the terms set forth in the hearing officer's recommendation.

In order to assure that the Appellant promptly receives all benefits by this favorable decision, OAC Rule 5101:6-7-03(B)(1)(a) requires the county agency to comply with the terms of this recommendation in the Medicaid programs within fifteen (15) calendar days from the date the decision is issued, but in no event later than ninety days from the date of the hearing request.

**APPENDIX:**

**EXHIBITS:**

- A. Appeal Summary
- B. AEIWV, HCBS/Waiver Information
- C. AEIWV, HCBS/Waiver Information
- D. AEBWV, HDDB Patient Liability Budget
- E. AEBMB, Medicaid Benefit Budget Determination
- F. ODHS 7318, Medicaid Institutional Budget Computation Worksheet
- G. Running Record Comments
- H. PASSPORT Care Plan Authorization

**APPELLANT EXHIBITS:**

- 1. Withdrawal of Medicaid Appeals 1052978, 1052979, 1052980 and 1052981.

Date Issued: 04/08/2002