

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF

██████████
Appellant

_____ /

Docket No. 2009-20616 CMH
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████ (guardian) appeared on behalf of the Appellant. Her witness was her spouse, ██████████ (co-guardian). ██████████, hearings coordinator, represented the Department. She had no witnesses.

ISSUE

Did ██████████) properly deny Appellant's environmental modification request?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a disabled ██████████ Medicaid beneficiary.
2. The Appellant receives services, (supports coordination, skill building, respite and OT), through the ██████████. He is not enrolled in the Habilitation and Supports Waiver Program.
3. The CMH is under contract with the Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH service area.

4. The Appellant is afflicted with mental retardation and cerebral palsy. He uses a wheelchair.
5. On ██████████, the Appellant brought a request for an environmental modification to cut the curb and modify his driveway to enhance his wheelchair safety.
6. The request was supported with documentation counter-signed by a non-physician/provider, reviewed and denied. The reason given for the denial was: Not a covered service. The request for a concrete slab is not a covered service. His further appeal rights were contained in that notice. (Department's Exhibit A, pp. 2-10)
7. The Appellant brought the instant appeal which was received by the State Office of Administrative Hearings and Rules (SOAHR) on ██████████. (Appellant's Exhibit #1)

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Title XIX of the Social Security Act, enacted in 1965, authorizes Federal grants to States for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children. The program is jointly financed by the Federal and State governments and administered by States. Within broad Federal rules, each State decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures. Payments for services are made directly by the State to the individuals or entities that furnish the services.

42 CFR 430.0

The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department. The State

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plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program.

42 CFR 430.10

Section 1915(b) of the Social Security Act provides:

The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection (s) of this section) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State...

Section 1915(c) of the Social Security Act provides:

The Secretary may by waiver provide that a State plan approved under this title may include as "medical assistance" under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded...

The State of Michigan has opted to simultaneously utilize the authorities of the 1915(b) and 1915 (c) programs to provide a continuum of services to disabled and/or elderly populations. Under approval from the Centers for Medicare and Medicaid Services (CMS) the Department of Community Health (MDCH) operates a section 1915(b) Medicaid Managed Specialty Services and Support program waiver in conjunction with a section 1915(c) Habilitation and Supports Waiver (HAB) HSW. The [REDACTED] Community Mental Health SP contracts with the Michigan Department of Community Health to provide services under the (HAB) HSW. Services are provided by [REDACTED] [REDACTED] pursuant to its contract obligations with the Department.

In this case the Appellant's guardian/representative seek to obtain a curb cut and driveway extension to enable a smoother transition for the Appellant as he exits the home to board transportation services. The representatives testified that the Appellant

has fallen from his wheelchair in recent history and sustained injury with lingering infection. Their desire is to achieve a safer means of egress for the Appellant.

The CMH representative testified that they applied the Medicaid Provider Manual (MPM) environmental modification criteria to the request and found that the driveway and proposed curb cut were not Medicaid covered services. She added that the modifications were not prescribed by a physician as required under Medicaid policy.

17.3.D. ENVIRONMENTAL MODIFICATIONS

Physical adaptations to the beneficiary's own home or apartment and/or work place. There must be documented evidence that the modification is the most cost-effective alternative to meet the beneficiary's need/goal based on the results of a review of all options, including a change in the use of rooms within the home or alternative housing, or in the case of vehicle modification, alternative transportation. All modifications must be prescribed by a physician. Prior to the environmental modification being authorized, PIHP may require that the beneficiary apply to all applicable funding sources (e.g., housing commission grants, MSHDA, and community development block grants), for assistance. It is expected that the PIHP case manager/supports coordinator will assist the beneficiary in his pursuit of these resources. Acceptances or denials by these funding sources must be documented in the beneficiary's records. Medicaid is a funding source of last resort.

Coverage includes:

- The installation of ramps and grab-bars
- Widening of doorways
- Modification of bathroom facilities
- Special floor, wall or window covering that will enable the beneficiary more independence or control over his environment, and/or ensure health and safety
- Installation of specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the beneficiary
- Assessments by an appropriate health care professional and specialized training needed in conjunction with the use of such environmental modifications
- Central air conditioning when prescribed by a physician and specified as to how it is essential in the treatment of the beneficiary's illness or condition. This supporting documentation must demonstrate the cost-effectiveness of central air compared to the cost of window units in all rooms that the beneficiary must use.
- Environmental modifications that are required to support proper functioning of medical equipment, such as electrical upgrades,

limited to the requirements for safe operation of the specified equipment.

- Adaptations to the work environment limited to those necessary to accommodate the beneficiary's individualized needs.

Coverage excludes:

- Adaptations or improvements to the home that are not of direct medical or remedial benefit to the beneficiary, or do not support the identified goals of community inclusion and participation, independence or productivity.
- Adaptations or improvements to the home that are of general utility or cosmetic value and are considered to be standard housing obligations of the beneficiary. Examples of exclusions include, but are not limited to, carpeting (see exception above), roof repair, sidewalks, driveways, heating, central air conditioning, garages, raised garage doors, storage and organizers, landscaping and general home repairs.
- Cost for construction of a new home or new construction (e.g., additions) in an existing home.
- Environmental modifications costs for improvements exclusively required to meet local building codes
- Adaptations to the work environment that are the requirements of Section 504 of the Rehabilitation Act, or the Americans with Disabilities Act; or are the responsibilities of the Michigan Rehabilitation Services.

.... Medicaid funds may be authorized to assist with the adaptations noted above (e.g., ramps, grab bars, widening doorways) for a recently purchased existing home. (Emphasis supplied).

MPM, Mental Health [], §17.3.D., Environmental Modifications, April 1, 2009, pp. 98-100.

The Appellant's representatives acknowledged on the record that they are pursuing an alternative ramp to assist the Appellant in a separate application not before the ALJ today.

The Medicaid policy listed above explicitly states: "All modifications must be prescribed by a physician." The record in this case is absent of any physician prescription for either driveway addition or curb cutting. The Appellant's representative did not present a physician executed prescription for driveway modification.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly denied the use of Medicaid funds for Appellant's environmental modification requests.

IT IS THEREFORE ORDERED that

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 7/21/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.