

**Ohio Department of Job and Family Services
Bureau of State Hearings**

State Hearing Decision

<u>Appeal</u>	<u>Program</u>	<u>Disposition</u>	<u>Compliance</u>
4060114	MED-S	SUS	Required

Request Date: 05/27/2026

Hearing Date: 06/22/2026

Mail Date: 06/26/2026

Hearing Officer: Michael Cummings

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ISSUE

Appeal #4060114

The issue on appeal is whether or not the County Board of Developmental Disabilities (CBDD) was correct to propose a reduction in the Appellant's independent provider's personal care service (PCS) hours to a maximum of forty hours per week effective June 1, 2026 (the Appellant was still found to need the same 62 total PCS hours per week).

After review of the evidence and relevant policy, I find that the CBDD was not correct.

PROCEDURAL MATTERS

1. The Appellant was represented via teleconference by her mother who is also her guardian and authorized representative.
2. The CBDD was represented via teleconference by Linda Riegelman and Miriah Kister—the Appellant's Service and Supports Administrator (SSA) through the CBDD.
3. The CBDD submitted an appeal summary for consideration on June 17, 2026.
4. The jurisdictional CDJFS was represented at the hearing by Jessica Dames and submitted an appeal summary for consideration on June 15, 2026. With the agreement of all parties, the CDJFS representative was dismissed at the outset of the hearing as her agency was not involved in the immediate action.
5. All parties were sworn in.

FINDINGS OF FACT

1. The Appellant lives in a shared living arrangement in the community. The Appellant's mother is her primary caretaker and assists her as paid independent provider at the Appellant's residence.
2. Prior to the events of this case, the Appellant's individual support plan (ISP) for her waiver through the CBDD called for 62 personal care service (PCS) hours per week. The ISP approved the Appellant's mother to provide all 62 hours per week as an independent provider as the Appellant's paid caretaker—twenty-two of which would be considered overtime pay.
3. In April 2026, the CBDD was updating the Appellant's individual support plan (ISP) for a new annual certification period beginning June 1, 2026. At that time, the CBDD determined the Appellant's ISP could not continue to approve the

Appellant's mother to be paid in excess of 40 hours per week (overtime hours) as an independent provider as the Appellant's PCS provider. The CBDD informed the Appellant's mother of this decision during the development of the ISP.

4. On May 18, 2026, the CBDD offered to complete a free choice of provider search for the Appellant in order to locate another provide to complete the additional hours each week (beyond the forty approved for the Appellant's mother to act as the provider). The Appellant's mother declined this offer.
5. On May 27, 2026, the CBDD sent the proposed ISP with a maximum cap on the number of hours
6. A hearing was requested on behalf of the Appellant on May 27, 2026.

CONCLUSIONS OF POLICY

Policy

This rule sets forth procedures related to overtime worked by independent providers, places a limit on the number of hours in a work week an independent provider may provide services under a home and community-based services medicaid waiver component administered by the Ohio department of developmental disabilities, and establishes a process and the circumstances under which the limit may be exceeded.

Ohio Admin. Code §5123-9-03(A) (2023).

The department, county boards, individuals who receive services, and independent providers will work collaboratively to efficiently use available resources and to the extent possible, reduce the need for overtime. To that end, an independent provider will inform an individual's service and support administrator of the number of persons for whom the independent provider provides any medicaid-funded services as an independent provider anywhere in the state and the number of hours of services the independent provider provides in a work week for each such person:

1. When the independent provider is selected by an individual to provide services;
2. When notifying the service and support administrator in accordance with paragraph (D)(3) of this rule; and
3. At other times upon request of the service and support administrator.

Ohio Admin. Code §5123-9-03(C) (2023).

Limit on providing services in a work week

1. After an independent provider has worked sixty hours in a work week providing any medicaid-funded services as an independent provider, that independent provider may provide additional units of services under a home and community-based services medicaid waiver component administered by the department as an independent provider in that work week only:
 - a. When authorized by the service and support administrator for the individual for whom the additional services are provided in accordance with paragraph (D)(2) of this rule; or
 - b. Due to an emergency.
2. As part of the assessment and person-centered planning process set forth in rule 5123-4-02 of the Administrative Code, an individual and the individual's team will identify known or anticipated events or circumstances that will necessitate an individual's independent provider to exceed the limit established in paragraph (D)(1) of this rule.
 - a. When known or anticipated events or circumstances will necessitate an individual's independent provider to exceed the limit, the events and circumstances, including authorization for the independent provider to exceed the limit for these specific events and circumstances, will be addressed in the individual service plan. Examples of known or anticipated events or circumstances include but are not limited to:
 - i. Scheduled travel or surgery of the individual, the individual's family member, or the individual's provider;
 - ii. Holidays or scheduled breaks from school;
 - iii. The individual has a compromised immune system and may be put at risk by having additional providers;
 - iv. The independent provider is the only provider that has been trained by a nurse on delegated tasks or trained by a behavioral specialist to implement unique behavioral support strategies; and
 - v. A shortage of other available providers.
 - c. When an individual requests that an independent provider be authorized to routinely exceed the limit due to a shortage of other available providers, the individual and the service and support administrator will work together to identify additional providers. When good faith efforts to identify additional providers have not been effective, the service and support administrator may authorize the independent provider to exceed the limit as specified in the individual service plan, for the duration of the individual's waiver eligibility span.
 - d. When, pursuant to circumstances described in paragraph (D)(2)(a)(iv) or (D)(2)(a)(v) of this rule, the service and support administrator authorizes an independent provider to exceed the limit, the service and support

