

OAAS LEADERSHIP CHANGES HANDS

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Elizabeth (Liz) Prather resigned her position as president of the OAAS board in September to assume interim superintendent responsibilities for the Richland County Board of MRDD. During her three-year term as president Liz was steadfast in her promotion of self-determination and consumer self-advocacy. With her leadership OAAS made strong progress on important strategic initiatives that included identification and dissemination of best practices, influence of rule and legislative development, promotion and support of self-determination, and improved communication between adult services and service and support administration. OAAS extends a big “thank you” to Liz for her service as president. She will continue as a member of the OAAS board.

Melanie Stretchbery succeeds Liz as OAAS board president. Melanie has served on the OAAS board since 2001, most recently as Vice President. Her 24 years of experience in the MRDD field include service as a regional case manager and county board case management director. Melanie is currently the Adult Services Director for the Wood County Board of MRDD.

The new president will be responsible for providing leadership to OAAS’s 2007 strategic initiatives. Communication and training goals for the coming year include a statewide conference on positive behavior supports, waiver implementation and waiver management training, and promotion of best practices in the areas of supported employment and services for transitioning youth. Active participation on public policy committees, involvement in rule writing, promotion of self-determination and SSA and adult services role delineation round out next year’s busy agenda. Good Luck Melanie – you have all of our support.

BUILDING BRIDGES GRANT SUMMARY TEAM VINTON

The Vinton County MRDD team met early on August 29th to begin the three-hour drive to the New River Gorge in West Virginia. Riding in the van were the SSAs, Adult Services staff, the Superintendent and an OU Practicum student who paid the fee to participate in the team building exercise. With the exception of the Superintendent, none of the staff had ever been whitewater rafting and everyone was a little concerned about the risk of rowing through the rapids.

Although the long ride to West Virginia provided plenty of time for bonding, it was when the group carried their raft to the bank of the river that the true team building began. Everyone waded into the water and jumped on board to begin the seven-mile journey to the other end of river.

The congenial guide took the team through rowing exercises to ensure that when going through the rapids everyone could paddle in unison. Left forward, right back, all forward, all back were a few of the commands the team had to learn. When rowing was no longer necessary and the boat could drift, the guide would yell “and drift.” At first members of the group were confused thinking he was calling out to “Andrea” who was seated near the front of the boat. When that little problem resolved the team headed down the river.

The first challenge came as the group traveled through a class three rapid. The thrill of going through the gush of water was enhanced by the fear of being able to remain in the boat while following the instructions shouted by the guide. Left back, right forward, all forward plus the confusing “and drift” was barely audible above the screams as everyone struggled to remain in the boat.

The real test for the team came as the boat turned backwards while entering the first of several class five rapids. Everyone was tossed around and a couple participants almost tumbled out of the boat. Thanks to the quick response of fellow team members, they were grabbed just in time. Throughout the rest of the trip down the river, opportunities to rescue each other occurred numerous times. All of the rafters had to rely on each other to ensure that everyone remained in the boat and did not go overboard into the rushing water.

The team took other risks throughout the day including a climb through steep rocks to reach a cliff thirty feet high where they jumped into the river. Coaxing and helping each other through that challenge offered another opportunity for the group to work together.

The ride home was relaxing as everyone shared what was most fun for them throughout the day. Everyone agreed that leaving the facility and being together as people and not MRDD staff was the most beneficial thing that came out of this shared adventure.

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The group photo as we struggled through the rapids will forever remind us of the power of teamwork and help us remember the day that differences were put aside and as a team we overcame our fears to work together toward a shared goal.

One of the 2006 Strategic Initiatives for the Ohio Association of Adult Services (OAAS) is to promote networking opportunities with Service and Support Administrators (SSAs) at the local and state level.

OAAS recently awarded 20 mini-grants to members who desire to improve services to individuals through an enhanced relationship between Adult Services and SSAs. Another summary is included in this edition of The OAAS Leader on Page 11.

Look for more summaries of Building Projects in upcoming issues of the OAAS Leader

PORTAGE INDUSTRIES, INC. AWARDED FICA EXEMPTION

By Terri O'Connell, Editor

Portage Industries, Inc. has taken consumer choice to a new level. Workshop consumers who earn wages equal to or less than 2/3 of "substantial gainful activity" can choose whether or not to pay FICA Tax and Medicare. This choice results from an intensive five year effort by the Portage Industries, Inc. board and management staff.

