

In Re Appeal of:

Docket Number:	AA-2476	
Appeal No(s)	1388078	MED
AG No.	5069607686	
Hearing Request Date:	12/17/2007	
Hearing Decision Date:	03/12/2008 / JLP	
Appeal Request Date:	03/24/2008	
Agency:	ASHLAND CDJFS	

Administrative Appeal Decision

The appellant has requested an administrative appeal of the state hearing decision issued on March 12, 2008. The state hearing decision overruled the appellant's appeal, finding that the Ohio Department of Mental Health correctly determined that the appellant did not need the level of services provided by a nursing facility. The state hearing decision found, however, that the appellant did require specialized services for serious mental illness in psychiatric facility. The state hearing decision, however, did not include any order for compliance, requiring ODMH to provide these services.

The appellant, a forty-nine year old woman entered the nursing facility on a thirty day convalescent stay on October 18, 2007. The appellant has been diagnosed with schizophrenia. Based on the diagnosis, it was determined that the appellant suffers from serious mental illness as defined by Ohio Admin. Code 5101:3-3-151(B)(16) and therefore is subject to a PASRR review. Pursuant to ORC 5119.061 and Ohio Admin. Code 5122-21-03, ODMH has the responsibility to review the nursing home admission of any person who is found to have an indication of a serious mental illness, as defined by rule. The purpose of the review is to determine whether the person requires the level of services provided in a NF, and whether the person requires "specialized services" for the mental illness, which are services similar to those available in an inpatient psychiatric hospital. The entire process is known as pre-admission screening and resident review (PASRR).

In order to determine whether the appellant requires the level of services provided in a NF, the appellant's condition must meet either the skilled¹ or intermediate

¹ Ohio Admin. Code 5101:3-3-05

level of care². The appellant is currently receiving no skilled or rehabilitation services, and does not meet the skilled level of care .³ Ohio Admin. Code 5101:3-3-06(C)(2) provides that to meet the intermediate level of care at least one of the following applies:

² Ohio Admin. Code 5101:3-3-06

³ Ohio Admin. Code 5101:3-3-05(C)(2)

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

ADMINISTRATIVE APPEAL SECTION

- (a)** The individual requires hands-on assistance with the completion of at least two activities of daily living;
- (b)** The individual requires hands-on assistance with the completion of at least one activity of daily living; and is unable to perform self-administration of medication and requires that medication administration be performed by another person;
- (c)** The individual requires one or more skilled nursing or skilled rehabilitation services... at less than a skilled care level...; or
- (d)** Due to a cognitive impairment, including but not limited to dementia..., the individual requires the presence of another person, on a twenty-four-hour-a-day basis for the purpose of supervision to prevent harm.

The appellant's authorized representative argues that the appellant meets the intermediate level of care due to her need for hands on assistance with medication administration, because the appellant is cognitively impaired and because she represents a substantial risk of self-harm. Under Ohio Admin. Code 5101:3-3-06(C)(2)(b), however, an individual who is unable to perform self-administration of medication must also require hands on assistance with the completion of at least one activity of daily living in order to meet the requirements of an intermediate level of care. The documentation in the state hearing record, however, only indicates that the appellant requires supervision with grooming and is independent in all other activities of daily living. The appellant does not require hands on assistance with any activities of daily living, and does not, therefore, meet the requirements of an intermediate level of care pursuant to Ohio Admin. Code 5101:3-3-06(C)(2)(b). The PASARR assessment indicates that the appellant suffers from only a minimal cognitive impairment, as do the psychologist's progress notes⁴. The appellant does not meet the requirements of an intermediate level of care pursuant to Ohio Admin. Code 5101:3-3-06(C)(2)(d). The evidence does support, however, that the appellant represents a substantial risk of harm to herself. That issue goes to the appellant's need for specialized services, not whether the appellant meets the level of care.

The state hearing decision determined that the appellant requires specialized services for mental illness. Ohio Admin. Code 5122-21-03 provides the criteria to determine whether there is a need for specialized services for serious mental illness.

⁴ See, Exhibit F page 4, Exhibit 9

The rule states, "An individual shall be considered to be in need of specialized services for serious mental illness if he or she:

- (i) Represents a substantial risk of physical harm to self . . . ;
- (ii) Represents a substantial risk of physical harm to others . . . ;
- (iii) Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that he/she is unable to provide for and is not providing for his/her basic needs because of his/her mental illness and that appropriate provision for such needs cannot be made immediately available in the community;
- (iv) Would benefit from treatment in an inpatient setting for his/her mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave an imminent risk to substantial rights of others or self; or
- (v) Is experiencing an acute episode of mental illness which can reasonably be expected to respond to time limited treatment that is directed toward diagnosing and reducing the individual's behavioral symptoms, improving his or her level of independent functioning, and, achieving a functional level that permits reduction in the intensity of mental health services to below the level of specialized services at the earliest possible time.

We agree with the state hearing officer that the evidence supports the conclusion that the appellant is substantial risk to herself and cannot provide for her basic needs due to her mental illness. The state hearing decision, however, should have ordered ODMH to determine the best arrangements for the provision of these specialized services and to arrange an appropriate discharge plan to an inpatient psychiatric hospital.

DECISION

Accordingly we must ORDER that the hearing decision is AFFIRMED, but COMPLIANCE issued to ODMH to determine the appellant's need for specialized services and arrange an appropriate discharge plan. ODMH is directed to send the appellant written notice of the action taken as a result of this decision via an ODJFS 4074, 4065, 7334, 7401, 4701 or other appropriate state form. The county is to attach a copy of this notice to the ODJFS 4068 State Hearing Compliance form.

Administrative Appeal Officer

CONCUR:

Administrative Appeal Officer

Chief Administrative Hearing Officer

Date of Issuance: April 3, 2008

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, ASHLAND CDJFS
ROSEBS, PARSOJ, Bureau of State Hearings