administrator will work with the individual and the individual's team to develop and implement a plan to eliminate the circumstances that necessitate the independent provider to exceed the limit.

3. When an emergency necessitates an individual's independent provider to exceed the limit established in paragraph (D)(1) of this rule, the independent provider will notify the individual's service and support administrator in accordance with the county board's written procedure described in paragraph (D)(4) of this rule, within seventy-two hours of the events or circumstances creating the emergency and report the hours the independent provider worked that exceeded the limit.
4. A county board will adopt a written procedure for an individual's independent provider to notify the individual's service and support administrator when an emergency requires the independent provider to exceed the limit established in paragraph (D)(1) of this rule. The county board will notify independent providers at least thirty calendar days in advance of revising the written procedure.

Ohio Admin. Code §5123-9-03(D) (2023).

It shall be the responsibility of the agency to show, by a preponderance of the evidence, that its action or inaction was in accordance with rules of the Administrative Code.

Ohio Admin. Code §5101:6-7-01(C)(1)(c) (2023)

Analysis

In the immediate case, the CBDD completed a new proposed ISP for the Appellant for a new certification period effective June 1, 2026, for the Appellant's individual options (IO) waiver administered by the CBDD. As part of that ISP, the Appellant's mother was designated as an approved independent provider for a maximum of forty out of the sixty-two total PCS approved for the Appellant's care. The Appellant's mother had previously been approved as the Appellant's caretaker as an independent provider for the full sixty-two hours per week—twenty-two of which were considered overtime hours each week. The CBDD representation provided testimony and evidence that when the CBDD was in the process of updating the Appellant's ISP for the new certification, the CBDD identified that by policy they had an obligation to try and minimize the need for paying overtime to independent providers in the administration of their waivers. As a result, the CBDD approached the Appellant's mother—who is also the Appellant's guardian—with the plan to reduce the approved hours for the mother to a maximum of forty and utilize other providers to fill the additional hours approved for the Appellant each week (effectively working to eliminate the overtime hours being consistently issued to the Appellant's mother as an independent provider in the prior ISP). The CBDD explained that in numerous

conversations with the Appellant's mother throughout this process the Appellant's mother indicated she did not agree with the CBDD's proposal, and she wished to continue to provide all the hours each week as an independent provider. The CBDD noted that the Appellant's mother's stated reasons for wanting the arrangement to continue as it was because she (the mother) relied on the extra income from those overtime hours, and she found other providers to be unreliable based on experience utilizing them. The CBDD representations argued that the Appellant's mother—both as her guardian and as an independent provider being paid by the State—had an obligation to work and collaborate with the State to reduce the need for paying overtime hours to a single independent provider. The CBDD maintained that the Appellant's mother's stated reasons as to why she felt the arrangement should continue did not establish any special circumstance for which continued regular overtime pay would be merited. As a result, the CBDD maintained the proposed ISP with the maximum of forty hours approved for the Appellant's mother to be the PCS provider as an independent provider.

In response to the CBDD, the Appellant's mother essentially confirmed the CBDD's explanation for her objection to the ISP. She testified that caring for her daughter was essentially her full time job because it was so demanding, and she felt her daughter was doing best in the current shared living arrangement (as opposed to just living with her mother). Since the caretaking left her minimal other time, she testified she relied on the overtime hours and pay she had been paid under the past ISP. The Appellant's mother also confirmed that she did not like to rely on other PCS providers because in her past experience utilizing them for her daughter the caretakers were generally unreliable; they would change frequently or fail to appear at all. The Appellant's mother testified she understood the CBDD's position, but she still felt it would be best for her daughter for the prior arrangement to continue.

