

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-54123
Issue No.: 6004
Case No.: [REDACTED]
Hearing Date: November 16, 2010
DHS County:

ADMINISTRATIVE LAW JUDGE: Rhonda P. Craig

HEARING DECISION

The hearing in this matter was conducted by Administrative Law Judge Jana Bachman on November 16, 2010, pursuant to MCL 400.9, MSA 16.409 and MCL 400.37; MSA 16.437, and upon Petitioners' request for a hearing. Judge Bachman was unable to write the decision. The undersigned Administrative Law Judge has written this hearing decision after review of all evidence in the record including the tape recording of the actual hearing. Petitioners appeared and testified.

ISSUE

Is the Department of Human Services (Department) correct in denying Petitioners' request for a stair lift for their adopted child under the Adoption Medical Subsidy Program because it is considered a structural change, improvement to the home, or an item that provides for the comfort, education or recreation of other family members?

FINDINGS OF FACT

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

1. Petitioners adopted a child [REDACTED] who is eligible for the Adoption Medical Subsidy Program.
2. The child has been diagnosed with Duchenne muscular dystrophy. He is unable to walk up and down stairs independently.
3. On or about November 14, 2009, Petitioners requested a stair lift for the safe ambulation of their child from the upper part of the home to the lower part.

4. On October 22, 2009, the Department denied the request indicating that “the adoption medical subsidy program does not pay for structural changes, improvement to the home, or items that provide for the comfort, education or recreation of other family members”.
5. Petitioners requested a hearing contesting the denial of an Adoption Medical Subsidy for payment of a stair lift.

CONCLUSIONS OF LAW

The Adoption Subsidy program is established by MCL 400.115, *et seq.*, and is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10, *et seq.* Department policies regarding adoption subsidy are found in the Services Manual (SM). The federal law upon which Michigan law is based is Title IV-E of the Social Security Act, Section 473(c).

Adoption Medical Subsidy is intended to assist with paying for services related to the treatment of physical, mental, or emotional conditions certified by the Adoption Subsidy Program Office. State law makes it the payer of last resort (MCLA 400.115h). Parents retain responsibility for making treatment arrangements for their child, seeking prior approval for services when required, and making payment arrangements with providers. The quality of services is the responsibility of parents and the services provider.

Adoption Medical Subsidy assists with medical, surgical, hospital and related expenses only for condition(s) certified by the Adoption Subsidy Program Office. Related expenses may include pharmaceutical expenses, prescriptions, medical supplies, or laboratory expenses.

Adoption Medical Subsidy assistance for psychological or mental health treatment may be approved for specific mental or emotional conditions that existed prior to the adoption or the **cause** of which existed prior to the adoption and that have been certified by the Adoption Subsidy Program Office. AAM 640p. 1.

Subsidy Payment Procedures

Adoption medical subsidy payments are made in response to specific bills submitted by the parents or by the service provider. Payments are made at the rate approved by the Department and sent directly to the service provider unless the parent requests direct payment. Frequency and duration of treatment are subject to review by the Adoption Subsidy Program Office.

Adoption medical subsidy does not pay for missed appointments.

Payment is approved only if **all** of the following are met:

- The service is **necessary** to treat a certified condition (as defined in CFG, Glossary).
- The date of service is on or after the effective date of the adoption medical subsidy agreement.
- If required by department policy, the family has obtained prior approval for the services from the Adoption Subsidy Program Office. Services requiring prior approval include, but are not limited to:
 - Assisted care services.
 - Educational costs and services, such as speech therapy, physical therapy, occupational therapy, tutoring, or educational equipment and supplies.
 - Durable medical equipment such as wheelchairs, ramps, van lifts, etc.
 - Placement outside the family home.
 - Summer camp.

AAM 640 p. 1-2.

The adoption medical subsidy program does not pay for structural changes, improvements to the home, or items that provide for the comfort, education or recreation of other family members.

The adoption subsidy program does not purchase cars or vans.

Equipment Requirements

Durable medical equipment is paid for only when the medical equipment is:

- Related to the treatment of a condition certified by the Adoption Subsidy Program Office, and
- Prescribed by a physician to treat the condition certified by the Adoption Subsidy Program Office, and
- The least expensive alternative, and
- The parent's private health insurance, Medicaid, Children's Special Health Care Services, and the Trust Fund for Children With Special Needs have been exhausted as resources.

The adoption subsidy program may cover up to \$5,000 for the cost of van lifts once every five years. Van lifts will not be covered for minivans. AAM 640 pp.14-15.

In the present case, Petitioners are requesting a stair lift for their severely disabled child. Evidence indicates that the stair lift is necessary. It is necessary to reach a secondary exit from the home. It is necessary for the child to reach the main activity area of the home which allows access to areas which can provide physical therapy. The Department denied the request for the stair lift because "the adoption medical subsidy program does not pay for structural changes, improvement to the home, or items that provide for the comfort, education or recreation of other family members." There is no evidence to show that the stair lift is included in this category. A stair lift would not be a structural change to the home or a recognized improvement since it involves an addition to the home and not a change. It would not be considered an improvement since this type of addition does not enhance the home. Further, it cannot be said that the stair lift provides comfort, education or recreation of other family members. The Department also argues that it is not allowable medical equipment under the Medicaid Provider manual. However the Adoption Medical Subsidy program is not governed by that manual. The stair lift is needed for the child to safely navigate the lower portion of the home where significant activities in the household take place. It would also allow the child to exit the home independently from a secondary exit in case of an emergency. As with other medical equipment, such as a wheelchair, it would not benefit other members of the household and, although attached to a wall, would not involve a structural change or improvement. The Administrative Law Judge finds that

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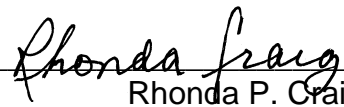
the Department was in error in denying Petitioners' request for a stair lift under the Adoption Medical Subsidy Program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that a stair lift is not a structural change, improvement to the home, or an item that provides for the comfort, education or recreation of other family members. And

IT IS ORDERED THAT the Department's denial of Petitioners' request for a stair lift be and is hereby OVERRULED.

IT IS FURTHER ORDERED THAT Petitioners' child be granted a stair lift if the child is otherwise eligible.


Rhonda P. Craig
Administrative Law Judge Manager
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 17, 2011

Date Mailed: February 17, 2011

NOTICE: The law provides that within 60 days of mailing of the above Decision and Order the claimant may appeal the Decision to the probate court for the county in which the petition for adoption was filed. If the adoptee is a resident of the State, the petition may be filed in the probate court for the county in which the adoptee is found. Administrative Hearings, on its own motion, or on request of a party within 60 days of the mailing date of this Decision and Order, may order a rehearing.

RPC/pf

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