At a 1998 ACCSES (American Congress of Community Support and Employment Services) conference, Adult Services Director Phil Miller learned that although specific to each work center and set of facts, it's possible for individuals with disabilities who perform services under habilitation and rehabilitation programs conducted by tax exempt organizations to be exempted from FICA Tax and Medicare. Consumers who are FICA Tax and Medicare exempt are not considered to be employees.

Information presented at the ACCSES conference was shared with the Portage Industries, Inc. board. Highlights included the following:

- Workshop consumers typically fail to accumulate sufficient quarters of coverage to qualify for social security benefits due to low earnings, or if eligible for benefits, would receive a social security benefit less than that payable under SSI. Therefore many consumers will never benefit from their FICA contributions.
- Whether or not a consumer benefits from the discontinuance of FICA depends on their earning history and earning potential. The effect of FICA exemption on consumers is determinable.

- Exemption from payment of the FICA Tax increases workers' take home pay by 7.65% of earnings with no effect on disability income (SSI is calculated on gross, not net income).
- Employers do not pay FICA Tax on exempted workers, a substantial savings
- If successful with the exemption effort, taxes paid by both the consumers and Portage Industries, Inc. over the prior five years could be refunded, with interest

Recognizing the potential benefit to consumers, the board made a policy decision to pursue FICA Tax exemption. They selected Raymond M. McCabe, a Buffalo, New York attorney to be their representative. FICA Tax exemption of consumer earnings is a specialized area of law and McCabe had a successful track record in obtaining favorable rulings. The board's meticulously crafted plan included the following elements.

- Identification of non employees - consumers with earnings \leq 2/3 of SGA
- Education of consumers, families, and SSAs
- Written consumer consent to collect prior tax payments on their behalf, beginning with tax year 1996
- A March 30, 2003 date to cease payment of FICA (non employee consumers only)
- Education of the local social security office to understand consumers' tax refunds
- Accounting solutions for "revenue" (total refund) and "expense" (disbursement of consumer refund)

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Portage Industries' planning, persistence and hard work paid off with receipt of the first refund check. In total Portage Industries, Inc. and their non employees will split tax refunds exceeding \$250,000. In addition both have saved this cost going forward. And because the IRS agreed to follow a settlement previously reached in the Chicago office, Portage Industries was relieved of the necessity to file extensive information with the IRS and was not required to meet in the IRS Appeals Office. As a result legal fees were contained to \$15,000.

IMPACT ON CONSUMERS

1. Approximately 140 of 220 consumer workers qualify as non employees
2. Non employees do not receive W-4s. They receive a 1099-Misc. Earnings are identified as miscellaneous income.
3. Refunded tax is not considered earned or unearned income. It does not affect disability benefits because disability benefits are based on gross, not net, earnings.
4. Refunded tax is counted as a resource and care should be taken to keep total resources below the allowable threshold. Refunds are issued by the IRS to Portage Industries quarter by quarter. Portage Industries issues refunds to consumers following the same schedule.
5. Interest received by consumers may reduce the monthly SSI payment in the month it is received. Planning is required.
6. All consumers, employees and non employees, continue to pay Ohio Income Tax

Looking back, Phil reflects that the hardest part of the endeavor was the time and effort required over an extended period - almost five years. He reports long periods when nothing happened followed by a flurry of required action.

But the distribution of refund checks to consumers made all the work worthwhile. Portage Industries, Inc. is keenly aware that work center income contributes to consumers' quality of life by helping with necessary expenses and providing opportunities for discretionary spending.

Phil advises that any organization seeking FICA Tax exemption should make sure they find an attorney familiar with this little-known provision of Federal tax law. He warns that the IRS is resistant to exemption efforts. IRS cooperation with Portage Industries, Inc.'s refund request came only after Attorney McCabe won several cases in other states. Phil would be happy to assist any interested OAAS member with a referral to counsel.

OAAS thanks Phil Miller for sharing this information with our membership.



MUI INVESTIGATION – *Adult Services Providers Need to Plan Role*

By Terri O’Connell, Editor

County Boards of MRDD have responsibility to ensure the health and safety of all consumers. The requirements for reporting, investigating, reviewing, and remediating incidents that adversely affect consumers’ health and safety, and to monitor preventative and corrective actions, are specified in rule 5123:2-17-02 - Incidents adversely affecting health and safety. The requirements of the rule apply to county boards of MRDD, developmental centers, and providers. Under the rule “Provider” includes a county board when providing the services, or county board contracting entity as defined in section 5126.281 of the Revised Code. Therefore, for purposes of this rule, a county board operated adult services program must comply with both county board and provider responsibilities and requirements. A county board contracting entity must meet provider responsibilities and requirements.

