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CLERK OF COURTS
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IN THE COURT OF COMMON PLEAS OF WILLIAMS COUNTY, OHIO

Kenneth Schrimsher,

Case No. 15 CI 073

Appellant,

vs.

Ohio Department of Job & Family
Services,

DECISION and JUDGMENT ENTRY

Appellee.

BACKGROUND

The Appellant, Kenneth Schrimsher, has appealed an Ohio Department of Job & Family Services ("ODJFS") Administrative Appeal Decision, issued May 1, 2015, pursuant to R.C. 119.12 and R.C. 5101.35(E). In its decision, ODJFS denied the Appellant Medicaid reimbursements for the time Appellant spent in a nursing home facility in Edgerton, Ohio. ODJFS ruled that Appellant did not meet the requirements for "intermediate level of care."

Appellant asks this Court to reverse the Administrative Appeal Decision of the ODJFS and the State Hearing Decision. Appellant asserts that the record on appeal establishes the requisite "intermediate level of care" and therefore Appellant is entitled to the Medicaid reimbursements for his nursing home stay from August 4, 2014 to February 2, 2015. Appellant further argues that the agency's order is not supported by reliable, probative and substantial evidence and is not in accordance with the law.

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THE FACTS

The Court has reviewed the pleadings of the parties and the record and hereby adopts, as its own, the following summary:

Mr. Schrimsher is a 59-year old male who began residing at Parkview Nursing Center on August 4, 2014, after being transferred from an Indiana hospital. On August 21, 2014 the local agency received a request for a level of care (LOC) determination for him for an Ohio nursing facility, with an effective date of August 4, 2014. The agency concluded that the documentation dated August 11, 2014, submitted pursuant to this request, indicated that Mr. Schrimsher did not need assistance with an "activity of daily living," or "ADL." Instead, the agency concluded, he needed only supervision with ADLs.

On September 2, 2014 a representative of the agency visited Mr. Schrimsher in Parkview Nursing Center. Evidence indicates that the representative observed that Mr. Schrimsher dressed himself, completed oral care, showered himself, was able to use the phone independently, was alert, and was mentally aware of time and place. He independently completed oral care, shampooing and shaving. Mr. Schrimsher did not need assistance with mobility because he could ambulate independently through the halls. Notes submitted to the agency also indicated the Mr. Schrimsher was independent in eating, toileting and ambulation. Finally, it was determined that he was in need of assistance with "instrumental activities of daily living" (or IADLs). However, because Mr. Schrimsher did not need assistance with any ADLs (which are different from IADLS), the agency determined that he qualified only for the "protective level of care," rather than the "intermediate level of care." A signed affirmation from Mr. Schrimsher's treating physician, received by the agency on September 4, 2014, concurred the Mr. Schrimsher qualified only for the protective level of care.

The agency's determination was upheld by a State Hearing Decision issued on December 2, 2014. Mr. Schrimsher appealed through an administrative appeal request dated December 15, 2014. It is the resulting Administrative Appeal Decision, issued May 1, 2015, from which Mr. Schrimsher appealed to this Court.

THE LAW

Appeals to court from Administrative Appeal Decisions issued by ODJFS are authorized by R.C. 5101.35(E), which incorporates most of R.C. 119.12. This Court must decide whether the Administrative Appeal Decision is supported by reliable, probative, and substantial evidence

and is in accordance with law. If the Decision meets these criteria, it must be affirmed. See: *Rossiter v. State Med. Bd.*, 155 Ohio App. 3d 689, 2004-Ohio-128 ¶ 11.

The Ohio Supreme Court has further described this inquiry as follows:

The evidence required by R.C. 119.12 can be defined as follows: (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value.

Our Place, Inc. v. Ohio Liquor Control Comm., 63 Ohio St. 3d 570, 571 (1992).

The review required by R.C. 119.12 is a restricted one. It is not a trial *de novo* or (necessarily) an appeal solely on questions of law, but if there are factual issues the court conducts a hybrid review by appraising witness credibility, the probative character of the evidence, and the weight thereof. See: *Lies v. Veterinary Medical Bd.*, 2 Ohio App. 3d 204, 207 (1st Dist. 1981). The court may re-evaluate the credibility of the evidence, with "due deference to the administrative resolution of evidentiary conflicts." See: *Univ. of Cincinnati v. Conrad*, 63 Ohio St. 2d 108, 111 (1980); *Crumpler v. State Bd. of Educ.*, 71 Ohio App. 3d 526, 528 (10th Dist. 1991).

In addition, a court must give due deference to the agency's construction of a statute or rule enforced by the agency and should follow that construction unless it is unreasonable or impermissible. See: *Leon v. Ohio Bd. of Psych.*, 63 Ohio St. 3d 683, 687 (1992) (citing *Lorain City Bd. of Educ. v. State Emp. Rel. Bd.*, 40 Ohio St. 3d 257 (1988)); *Morning View Care Center - Fulton v. Ohio Dept. of Human Servs.*, 148 Ohio App. 3d 518, 533, 2002-Ohio-2878, ¶ 43 (10th

Dist.). See also: *Haynam v. Ohio St. Bd. of Edn.*, 6th Dist. No. L-11-1100, 2011-Ohio-6499, 2011 WL 6365144, ¶ 69-71 (Dec. 16, 2011).

