



Ohio Department of Job and Family Services

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Administrative Appeal Decision

APPELLANT:
M G

CASE No. 5042605971

APPEAL No(s). 9967760 & 9970483

DOCKET No. 2001-AA-0228

REPRESENTED BY:

Tina Dyehouse
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Cincinnati, Ohio 45202

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HEARING UNIT

By letter received March 8, 2001, Appellant, through Representative, has requested an Administrative Appeal of a state hearing decision rendered February 21, 2001. The issue raised on this Administrative Appeal is whether the Hamilton County Department of Job and Family Services (Agency) was correct in denying Disability Assistance (DA) Cash and Medical benefits. Agency asserts that an individual conditionally released from prison on parole to a halfway house remains under the legal custody of the Department of Rehabilitation and Correction (DRC) for the provision of medical care and is, therefore, not eligible for DA Cash or Medical benefits. The hearing decision found that the needs of the individual are met by the Division of Parole and Community Services and overruled the appeal. This Administrative Appeal Decision Reverses the state hearing decision.

SUMMARY OF CASE

The hearing record indicates Appellant is an applicant for DA Cash and Medical benefits through Agency. Appellant submitted an application June 7, 2000. Appellant submitted a copy of his Certificate of Parole/Release Authorization. The Certificate permits the completion of sentence outside confinement. Appellant lives in a Halfway House which provides twenty-four-hour supervision and Appellant is required to be there seven days per week. Agency determined that Appellant does not meet eligibility requirements and, by notice mailed July 3, 2000, Agency denied the application for DA Cash and D.4 Medical assistance.

Appellant's Representative elicited testimony from the Agency representative and established that the reason for denial was Residency. From Representative questioning Agency asserted Appellant remains under the legal jurisdiction of the DRC, therefore, Appellant is considered incarcerated. Representative established that a Drug/Alcohol Treatment Facility would not preclude eligibility. Representative also questioned Agency regarding payment of some medical benefits by a third party and retaining Medicaid eligibility.

Representative questioned a representative from the halfway house where Appellant resides. Representative established that DRC is the primary provider of funds for the operation of the halfway house. Testimony indicated that CRC provides funds for medical benefits only regarding substance abuse treatment, sexual offender treatment or for those who are diagnosed with mental illness and chemical dependence. The halfway house representative distinguished Probation and Parole from incarceration and testified regarding Appellant's living arrangement under the control of Appellant's Supervising Counselor. Testimony was offered that the halfway house does not receive funding for medications, hospitalization or other medical care from the CRC. The halfway house representative testified that all residents are referred to *Agency* to apply for benefits and that some of the residents receive DA Cash benefits and some receive either DA Medical or Medicaid benefits.

Agency questioned the halfway house representative regarding requirements in the event Appellant left the halfway house, establishing that the Parole Officer would be contacted. The Parole Officer might file charges for escape and seek an arrest warrant, which could result in re-incarceration or re-placement in a different halfway house.

Representative argued that Appellant is not incarcerated, but that application has been submitted for Supplemental Security Income (SSI) benefits. Additionally, residence in a drug and alcohol treatment facility certified by the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) provides automatic eligibility for DA but does not preclude other eligibility. Others receive benefits without residing in a facility certified by ODADAS. Representative asserted it is Agency's burden to establish another entity is providing health care for Appellant. Representative argues that Agency should have started the process for submitting medical documentation to County Medical Services (CMS) for determination whether Appellant is considered disabled for eligibility purposes. Representative asserts the request for Medical benefits should have been considered a declaration of disability. Appellant's reliance upon the anti-psychotic drug Haldol is an indication that Agency should have explored disability.

In summary, Representative asserted Agency did not demonstrate that another agency is financially responsible for Appellant's medical care or that Appellant remains incarcerated. The policy relied upon by Agency is only an internal memorandum and is not controlling authority. Representative asserted that because Appellant is not incarcerated, Appellant should be found eligible and granted access to new drugs which will aid Appellant in rehabilitation.

Agency offered rebuttal regarding processing an application for CMS determination of disability, stating that if other eligibility factors have not been met and a denial results, it is not necessary to process an individual for CMS determination of disability.

The hearing officer found as fact that Appellant "remains under the custody and legal jurisdiction of the Division of Parole and Community Services until [Appellant's] final release."