Rule 5123:2-17-02 identifies the respective roles of the provider, county board, and the Department of MRDD in the incident reporting system. The role of the Investigative Agent and the categorical definitions of Major Unusual Incidents were reported in the spring edition of *The Leader*. The summer newsletter outlined provider requirements for notification and reporting of major unusual incidents as well as county board response obligations. (Past editions of *The Leader* can be found on the OAAS website, www.oaas.org). The purpose of the current article is to identify the roles and responsibilities of each the Investigative Agent and the provider when an employee of the provider forms the basis of a major unusual incident.

INVESTIGATIVE AGENT ROLE & RESPONSIBILITY

The Investigative Agent’s role in conducting MUI investigations is three fold:

1. He/she is the primary responsible agent to investigate and fact-find on behalf of persons with MRDD and the county board.
2. He/she is responsible to make appropriate and required notifications to persons with MRDD (advocate of person’s choice, legal guardian, attorney, provider, SSA) and to lead enforcement agencies (law enforcement, children services, ODMRDD) in a timely manner.
3. He/she is responsible to ensure that a complete and thorough investigation into incidents meeting the MUI criteria is conducted in accordance with rule requirements.

The MUI rule is complex. Although over simplified, the table below identifies some important elements related to “protocol” and “non-protocol” MUIs.

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CLASSIFICATION	PROTOCOL MUI	NON-PROTOCOL MUI
DESCRIPTION	Abuse, Neglect, Exploitation, Misappropriation, Suspicious or Accidental Death, Prohibited Sexual Relations, Rights Code Violation, or Any other incident the county board thinks should be investigated within protocol MUI timelines.	Hospitalizations, known injuries, unapproved behavior support, etc.
TIMELINES	Investigation is initiated immediately if consumer's safety and health is thought to be in immediate jeopardy. Otherwise the investigation must be initiated within 24 hours.	Investigation must be initiated within 48 hours of the county board's knowledge of the incident.
EVIDENTIARY CRITERIA	Preponderance of Evidence. Preponderance of evidence means the credible evidence indicates that it is more probable than not that the alleged incident occurred.	None
IA ACTION	Substantiates or does not substantiate the occurrence of the alleged incident	. Facts discovered are reported to ODMRDD. There is no statement of substantiation or Non substantiation
CLOSED BY	Ohio Department of MRDD	Investigative Agent
CLOSURE NOTIFICATION	ODMRDD notifies the county board when the MUI is closed. The county board notifies the provider when the MUI is closed by ODMRDD.	The county board notifies the provider that the MUI is closed.

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Absent an approved extension, the county board is required to provide a written investigation report of the MUI findings to the ODMRDD within thirty working days of the receipt the MUI report. A written summary of the investigation findings must be submitted to the provider at least five working days following the submission of the report to ODMRDD.

PROVIDER ROLE & RESPONSIBILITY

Immediately upon notification or identification of an MUI the provider must take all reasonable measures to ensure the health and safety of all individuals served. The importance of this requirement cannot be overstated and it is required that providers document all of the information and efforts to ensure compliance with governing rules.

An MUI investigation does not replace a provider's personnel policies or labor agreement. When a provider's employee forms the basis of an incident the responsibility for personnel administration rests with the provider.

It is important that providers understand that the Investigative Agent's primary role is one of fact-finder and not decision maker as to whether employee discipline is warranted. The provider is responsible to decide if the action of its employee warrants disciplinary action.

Providers and employees listed under the mandated reporting law (Section 5123.01 of the Revised Code and 5123:2-17-02) must cooperate with all investigations conducted by Investigative Agents and other authorized entities, and must respond to all requests for additional information made by the department, county board, or any investigating entity as soon as practicable, but within five days of receipt of the request.

The rule permits providers to conduct a separate investigation of any major unusual incident. If the provider conducts a separate investigation, the provider shall submit to the county board a copy of its internal investigation report within fourteen days of becoming aware of the major unusual incident.

The rule requires that providers develop and implement a written procedure for the internal review of all major unusual incidents. The provider is responsible to take corrective action to remediate incidents and all reasonable steps necessary to prevent the recurrence of major unusual incidents.