An agency's findings of fact are presumed to be correct and must be deferred to by a reviewing court unless the court determines that the agency's findings are internally inconsistent, impeached by evidence of a prior inconsistent statement, rest upon improper inferences, or are otherwise unsupportable. *Ohio Hist. Soc. v. State Emp. Relations Bd.*, 66 Ohio St. 3d 466 (1993); *Dayton Tavern, Inc. v. Ohio Liquor Control Comm.*, 134 Ohio App. 3d 816 (2nd Dist. Montgomery Co. 1999). Further, a reviewing court must abide by proper regulations of the administrative agency and give deference to the agency's interpretation of its own rules and regulations if the interpretation is consistent with the law and the plain meaning of the rule. *Clark v. Ohio Dept. of MRDD*, 55 Ohio App. 3d 40 (6th Dist. Lucas Co. 1988); *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384 (2006).

To sum up the above, the court should review legal questions de novo but defer to ODJFS' reasonable interpretations of the statutes and rules that ODJFS enforces. Any factual disputes must be reviewed to determine whether ODJFS' conclusions are supported by reliable, probative, and substantial evidence, with due deference given to ODJFS' resolution of evidentiary conflicts.

The above standard of review is to be applied to the certified record of the agency proceedings in a case like this one. The certified record for this case was filed on July 9, 2015. Documents outside the record (and all arguments based on them) cannot be considered by this court when considering the merits of the case, with one exception: "newly-discovered evidence"

may be admitted and considered. See R.C. 119.12; See also *State Med. Bd. v. Murray*, 66 Ohio St. 3d 527, 537-38 (1993). "Newly-discovered evidence" means evidence that was (1) in existence at the time of the agency hearing but (2) could not with due diligence be discovered and presented at that hearing. See R.C. 119/12; *Murray, supra*.

Exhibits A and C to Appellant's Brief are dated in May 2015 (long after the December 2, 2014 agency hearing in question). The brief and attached exhibits were also filed after the issuance of the May 1, 2015 Administrative Appeal Decision that is the very subject of this appeal. These exhibits (and arguments based on them) cannot be considered by the Court, because they are obviously newly created, and thus cannot qualify as "newly discovered" under R.C. 119.12. See e.g., *Golden Christian Acad. v. Zelman*, 144 Ohio App. 3d 513, 517 (10th Dist. 2001).

This Court likewise has disregarded any references to a State Hearing Decision issued April 3, 2015, as mentioned on page 8 of Appellant's Brief, because that decision is not part of this appeal. It was issued in a separate case, procedurally speaking, and brought with it an independent appeal path if Mr. Schrimsher disagreed with it. See: R.C. 5101.35(C) (allowing an appeal from a state hearing decision) and 5101.35(E) (allowing an appeal from an Administrative Appeal Decision that reviewed a State Hearing Decision). As Mr. Schrimsher concedes, this appeal concerns the May 1, 2015, Administrative Appeal Decision, which reviewed only the December 2, 2014, State Hearing Decision. See: Appellant's Brief at 1. The December 2, 2014 State Hearing Decision reviewed only whether the September 10, 2014 Pre-Admission Review finding about Mr. Schrimsher's level of care was correct based on the information available at

that time. See: 12/2/14 State Hearing Decision at 1 & 5.

In order to meet the requirements for the "intermediate level of care" designation, OAC 5160:3-3-08(B)(4) states that the individual must need assistance in at least one "activity of daily living." The Appellant began residing in the nursing facility on August 4, 2014 after being transferred from an Indiana hospital. A level of care determination (LOC) was requested and the reviewing agency determined that the Appellant "did not need assistance with an activity of daily living." The agency determined the Appellant needed "supervision" only.

On September 2, 2014, an agency representative actually visited the Appellant at the nursing facility. The agency's representative personally observed and spoke with the Appellant. Based upon the representative's observations and discussions with the Appellant, the agency's representative concluded that the Appellant did not need assistance with an "activity of daily living." The Appellant required only supervision with his ADLs. Finally, the Appellant's own treating physician apparently concurred that Appellant qualified only for the protective level of care.

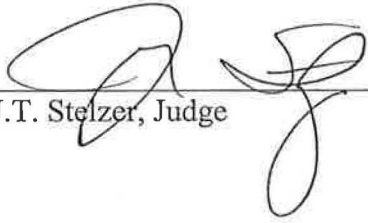
The Court has thoroughly reviewed the certified record of the agency proceedings upon which ODJFS relied in finding that Appellant did not meet the requirements of "intermediate level of care" and subsequently denied Appellant for Medicaid reimbursement. From a review of the record, the Court finds that agency's order is supported by reliable, probative and substantial evidence and the order is in accordance with the law.

JUDGMENT ENTRY

It is the JUDGMENT, ORDER and DECREE of this Court that the Administrative Appeal Decision of May 1, 2015 is hereby affirmed. This is a FINAL, APPEALABLE ORDER.

The Clerk of Courts shall serve all parties with notice of this judgment and its date of entry upon the journal.

Costs to Appellant.



J.T. Stelzer, Judge