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The hearing officer determined that Appellant remains under the control and custody of the Division Of Parole and Community Services which is a division of the Ohio Department of Rehabilitation and Correction; that part of the control responsibilities includes housing and other services required which would include medical care and medications necessary for rehabilitation; and that Agency is correct to deny DA eligibility based upon a failure to meet the residence requirement.

REQUEST FOR ADMINISTRATIVE APPEAL

Representative asserts that Agency failed to show that the action was correct by a preponderance of the evidence presented; that the hearing officer failed to examine all the evidence; that there is no requirement that medical care be provided by either the halfway house or DRC; and that the halfway house is not a public institution. Representative asserts Agency could not produce a department rule providing a basis for a denial. A Public Policy Memo does not have controlling weight and cannot be used to deny benefits, therefore, the appeal must be sustained. Representative further asserts that the hearing officer failed to consider the testimony of the halfway house representative and failed to reconcile the conflicting testimony offered at the state hearing.

ANALYSIS

Ohio Administrative Code (OAC) 5101:6-8-01 allows for an Administrative Appeal from a state hearing decision. The Administrative Hearing Examiner is required to examine the decision, the information supplied on appeal and the record and/or tape of the hearing if appropriate. If the initial decision contains no error that affects the outcome of the appeal the decision is to be affirmed. If the decision contains an error that resulted in an outcome adverse to the individual the decision is to be reversed. OAC 5101:6-7-01 requires that a county agency establish, by a preponderance of the evidence: that its action or inaction is in accordance with department rules. Agency denied eligibility based upon OAC 5101:1-5-10 (see Appeal Summary exhibit found in the hearing record at page 18). The relevant section of rule states: "DA may be given to individuals living in their own homes or other suitable quarters, but shall not be given to individuals who reside in a county home, city infirmary, jail, or public institution."

The hearing officer's finding is that, "based on the language of ORC 2967.14(B) the Division of Parole is responsible for the appellant's medical care." There is no finding in the hearing decision regarding Appellant's living arrangement, specifically whether Appellant resides in a "public institution." Representative offered testimony that Appellant is not incarcerated, based upon a definition of "parole" which states: "Paroled means that the offender was released from prison under some type of supervision." Agency offered the definition of "Parole" from OAC 5120:1-3-05 in which it states: "Legal custody of a parolee shall remain in the Department of Rehabilitation and Correction until a final release is granted by the authority, pursuant to section 2967.16 of the Revised Code." There was no dispute regarding legal

custody as defined. Agency testimony indicates that OAC 5101:1-5-10(C) regarding residence was the authority relied upon to deny benefits. As discussed above, that permits the denial of DA benefits to an individual residing in a public institution. What must be demonstrated is that Appellant resides in a "public institution."

Agency relied upon a Public Assistance Policy Memo #13, issued October 1, 1999, for clarification of the residence rule. As entered into the record there is no indication of the issuing individual of that memo, however, it is clear that it does not carry the weight of authority of the Ohio Administrative Code. The Public Assistance Policy Memo indicates that, for individuals admitted to a half way house in advance of release from incarceration, the "arresting authority remains financially responsible for their food, shelter, clothing and medical care." The Memo indicates that, because of that responsibility, residents of a halfway house who are released from incarceration on parole are ineligible for DA benefits. There is no other connection made in the Memo between the financial responsibility and residency of the individual. The hearing officer found that Ohio Revised Code (ORC) 2967.14 authorizes the adult parole authority to require residence in a halfway house, and authorizes a contract between the Division of Parole and Community Services and a public or private agency that operates a halfway house.

ORC 2967.14(B) states: "An agreement under this division shall provide for housing, supervision, and other services that are required for persons who have been assigned to a halfway house or community residential center. . . ." "Other services" are not defined in the statute. The statute requires per diem payments limited to "the total operating costs of the halfway house's . . . per capita costs with its facility at full occupancy." Further, the statute allows, but does not require, the division of parole and community services to use "a portion of the amount appropriated to the department" for "nonresidential services [which] may include, but are not limited to, treatment for substance abuse, mental health counseling, and counseling for sex offenders."

Representative provided evidence and testimony that the halfway house contract does not provide for the medical services needed by Appellant. On Administrative Appeal Representative has submitted a copy of the contract for services entered by the halfway house. As that information was not entered as an exhibit at the state hearing it cannot be considered as part of a review of the record. The hearing officer found that "prescribed medication and medical care are required services for a person who has been diagnosed with a mental illness" and determined that ORC 2567.14 would, therefore, require the Division of Parole and Community Services to be responsible for medical care. That conclusion, however, is not supported by any documentation within the hearing record.