CONSIDERATIONS

William Angel, Director of the Department of Investigative Services, Montgomery County Board of MRDD, highly recommends that providers conduct joint investigations with the Investigative Agent. Montgomery County uses this approach with great success. By conducting a joint investigation the provider benefits from the IA's investigative training and expertise, acquires a full understanding of facts surrounding an alleged incident, and obtains the information needed to determine if administrative or disciplinary action should be initiated.

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Mary Brandstetter, Clark County MRDD Board Adult Services Director, advises a written description of the provider management staff's role in MUI investigation. Clark County's procedure allows provider management staff to participate in MUI investigation interviews.

Dave Kessler, Dublin Management Group, emphasizes providers' responsibility for the personnel administration role. He notes that providers must implement agency personnel policy whenever allegations of employee misconduct arise. In cases of "employee involved" MUIs, Kessler recommends that the provider and Investigative Agent conduct parallel investigations. He warns that an MUI investigation report may not be enough to uphold employee discipline, especially if the provider fails to follow personnel policy or labor agreement requirements. MUI investigation and personnel policy requirements can differ in several ways. The first is timelines. Given knowledge of an alleged incident that may give rise to disciplinary action, a provider's personnel policy may require action within a timeframe that is different from an MUI investigation timeframe. In addition, agency personnel policies or labor agreements could entitle the employee to have a representative present during any interview that has disciplinary implications. An employee may be interviewed privately for the purpose of an MUI investigation. If disciplinary action is taken and ends up before an arbitrator within the confines of a labor agreement or before an administrative law judge at the State Personnel Board of Review, the standard is just cause which is substantially different than preponderance of evidence. Finally, Kessler indicates that the confidential nature of an MUI investigation must be considered. Providers should be certain that they have documentation which can be used for any proposed personnel action.

RECOMMENDATIONS

It is recommended that adult services providers work proactively and cooperatively with Investigative Agents and other authorized investigative entities to identify the provider's role in the investigation of "employee involved" MUIs. The resulting procedures and practice should comply with both the provider agency's personnel policies and the investigation requirements defined in rule 5123:2-17-02. The procedures should also outline and define efficient MUI related communication. Providers will want to determine and communicate in advance the time of day staff will be made available for interviews. This will help assure that program services are not disrupted.

OAAS thanks the following for collaboration on this article.

William Angel Jr., Director
Department of Investigation Services
Montgomery County Board of MRDD

Dave Kessler, President
Dublin Management Group

Mary Brandstetter, Adult Services Director
Clark County Board of MRDD



THE FACE ☺ ☹ OF ADULT SERVICES IN OHIO

Submitted by Angie Herzog, Allen County

Allen County's recent survey of Ohio Adult Services programs revealed some interesting trends. All counties are dealing with change or thoughts of change in some way, shape or form—mostly due to the Medicaid waiver rule changes. Allen County's survey did not seek out agencies other than County Boards. Here is some of the information that was compiled:

of responses—88

County Board Adult Services that have privatized—4 (Ross, Delaware, Ottawa, Madison)

Counties working toward making a change to privatization—9 (Clark, Fairfield, Crawford, Pickaway, Geauga, Meigs, Belmont, Mercer, Knox)

Adult Service programs still run by County Board—76

Counties where Adult Services is totally contracted out—3

Counties that partially contract out Adult Services—26

Number of agencies with unionized staff—32

What kinds of services are being offered?

Sheltered employment—81 Adult Services programs

Supported employment—73 Adult Services programs

Day habilitation—80 Adult Services programs

Many comments were made in response to survey questions. Information about specific counties and programs will be forwarded by OAAS email in the next few weeks.

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DARKE COUNTY BOARD OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

BUILDING BRIDGES MINI GRANT SUMMARY

On September 22, 2006, the Darke County Board of Mental Retardation and Developmental Disabilities Adult Services and Community Services Departments scheduled a day of "training" in coordination between departments. The day began with a four (4) hour In-Service titled, "Building Relationships in the Functioning Teams" conducted by Dr. James Dobbins, Psychologist. This training covered some of the following topics: Relationship Beginnings, The Ecology of Relationships, The Importance of Effective Communication, Building Relationships in High Performance Organizations and Building Multi-Cultural Relationships.

