

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

In the matter of:

<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1271825	MED	OVERRULED
1274905	MED	SUSTAINED

Compliance Required

Decision Date:	05/11/2006
Request Date:	02/13/2006
Hearing Officer:	GEOFF BROWN

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State Hearing Decision

**ISSUE SECTION**

**Appeal No.1274905 Medicaid:** On 2/24/06, Carestar, a provider of case management services under contract to ODJFS, denied the Appellant's request for a back-up generator powered by natural gas. The Appellant is quadriplegic and has a tracheostomy with ventilator support, as well as several other power assisted medical devices requiring a safe, reliable source of electricity in the event of loss of power to the home. Although the ventilator has a back-up battery, this will provide only a maximum of 15 hours of power. Several other adaptive and assistive devices on which the Appellant depends have no battery back-up. A review of the evidence and of the Medicaid regulations shows that the Appellant's request meets the requirements of medical necessity and of the home modification rule. Carestar's denial of the request was incorrect.

**Appeal No.1271825 Medicaid:** On 2/2/06, Carestar mailed the Appellant notice of denial of his request for installation of an emergency exit in his bedroom. Carestar denied the request due to lack of medical necessity. The Appellant currently has access to an exit/entrance to his residence through the front door which is equipped with a wheel chair ramp. The Appellant claimed that fire safety required the installation of an exterior door in his bedroom because it is a back bedroom off a narrow hallway and has small high windows that would be inaccessible to emergency personnel. Although the Appellant's description and characterization of his bedroom/office is accurate, other arrangements for his living space within the home could be made. Medical necessity for the home modification was therefore not established. Carestar's denial was correct.

**PROCEDURAL MATTERS**

Appeal No.1271825 was received by the Bureau of State Hearings on 2/13/06. The hearing was scheduled for 3/14/06. That date conflicted with one of the Appellant's medical appointments, therefore the hearing was postponed and rescheduled, together with Appeal No.1274905, received 3/3/06, for 3/28/06, when it was duly conducted. The hearing was conducted at the county department of job and family services. The Appellant attended the hearing and represented himself. He was accompanied by his mother and by his respiratory therapist, both of whom offered testimony in support of his appeals. Carestar was represented by Judy Kitson,

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Home Modification Specialist, Mary Counts, Administrator, and Liz Kemmerling, Case Manager. All parties were sworn in by the Hearing Officer. Testimony was taken and documents were accepted and identified as Exhibits. Based on the evidence presented, the Hearing Officer made the following findings of fact.

**FINDINGS OF FACT**

- (1) The Appellant is a 38 year old man who is quadriplegic. He is has a tracheostomy and is on ventilator support.
- (2) The Appellant requires assistance with all activities of daily living (ADL's), but is able use a power wheel chair for locomotion.
- (3) The Appellant is enrolled on the Ohio Home Care waiver and receives 68 hours of nursing services per week.
- (4) The Appellant resides with his parents, both of whom are in their late sixties. His father has had knee replacement surgery and has limited mobility.
- (5) In addition to his ventilator, the Appellant is dependent on several other electrically powered devices, including, a heated cascade device, an overhead lift and a waterbed heater (the use of a waterbed has eliminated bedsores).
- (6) The Appellant's residence is equipped with a wheelchair ramp at the front door.
- (7) The Appellant spends the great majority of his time in his bedroom/office, a back bedroom 30 feet from the front door. The lower sills of the windows in the Appellant's room are five feet off the floor; a design not up to the current architectural code.
- (8) The Appellant, who weighs 200 lbs., is sometimes in the care of only one other person, usually one of his parents, neither of whom would be capable of quickly getting the Appellant into his motorized wheelchair in case of an emergency, such as a fire.

**CONCLUSIONS OF POLICY**

Carestar prepared separate appeal summaries for the Appellant's two requests, however both summaries were based on Ohio Administrative Code § 5101:3-1-01 (2002), "Medicaid: definition of medical necessity," and emphasized, in bold print, the following section of the rule, ". . . 'medically necessary services' are defined as services which are necessary for the diagnosis or treatment of disease, illness, or injury and without which the patient can be expected to suffer prolonged, increased or new morbidity, impairment of function, dysfunction of a body organ or part, or significant pain or discomfort." The rule goes on to specify in (A) (5) that a medically necessary service must is one which is the lowest cost alternative that effectively addresses and treats the medical problem.

The Appellant's request for a natural gas generator has some history in the appeals process. His request was originally addressed by a state hearing decision issued on 1/13/06. That decision ordered Carestar to ". . . reevaluate the Appellant's request considering lowest cost alternatives to address the medical concern of the Appellant." The Administrative Appeal decision, subsequently requested by the Appellant, noted that the appeal had been sustained, yet not

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resolved. The Administrative Appeal decision affirmed the hearing decision, but elaborated the compliance by directing the provider to consider, essentially by way of analogy, the proposition that the request for a back-up generator be evaluated in terms of an emergency response system as described in paragraph (G) of Ohio Administrative Code 5101:3-12-07. On 2/24/06, Carestar, having explored a number of options and community resources, denied the Appellant's request a second time.