Whether or not the Division of Parole and Community Services is responsible for medical care, the analysis left the issue of residence unresolved. Representative provided evidence and testimony that the halfway house is not a "public institution." The hearing decision does not address that issue in any

analysis. On Administrative Appeal Representative asserts OAC 5101:1-39-04 defines "public institution" as "one which is the responsibility of a governmental unit or over which the governmental unit exercises administrative control." It is noted that the definition cited is within regulations related to Medicaid while the application and processing for benefits relates to Disability Assistance and, thus, are of some weight but not controlling. The hearing decision fails to resolve the issue whether the halfway house is a public institution, opting instead to rule related to financial control of a parolee.

There is no dispute that, while an individual is incarcerated, that individual resides in a "public institution." The hearing record contains citation to OAC 5120:1-3-05 which defines "parole" as "[t]he release of confinement in any state penal or reformatory institution by the adult parole authorities . . ." and defines "parolee" as "[a]n offender who has served a term of incarceration as a felon and has been released to the community under parole supervision." The plain reading of these rules indicates that an individual serving parole is no longer a resident of a "public institution" unless the placement during parole would meet a definition of a public institution. The hearing record contains a copy of the "Placement Investigation Request" with two alternative plans for release on parole, the first being to the halfway house, the alternative being to the private residence of Appellant's relatives, Testimony from the halfway house representative indicated clearly that the halfway house is under contract with, but not under the control of, the Department of Rehabilitation and Correction.

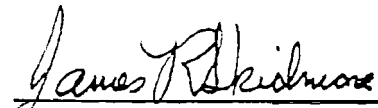
Because Agency offered no evidence or testimony related to qualification of the halfway house as a "public institution," the weight of evidence clearly establishes that the halfway house is not a "public institution." Thus, it was inappropriate for Agency to deny the application based upon living arrangements. The Public Assistance Policy Memo which Agency relied upon is not supported by independent department regulation or statutory citation. It is inappropriate to rely upon that memo for a determination of living arrangement.


It is the opinion of this Administrative Hearing Examiner that the hearing decision relies upon a misapplication of law or rule and is contrary to the weight of evidence presented, as Agency did not establish that the residential arrangements of Appellant meet the definition of a "public institution." OAC 5101:6-7-01 requires that an Agency establish, by a preponderance of the evidence, that the action taken or proposed is *in* accordance with department regulations. The denial was based upon residential limitations and the evidence and testimony offered failed to establish that essential element of the regulation. The hearing decision applies an unstated requirement, that another agency is "responsible for appellant's medical care," to make the finding that the action is correct. While it may seem correct that, if another party is responsible for the medical care, there should be no eligibility for a DA Medical program, that is not the stated reason for denial. Additionally, the finding that DRC should be responsible for the

medical care was not supported by documentation or regulation indicating that DRC is responsible for the medical care.

DECISION

The state hearing decision regarding a denial of DA Cash and DA Medical benefits based upon a living arrangement and related to Appeal Numbers 9967760 and 9970483 is REVERSED. Agency is instructed to reprocess the application to determine whether all other eligibility criteria were met. Agency is instructed that the living arrangement for Appellant does not meet the qualification of a "public institution" in the processing of the application. Agency is further directed to send Appellant written notice of the action taken via an ODHS 4074, 4065, 7334, 7401, 4071 or other appropriate state form as a result of this decision. Agency is to attach a copy of this notice to the ODHS 4068 State Hearing Compliance form.


James R. Skidmore, Attorney-at-Law
Administrative Hearing Examiner


Marcia K. Slotnick, Attorney-at-Law
Chief Administrative Hearing Examiner
Office of Legal Services on behalf of
Jo Ann Davidson, Director

DATE OF ISSUANCE 3-29-01

This Administrative Appeal Decision is the final administrative decision on your case from the Ohio Department of Job and Family Services. If you disagree with this decision, you may have the right to appeal to common pleas court pursuant to Section 5101.35 of the Ohio Revised Code. Your appeal must be filed within thirty days of the date this decision was issued to you. If you have questions about appeal to 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, Hamilton County Department of Job and Family Services
- Dorothy Smith, Office of Legal Services
- Hearings Supervisor
- Bureau of State Hearings
- Bureau of family Stability, Cash Assistance Section
- Appellant
- Appellant's Representative