

**OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
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**MEMORANDUM**

DATE: January 30, 2007

TO: OPERS Retirement Board Members

FROM: Julie E. Becker, General Counsel

RE: **IV. Action Items:**  
**A. Appeal to the OPERS Board-Lucas County and Anita Allen, Monica Armstrong-Schmidt and Mary Dunn-Brock**

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**Action requested:**

The question for the Board is whether Ms. Allen, Ms. Armstrong-Schmidt, and Ms. Dunn-Brock ("Claimants") were carry-over employees, and therefore public employees, for OPERS purposes while employed by Community Living Options, Inc. a nonprofit entity created by Lucas County.

Depending upon your decision, you may make suggested motions as listed or motions as you determine appropriate.

\_\_\_\_\_ moved, \_\_\_\_\_ seconded, to accept the findings of fact and conclusions of law to find that Claimants were public employees while employed by the non-profit Community Living Options, Inc. and therefore are eligible for OPERS coverage for the relevant time periods. (Hearing examiner's recommendation.)

OR

\_\_\_\_\_ moved, \_\_\_\_\_ seconded, to modify the findings of fact and reject the conclusions of law to find that Claimants were not public employees while employed by the non-profit Community Living Options, Inc. and therefore are not eligible for OPERS coverage.

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**OPERS Staff Decision:**

Ohio Revised Code Section 145.01(A)(2) provides that a carryover public employee is a person who is a member of the system who continues to perform the same or similar duties under the direction of a contractor who has contracted to take over what before the date of the contract was a publicly operated

function. The governmental unit with which the contract has been made shall be deemed to be the employer.

Prior to March 14, 1991, the Claimants were employed by the Lucas County MRDD and were members of OPERS. Lucas County MRDD created Community Living Options, Inc. ("CLO"), a non-profit organization, to administer supported living, which was a program designed to benefit individuals with mental retardation and/or developmental disabilities. The Claimants resigned from Lucas County and immediately began their employment with CLO. Staff determined that the job duties the claimants performed at the CLO were materially similar in nature and that the Claimants were therefore carryover employees.

The main factor in dispute in this matter is whether the Claimants continued to perform the same or similar duties.

**Procedural Background:** Lucas County appealed OPERS staff determination. The parties participated in an administrative hearing process conducted by a hearing examiner.

The hearing examiner prepared a Report and Recommendation ("R&R") to the board with findings of fact and conclusions of law, recommending that the Board find that the Claimants were carryover employees in this matter. R&R attached as Tab 1.

Lucas County filed written objections to the R&R, attached as Tab 2.

Per the Administrative Code Rule 145-1-11, attached as Tab 3, you may accept, reject, or modify the R&R. The Board may also remand to the hearing examiner for further findings before making your final decision. The parties have been notified via certified mail that the Board will consider this appeal at its February 21, 2007 meeting. The parties were also told that they may make short presentations.