The previous hearing decision and administrative appeal directed Carestar to explore the lowest cost means of responding to the Appellant's request. Carestar's Appeal Summary, Exhibit (D) listed a number of alternative plans to installation of a natural gas back-up generator. The alternatives included reliance upon back-up batteries for the ventilator, and emergency transportation to a nursing facility capable of providing ventilator care. Significantly, Carestar made no attempt to ascertain the minimum cost of installing a propane or natural gas powered generator. The Carestar Summary mentioned that the Appellant's home is already equipped with a gasoline powered back-up generator. However, it was undisputed that this same generator caused a fire at the Appellant's residence, burning down the shed in which it was housed, and damaging the roof of the Appellant's home. It can hardly, therefore, be considered a safe alternative. In regard to back-up battery packs, the Appellant effectively disputed the length of time these are capable of running his equipment, and further pointed out that the heated cascade device which helps the him avoid pneumonia, the overhead lift that assists in getting him in and out of bed, and the central furnace, are not equipped with back-up batteries.

The Carestar Appeal Summary also cites paragraph (C) (3) of Ohio Administrative Code 5101:3-12-07 (1998), "ODHS-Administered HCBS waiver services," to the effect that supplemental adaptive and assistive devices must ". . . be necessary to ensure the health, welfare and safety of the consumer," and that they "Enable the consumer to function with greater independence in the home and without which the consumer would require institutionalization . . ." In gauging the Appellant's request, recent community history must be brought into play. Short term electrical outages are frequent, but the Appellant's battery back-up is adequate to maintain the most essential, though not all of his assistive devices for short periods of time. However, in the winter of 2004, an ice storm shut down electricity to large areas of the major city in which the Appellant resides. Although the Appellant was fortunately not in one of the worst areas, some parts of the city, including the residence of the mayor, were without electricity for up to five days. The Appellant also pointed out that in this type of weather emergency, transportation services, if they can operate at all, are overburdened and run only with considerable delays. Finally, the Carestar emergency plan calls for admitting the Appellant to a nursing facility, something that the OHC waiver is intended to avoid. Without minimizing the considerable efforts reflected in Carestar's efforts to provide an alternative solution, the Appellant has amply demonstrated the inadequacy of the Carestar plan. Without a continuous supply of electricity, the Appellant will suffer increased morbidity or death. Medical necessity is clearly established. As regards the lowest cost alternative, it is true that the requested item must be within the Appellant's individual cost cap, but the cost of a back-up generator would not amount to two month's payment for nursing home vendor care. By helping the Appellant's parents to maintain their son in the community, the Medicaid program will still experience reduced cost of care.

The Appellant's second appeal is over Carestar's denial of his request for installation of a bedroom door to the outside. The Appellant's rationale for this request is also based on safety. His bedroom/office is in a back room, down a narrow hallway thirty feet from the front door and

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its wheelchair ramp. In the event of a fire, the Appellant is concerned that his caregivers would be unable to get him out of the house in time to avoid injury or death, and that emergency personnel would be unable to reach him in a back bedroom with small high windows. The Appellant provided a abundance of materials, including photographs and fire safety information, in support of his argument. Carestar has proposed widening the doorway to the Appellant's bedroom in order to provide easier entry and exit for his power wheelchair, but the Appellant has declined this home modification. Carestar also pointed out there is no provision for a second wheelchair ramp for the proposed doorway, which would be three feet off the ground.

The request for an outside door is distinguished from the back-up generator in two respects. First, although there was a fire at the Appellant's home, caused by a gasoline powered generator, fires are to a large extent preventable; power outages are not. Second, and more important, the placement of the Appellant's living quarters within the house is a family decision, within the ability of the family to change. Although it would be a hardship for the family to give up the convenience of their living room to assure the Appellant had ready egress in the case of an emergency, it is not an unusual arrangement in homes with a disabled member who has bulky medical supportive and assistive devices.

### HEARING OFFICER'S RECOMMENDATIONS

**Appeal No.1274905 Medicaid:** Based on the record before me. I recommend the appeal be sustained. Carestar should be directed to determine the lowest cost natural gas or propane powered generator that will meet the minimum power needs to assure the Appellant's health and safety, and proceed with acquisition and installation.

**Appeal No.1271825 Medicaid:** Based on the record before me, I recommend the appeal be overruled. Medical necessity for the requested home modification, addition of an external door, has not been established.

### FINAL ADMINISTRATIVE DECISION AND ORDER

I find the Hearing Officer's conclusions to be supported by the cited policy and by the evidence. The recommendations are therefore adopted; appeal No.1271825 is overruled and appeal No.1274905 is sustained. Compliance on appeal No.1274905 is required. Ohio Administrative Code § 5101:6-7-03 (B) (1) (a) requires compliance with decisions involving public assistance within fifteen calendar days from the date the decision is issued, but in no event later than ninety days from the date of the hearing request.

May 11, 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).

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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 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.

**Appendix**

**Appellant Exhibits**

- (1) JFS 04065, State Hearing Request, received 2/13/06; one page.
- (2) JFS 04065, State Hearing Request, received 3/3/06; two pages.
- (3) Appeal Summary regarding request for back-up generator; three pages.
- (4) Appeal Summary regarding request for door; two pages.
- (5) Ohio Residential Code for family dwellings; two pages.
- (6) Fire safety information; one page.
- (7) Carestar letter, dated 12/9/05, regarding contacts for community resources for door; two pages.
- (8) Carestar letter, dated 12/9/05, regarding contacts for community resources for generator; two pages.
- (9) Appellant's statement of wattage requirements; one page.
- (10) Photographs of Appellant's hallway, living room, bedroom and exterior of house; four pages.

**Agency Exhibits**

- (A) Carestar Appeal Summary for denial of door; three pages.
- (B) Therapy Assessment and Plan of Care; one page.
- (C) Proposal and cost estimate; three pages.
- (D) Carestar Appeal Summary for generator denial; four pages.
- (E) State Hearing Decision, dated 1/13/06; five pages.
- (F) Administrative Appeal Decision, dated 2/14/06; three pages.