

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

Docket No. 2010-40594 EDW

██████████

██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.* upon the Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████. ██████████ appeared on her own behalf. ██████████, son, appeared as a witness for the Appellant. ██████████ Director of Quality, appeared on behalf of ██████████, the Department's MI Choice program waiver agency (hereafter, Department). ██████████ Clinical Manager, and ██████████, Social Work Case Manager, appeared as witnesses for the Department.

ISSUE

Did the Department properly deny the Appellant's request for a handicapped accessible ramp through the MI Choice Waiver program?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence on the whole record, I find as material fact:

1. The Appellant is a Medicaid beneficiary who has been receiving MI Choice Waiver services.
2. The Appellant has multiple diagnoses including cervical stenosis, congestive heart failure, hypertension, peripheral vascular disease, arthritis, osteoporosis, depressions, and seizure disorder. (Exhibit 3, pages 1 and 4)
3. In ██████████, the Appellant was approved for a motorized wheelchair/scooter outside of the MI Choice Waiver program. (Appellant Testimony and Request for Hearing)

4. On ██████████, the waiver agency conducted a re-assessment of the Appellant's case. (Exhibit 3)
5. During the reassessment, the possibility of a handicapped accessible ramp was discussed and the Social Work Case Manager indicated he would review this with the long term care manager. (Social Work Case Manager Testimony)
6. On ██████████, the Appellant's request for a handicapped accessible ramp was submitted to the Clinical Manager. (Social Work Case Manager Testimony)
7. The Clinical Manager requested additional documentation and received the Appellant's recent physical therapy discharge report. (Exhibit 2)
8. Based on the re-assessment and physical therapy discharge reports, the Clinical Manager determined that there was insufficient documentation to support medical necessity of the requested handicapped accessible ramp. (Clinical Manager Testimony)
9. On ██████████, the waiver agency issued a notice denying the Appellant's request for a handicapped accessible ramp. (Hearing Summary)
10. The Appellant's request for an administrative hearing contesting the denial of the handicapped accessible ramp was received on ██████████. (Request for Hearing)

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.

Effective November 1, 2004, the Michigan Department of Community Health (MDCH) implemented revised functional/medical eligibility criteria for Medicaid nursing facility, MI Choice, and PACE services. Federal regulations require that Medicaid pay for services only for those beneficiaries who meet specified level of care criteria.

This Appellant is claiming services through the Department's Home and Community Based Services for Elderly and Disabled (HCBS/ED). The waiver is called MI Choice in Michigan. The program is funded through the federal Health Care Financing Administration to the Michigan Department of Community Health (Department). Regional agencies, in this case the Waiver Agency, function as the Department's administrative agency.

Waivers are intended to provide the flexibility needed to enable States to try new or different approaches to the efficient and cost-effective delivery of health care services, or to adapt their programs to the special needs of particular areas or groups of recipients. Waivers allow exceptions to State plan requirements and permit a State to implement innovative programs or activities on a time-limited basis, and subject to specific safeguards for the protection of recipients and the program. Detailed rules for waivers are set forth in subpart B of part 431, subpart A of part 440 and subpart G of part 441 of this chapter. *42 CFR 430.25(b)*

1915 (c) (42 USC 1396n (c) allows home and community based services to be classified as “medical assistance” under the State Plan when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR and is reimbursable under the State Plan. (42 CFR 430.25(b)).

Home and community based services means services not otherwise furnished under the State’s Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this subchapter. (42 CFR 440.180(a)). Included services. Home or community-based services may include the following services, as they are defined by the agency and approved by HCFA:

- Case management services.
- Homemaker services.
- Home health aide services.
- Personal care services.
- Adult day health services
- Habilitation services.
- Respite care services.
- Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

Other services requested by the agency and approved by HCFA as cost effective and necessary to avoid institutionalization. 42 CFR 440.180(b). Medicaid beneficiaries are only entitled to medically necessary Medicaid

covered services. See 42 CFR 440.230. The MI Choice waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary.

The Michigan Department of Community Health Minimum Operating Standards for MI Choice Waiver Program Services addresses environmental accessibility adaptations:

NAME

Environmental Accessibility Adaptations

DEFINITION

Those physical adaptations to the home, required by the participant's service plan, that are necessary to ensure the health and welfare of the participant or that enables the participant to function with greater independence in the home, without which, the participant would require institutionalization. Such adaptations include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the participant. Excluded are those adaptations or improvements to the home that are not of general utility, and are not of direct medical or remedial benefit to the participant. Adaptations that add to the total square footage of the home are excluded from this benefit except when necessary to complete an adaptation. All services shall be provided in accordance with applicable State or local building codes.

*Michigan Department of Community Health,
Minimum Operating Standards for MI Choice Waiver Program
Services, Attachment H,
9/17/09, Pages 23-24*

In the present case, the Appellant met the nursing facility level or care determination criteria under Door 4 based upon daily oxygen use. (Social Work Case Manager Testimony and Exhibit 3) The Appellant was approved for a motorized chair/scooter outside of the MI Choice Waiver program. (Appellant Testimony and Request for Hearing) The Appellant testified she has a 4-wheeled motorized chair, or Rascal chair. The Appellant testified she does not use the chair inside her home because of limited space and wanting to avoid bumping into her furniture.

The Clinical Manager testified the Appellant's request for a handicap accessible ramp was denied because the reassessment summary indicates that the Appellant can ambulate with a walker or personal assist. She further stated the physical therapy report included met goals of ambulating 150 feet to the mailbox with 4 wheel walker and stand by assist, as well as navigating 3 steps from the home to garage without a handrail with care giver assist. (See Exhibit 2) Therefore, she determined medical necessity for the handicapped accessible ramp was not established.

The Appellant testified that she can not use her motorized chair without a ramp to get in/out of her home. The Appellant further explained that the ramp would not be just for the wheelchair, but also because of difficulty getting in/out of her home with her walker. She explained it is difficult to keep the doors open while balancing the walker on the steps to get in/out of her home. The Appellant and her son explained that he is not always home, up, or otherwise available to assist the Appellant.

In reviewing the request for the handicapped accessible ramp, under the above cited policy, this ALJ find that the evidence does not establish that the Appellant would be at risk of institutionalization without a handicapped accessible ramp. The testimony indicates that the Appellant was discharged home from a nursing facility without a ramp in place. The reassessment report is not consistent regarding the Appellant's abilities and needs for assistance with ambulation, but does document balance and fall concerns. (Exhibit 3 pages 3-4 and 6-9) While the Appellant testified she can not use the motorized chair unless he has a ramp, she also stated she does not intend to use the motorized chair inside her home. The physical therapy discharge report indicates the Appellant can navigate the 3 steps from her home to the garage without a handrail with caregiver assistance. The Appellant's testimony indicates that despite some difficulty, she has been getting in and out of her home with the walker without assistance. (Appellant Testimony) Further, the waiver agency stated they will address the van driver not assisting the Appellant in and out of her home when she is transported to programs. (Clinical Manager Testimony)

Based on the available information, the waiver agency's denial of a handicap accessible ramp is upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the MI Choice waiver agency denied the requested handicap accessible ramp.

[REDACTED]
Docket No. 2010-40594 EDW
Hearing Decision & Order

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 9/20/2010

***** 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.