Immediately following lunch, both departments participated in another two (2) hour In-Service titled "The Working Relationship Between Adult Services and Community Services Department." The goal of this training was to provide all staff in both departments the opportunity to become more aware of the roles of each department, as well as specific duties of various team members. On behalf of the Adult Services Program, a Habilitation Manager discussed the role of the Adult Services Program in the consumer's Individual Service Plan. The Job Developer shared the role of this position with those involved in the community. The Community Services Department then shared the various roles and services provided in relationship to the Adult Program provided to consumers by that department. Some of the topics covered were Transition from the educational arena to the Adult Program, Individual Service Plan Coordination, Family Support Services and Behavior Support Services.

This opportunity to be together proved to be a very positive for all participants. Communication is a necessity for any successful team and in Darke County, the Building Bridges Mini-Grant was a tool that promoted positive communication between the Adult Services and Community Services Department.

SOUTHWEST REGIONAL NEWS

Mark Schwartz will assume duties as Adult Services Director for the Fayette County Board of MRDD effective November 6. He will replace Steve Davis. Mark currently works as an SSA for the board. Prior to his employment in Fayette County he served as an SSA and a Vocational Services Manager for the Pickaway County Board of MRDD.

Mark received a BA degree from Ohio Northern University and holds an MBA from the University of Phoenix. He lives in Washington Court House with his wife and two children. Welcome Mark!

Where are we with the New Adult Day Services Array?

Submitted by Mark Smith
Ohio Department of MRDD

Since the OAAS conference there have been a couple follow-up meetings with the Centers for Medicare and Medicaid Services (CMS). In these meetings we've discussed the absentee rate, as well as the building and capital costs included in the rate model. These discussions directly impact payment rates we can use for day services. As most of you know, we've been working to validate the absentee rates found in day habilitation service delivery. With assistance from county boards, in particular adult services directors, the Ohio Department of Mental Retardation and Developmental Disabilities (ODMRDD) has worked to provide credible data to support our claims. We were asked by CMS to give a number of indicators to verify the level of absenteeism. Once we explained our rationale, CMS eventually agreed that our rate had an appropriate level of absenteeism.

Building and capital costs associated with the Supported Employment-Enclave services were also questioned by CMS. It was explained that these services require an office, a training area, and space just like other waiver services. Again, Ohio appears to have succeeded in getting CMS to accept our rationale.

Still to be finalized is the phase-in from Day Habilitation to the new Adult Day Services Array (we are now calling it a 'phase-in', as opposed to a 'transition' to avoid some confusion with the shift around Homemaker/Personal Care (HPC) and other residential services). ODMRDD continues to strive towards giving our system maximum ability to move to these new services by working towards a phase-in period that will adequately allow day habilitation providers to make the phase-in to the new services. As we finalize the beginning and end dates for phase-in, this information will be shared with the field.

One reason we are asking for a January 2007 begin date (this date is NOT yet finalized) is because our rules are in 'TBR' status. What does TBR mean? Well, 'TBR' stands for 'To Be Refiled'. We had created our rules, and had released them for public comment, and even got to the point where we submitted them to the Joint Committee for Administrative Rule Review (JCARR). However, when we received comments back from CMS, we felt there would be a delay in their approval. Rather than have rules in place with no approval of match for implementation, ODMRDD decided to pull the rules and 'TBR' them pending CMS approval to move forward. Placing the rules in TBR status eliminates the need to repeat the process of placing the rules before JCARR again. That does not mean interested parties won't have a chance to comment on the rules, and please know the changes we could accommodate in the rules from the public comment we initially received have been added into the rules. An important element of the TBR rules is the allowance of "averaged" staff ratios. This is in contrast to the "fixed" ratios initially required. "Averaging" responds to the reality that consumers' staffing needs change throughout the day and eliminates unnecessary rigidity in service design for Waiver consumers. For example, averaging would allow a person in Acuity Group B to receive services at a 1:12 ratio for some part of the day as long as their "average" level of service is 1:6 for at least 75% of the day. OAAS requested this change and we now understand why Adult Services Directors felt it was so important. Thank you for helping us understand and hopefully make delivery of these services as effective as possible.

When Ohio gets approval for our entire waiver amendment we can move forward with the final JCARR review of our rules. Once we have an approval from CMS, we will know when the phase-in of these services can begin, and when we must end the delivery of day habilitation and be fully delivering services in the new Adult Day Services Array. Once those dates are known, we all will have a great deal of work to do: completing all the assessments, planning how this new way of doing business will work, and working with those who plan the services so plans align with the way the services are delivered.

