

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

In the matter of:

<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1266283	MED	OVERRULED
No Compliance Required		
Decision Date:	04/06/2006	
Request Date:	01/09/2006	
Hearing Officer:	WANDA WILSON	

State Hearing Decision

**ISSUE SECTION**

The Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) completed a resident review in the Appellant's case and issued a Rule Out Notice December 21, 2005 because of a lack of clear evidence of mental retardation and/or developmental disability prior to the age of twenty-two. The ODMR/DD is unable to make a determination of the appropriateness of Appellant's nursing facility placement because he does not meet the eligibility criteria for MR/DD.

The Appellant's Authorized Representative disagrees with the ODMR/DD rule out and requested a state hearing.

After considering testimony and information provided at hearing and considering the policy applicable in the Appellant's appeal, the Hearing Officer is persuaded by evidence reviewed that the Appellant has mild mental retardation; however, the evidence does not support that the mental retardation was manifested before the Appellant reached the age of twenty-two as set forth in applicable policy. The Hearing Officer is therefore persuaded that the ODMR/DD action to issue a Rule Out Notice is in accordance with applicable policy.

The Hearing Officer recommends Appeal 1266283 be overruled.

**PROCEDURAL MATTERS**

Resident Review Determination was mailed December 21, 2005. The Ohio Department of Job and Family Services (ODJFS), Bureau of State Hearings received the request for state hearing from the Appellant's Authorized Representative on January 9, 2006. State hearing scheduling notice was mailed January 20, 2006 scheduling the state hearing for February 2, 2006. The state hearing was conducted by speaker phone on February 2, 2006. The ODJFS received an appeal summary from the ODMR/DD on February 2, 2006.

The Ashtabula County Department of Job and Family Services (CDJFS) was represented at hearing by Ms. Rhonda Rodriguez, Hearing Coordinator. The ODMR/DD was represented at hearing by Ms. Ann Osborne, PASRR Eligibility Specialist, and Ms. Suellen White, PASRR

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Manager. The Ashtabula County Board of MR/DD was represented at hearing by Ms. Lisa Fuller-Grippi. Appellant was represented by Mr. Russell Kinnebrew, Regional Program Director, and Mr. Eric Backders, Protective Services Representative, both of Advocacy and Protective Services, Inc.

**FINDINGS OF FACT**

1. The Appellant, age sixty-seven, resides in an intermediate care facility for the mentally retarded (ICF-MR).
2. The ODMR/DD is required to evaluate nursing facility residents with mental retardation or developmental disability when a significant change in condition has occurred, when the convalescent, respite or emergency stay expires, or when there are no previous preadmission screening resident review records.
3. The Appellant has a diagnosis of cerebral vascular accident with hemiparesis, hypertension, coronary artery disease, congestive heart failure and schizophrenia with agitation.
4. There is no evidence that the Appellant has been involved with a County Board of MR/DD in Ohio and there is no history of eligibility ever being established.
5. The ODMR/DD received information to complete a review in the Appellant's case.
6. ODMR/DD determined that information was not sufficient to establish the Appellant is mentally retarded or developmentally disabled prior to age twenty-two.
7. The ODMR/DD issued a Rule Out Notice dated December 21, 2006.
8. Exhibit C is a psychology assessment dated December 8, 2005 which summarizes the Appellant as a man with mild mental retardation and severe delays in adaptive behavior.
9. The evidence contained in the hearing case record does not support a finding that mental retardation was manifested prior to age twenty-two.

**CONCLUSIONS OF POLICY**

Ohio Administrative Code § 5123:2-14-01 describes preadmission screening and resident review for residents with mental retardation or developmental disabilities (MR/DD).

An individual is considered to have mental retardation and/or a developmental disability if the individual has a level of retardation (mild, moderate, severe or profound) as described in the American Association of Mental Retardation's Manual on Classification in Mental Retardation (1983) or a related condition defined in paragraph (B)(11) of this rule.

Paragraph (B)(11) defines related condition as a severe, chronic disability that meets all of the following conditions: (a) it is attributable to cerebral palsy or epilepsy or any other condition other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons and requires treatment or services similar to those required for those persons; (b) it is manifested before the person reaches the age of twenty-two; (c) it is likely to continue indefinitely; (d) it results in substantial functional limitations in three or more areas of major life activity including, self-care, understanding and use of language, learning, ability, self-direction, capacity for independent living and economic self-sufficiency.

**Analysis**

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The Appellant is age sixty-seven and resides in a nursing facility. The ODMR/DD was required to complete a resident review in the Appellant's case; however, this agency issued a Rule Out Notice on the basis that there was insufficient documentation to support the Appellant has mental retardation manifested prior to age twenty-two.

There appears to be no information regarding the Appellant's status prior to age twenty-two. A psychology assessment summarizes the Appellant with mild mental retardation; however, this assessment provides no date of onset of the mental retardation. The applicable policy requires manifestation prior to age twenty-two. The Hearing Officer is therefore persuaded that without documentation supporting mental retardation was manifested prior to age of twenty-two, the ODMR/DD is correct to issue a Rule Out Notice and this action is upheld as being correct.

The Appellant's Authorized Representative is reminded of right to appeal this state hearing decision through the Administrative Appeal process.

**HEARING OFFICER'S RECOMMENDATION**

Based on the record and Agency policy before me, I recommend that appeal 1266283 be overruled.

**FINAL ADMINISTRATIVE DECISION AND ORDER**

Since I find that the Hearing Officer's recommendation is supported by policy and the evidence, I hereby adopt the recommendation. Thus, appeal 1266283 is overruled.

  
Sue Roseborough, Hearing Authority

April 6, 2006

**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.

**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

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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.

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Appendix

**ODMR/DD EXHIBITS**

- A. Ohio Department of MR/DD Appeal Summary dated January 27, 2006, Three Pages
- B. OBRA Preadmission Screening Evaluation Summary dated December 20, 2005, One Page
- C. Psychology Assessment dated December 8, 2005, Two Pages

**APPELLANT EXHIBITS**

- 1. Resident Review Determination and Request for State Haring dated January 9, 2006, Three Pages
- 2. Level of Care Assessment (ODHS 3697) dated December 8, 2005, Eight Pages
- 3. Statement of Expert Evaluation dated April 28, 2005, Two Pages
- 4. Judgment Entry/Magistrate's Decision dated February 26, 2003, One Page