

**Department of
Developmental Disabilities****Mike DeWine**, Governor**Kim Hauck**, Director**Hearing Summary Report****Hearing Date:** 05/16/2023**Today's Date:** 05/22/2023**Rule Numbers:**

Rescind: 5123:2-2-05, 5123:2-9-03

Adopt: 5123-2-05, 5123-9-03

If no comments at hearing, please check the box. ☐

List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

5123-2-05:

Tom Rickels, Co-Owner, X-Excel

Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

5123-2-05:

(C)(2) and (C)(3): What is the difference in the definitions in "community employment" and "competitive integrated employment"? I understand (C)(3) is more of a national definition but not sure what the difference is and why it is important to have two similar definitions.

Department's response: "Community employment" is used in the Employment First authorizing statute (Section 5123.022 of the Revised Code), so we believe it important to maintain the term in the rule. "Competitive integrated employment" and its definition were adopted by stakeholder consensus as the appropriate wording for the new rule.

(C)(3)(a)(i)(b): I understand what is being said, but who actually would be doing this? Is there ever an example of this being done? It seems overly administrative. If a person is happy with what they make in self-employment, why should they have to make a similar wage to a person without disabilities? If

they don't make what a person without disabilities makes, are we going to tell them they can't be employed?

Department's response: This is a check point for an individual and the individual's team -- not to dissuade the individual from being self-employed -- but to discuss and explore what supports might be indicated to enhance business success and the individual's earning potential.

(C)(3)(a)(ii): I understand the intent of this statement but would like to know the answer to this question. If someone works at Ohio State University (OSU) and chooses not to take the insurance offered by OSU but stays on Medicaid so they can have waiver services, does that meet the definition of "eligible"?

Department's response: Yes. In your example, the employer offered the benefits to the individual. The choice to accept or decline the benefits belongs to the individual.

(C)(7)(a)(i): If a person receives Career Planning, are they considered employed in the Outcome Tracking System? I ask this because many states use career planning, other assessments, and benefits analysis to inflate their employment statistics when people only in these services are not making any money.

Department's response: No. A person is not considered employed on the basis of receiving Career Planning. Career Planning is a spectrum of one-on-one supports a person needs to reach community employment goals.

(D)(2)(d) and (D)(3)(c): This is where I have the greatest problem. Either people have choices, or they don't. When former Director of the Department, John Martin, came out with Employment First, he said, "It is employment first, not employment only." In the Rhode Island Olmstead Consent Decree (remember this was overseen by a magistrate for many years), Anne LeClerc, Associate Director of Program Performance, Rhode Island Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals said:

Individuals and/or guardians were offered a variance which simply asked why "work is not right for you." Someone prevented from working by poor health need simply note that as a reason but no medical documentation is necessary. The variance itself is a one-time thing. During individual service plan meetings held annually, those individuals who have previously chosen variances will simply be asked whether they're still happy with their decisions not to work. If not, they may reconsider. <http://olmstead-ddnews.org/olmstead-updates/tag/Anne+LeClerc>

The variance puts the individual in control. As this rule is written, the Department is in control and forcing providers to comply with a task that I feel is nothing less than inhumane for many individuals. The Department spends thousands of dollars on surveys for Direct Support Professionals (DSP). In a recent survey done by Ohio Association for Direct Support Professionals, part of the feedback was that sometimes they felt disrespected by the system. Many times, that may be in reference to their direct supervisors, but this is an example of asking DSPs and front-line supervisors to talk to people about jobs when those individuals have little to no expressive or receptive language skills. The statement, "why isn't work right for you" seems much more appropriate than "maybe they don't know enough." The first has the individual at the center, the latter is ableist. As the old Bartles & Jaymes commercial said, "Brilliant."

Department's response: Place IV on the path to competitive integrated employment was the subject of robust debate among stakeholders during meetings of the Blueprint for Adult Day and Employment Services Workgroup and the Rule and Waiver Amendment Implementation Team. After much discussion, stakeholders agreed upon the revisions being made that are intended to shift the tone and

address the very concerns you raise. The restated emphasis for an individual on Place IV is ensuring the individual has up-to-date information and knows support is available. Place IV is necessary because the authorizing statute (Section 5123.022 of the Revised Code) sets forth that every individual with a developmental disability is presumed capable of community employment.

Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

The Department answered questions and explained that the wording in paragraphs (D)(2)(d) and (D)(3)(c) is the result of extensive debate, and ultimately consensus, achieved by system stakeholders.