Ohio Administrative Code §5123-9-03 governs overtime and the limit on the number of hours in a work week an independent provider may provide services under home and community based services waivers administered by the CBDD. The rule expressly states “[The State Department of Developmental Disabilities (DODD)], county boards, individuals who receive services, and independent providers will work collaboratively to efficiently use available resources and to the extent possible, reduce the need for overtime.” Overtime is generally defined as hours in excess of forty per week for a given independent provider. This tends to confirm the CBDD's position that there is a general obligation for all parties to reduce the need for overtime. However, the very next section of the rule is where the limits on providing services are more explicitly laid out. Paragraph (D)(1) of that section states “[a]fter an independent provider has worked sixty hours in a work week providing any medicaid-funded services as an independent provider, that independent provider may provide additional units of services . . . as an independent provider in that work week only” due to an emergency or when authorized by an individual's SSA. Throughout the

remainder of the rule, there is then discussion of “the limit established in paragraph (D)(1) of this rule” or generally “the limit”. This discussion all centers around the idea that there should be efforts made to avoid an independent provider working more than the limit and the potential circumstances in which it would be approved/acceptable to exceed the limit.

In general, the CBDD’s entirely clear intention in this case was to make efforts to reduce situations in which they are paying overtime to a single Medicaid-paid provider. The Appellant’s case is a clear example with the Appellant’s mother having been receiving regular overtime (OT) pay per the Appellant’s prior ISP. That goal is reasonable, and it is supported by the mere existence of the OAC policy cited above. That said, the CBDD may not have carried out the policy correctly in their attempts to enforce it in this case.

There is a direct quote in the policy which largely echoes the CBDD’s exact purpose here. In short, it indicates all parties to a situation like this—the individual themselves (the Appellant), the CBDD, and the independent provider (the Appellant’s mother)—have an obligation to work together and where possible reduce the use of OT pay. The same rule directly states that OT pay is defined as any hours worked over forty in the same week.

Again, broadly, this support’s the CBDD’s goal. The CBDD is further correct that the Appellant’s mother—(action as guardian) and the provider in this case—clearly then has an obligation to participate in this effort as well. The evidence available all suggests the Appellant’s mother has not made this effort.

That said, the CBDD’s explanation as to how they carried out this goal was to propose essentially a hard cap on the amount of hours that the Appellant’s mother could be paid as the provider—forty in this case. The policy language—when actually discussing the limitations placed on providers—begins to refer to a limit of sixty hours. It contemplates what situations could necessitate hours over “the limit” and what situations the CBDD and the individual must make continued efforts to find providers and reduce the need for hours over “the limit”. The CBDD’s decision to use the maximum limit of forty hours was reasonable given that any hours over forty are OT—and the CBDD has an obligation to reduce OT. However, that following cited section suggests the CBDD should have contemplated whether they had an obligation to reduce the Appellant’s mother’s hours down to sixty or forty. Further, as allowed by policy, there are clearly some situations in which an independent provider’s hours may understandably and acceptably need to be above forty hours in a given week. The CBDD did not include the direct language used in the ISP as part of their appeal summary, but the CBDD must ensure that it is not written in such a way that the Appellant’s mother can *never* be paid more than forty hours in a week.

In summary, the CBDD’s general goal in this case was correct and the Appellant’s mother has an obligation to support that goal. However, the CBDD should reevaluate the limitation placed in the ISP on the Appellant’s mother as an independent provider to ensure it

conforms with the language cited from Ohio Administrative Code §5123-9-03. Accordingly, the CBDD's proposed reduction in the amount of hours the Appellant's mother can be paid as an independent provider is not supported by the preponderance of the evidence in this case.

HEARING OFFICER'S RECOMMENDATION

Based on the record before me and the policies of the Ohio Department of Job and Family Services, I recommend that appeal #4060114 be sustained with compliance.

To comply, the CBDD shall complete the following actions:

1. Reinstate the Appellant's mother's prior amount of approved hours as an independent provider from the Appellant's prior ISP.
2. In cooperation with the Appellant's mother (as guardian and provider), reevaluate and make a new determination on the limitations in the Appellant's ISP for the amount of hours approved for the Appellant's mother as an independent provider. All parties are expected to work together to reduce the need for overtime hours, find additional providers, and generally eliminate circumstances which require continual overtime.
3. The CBDD shall send notice of the determination to the Appellant, and the CBDD's new determination shall afford the Appellant full appeal rights.

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, appeals #4060114 is sustained with the recommended compliance. Compliance shall be achieved and reported in accordance with Ohio Administrative Code §5101:6-7-03.

Daniel George

06/26/2026

Notice to Appellant

This is the official decision of your state hearing. It informs you of the decision and order in your case. Papers and materials introduced at the hearing, known as "exhibits," make up the hearing record. The hearing record is maintained by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please call the ODJFS hotline at 1-866-635-3748.

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Appendix

Appellant Exhibits

1. Request-SH (9 pages)

Agency Exhibits

- A. Appeal Summary (4 pages)
- B. Appeal Summary- ACDJFS (21 pages)
- C. Case notes (4 pages)
- D. SSA Rule (15 pages)
- E. Suitability of Services (12 pages)
- F. administration of the Io and LI waivers (18 pages)
- G. overtime for independent providers (5 pages)

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