

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-16989 EDW
Case No. 84073256

DECISION AND ORDER

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

After due notice, a telephone hearing was held on ██████████. The Appellant's son, ██████████, appeared on the Appellant's behalf. ██████████, appeared on behalf of the Department's MI Choice program waiver agency, Area Agency on Aging 1B.

ISSUE

Did the Department properly deny the Appellant's request for a chair lift through the MI Choice Waiver program?

FINDINGS OF FACT

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

1. The Appellant is a ██████-year-old Medicaid beneficiary who has been receiving MI Choice Waiver services.
2. The Appellant suffers from Alzheimers disease, dementia, hypertension, and hyperlipidemia. (Exhibit 1, pages 17-18)
3. At the annual assessment on ██████████, the Appellant's son inquired about a chair lift for the Appellant. (Exhibit 1, page 14)
4. On ██████████, the Appellant's physician stated that she "may benefit from stairway handicap chair lift." (Exhibit 1, page 8))
5. The waiver agency denied the Appellant's request for a chair lift. (Exhibit 1, page 2)

6. The Appellant's request for an administrative hearing contesting the denial of the chair lift was received on [REDACTED].

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 Area Agency on Aging 1B, 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,
9/17/09, Pages 23-24*

In the present case, the Appellant met the nursing facility level of care determination criteria and was approved for six hours per day of personal care services through the MI Choice Waiver program. (Exhibit 1, page 6) However, the Appellant's son's request for a chair lift for the Appellant was denied.

The waiver agency testified that the request was denied for two reasons: (1) it is not clear that the Appellant can safely utilize the device on her own and (2) the Appellant is still able to ambulate and maneuver the stairs with assistance and her son is paid by the waiver agency to provide that assistance. The waiver agency's witness explained that because the Appellant's son and caregiver is able, and is being paid to, assist her down the stairs, the chair lift cannot be approved. In addition, she explained that there is no evidence that the Appellant could use the chair lift on her own.

The Appellant's son testified that the Appellant lives in an upper-level condo and that there are 15 steps to get to ground level. He stated that it takes 20 to 25 minutes for the Appellant to get down the steps because her Alzheimers disease has affected her ability to walk on her own. He is concerned for the Appellant's safety if an emergency should occur in the building. (Testimony of ██████████). However, he conceded that the Appellant would not be able to use the chair lift without assistance and she is able to get up and down the stairs, although it takes some time.

In reviewing the Appellant request for a chair lift, this Administrative Law Judge finds that the evidence does not establish that the Appellant would be at risk of institutionalization without a chair lift. While the Appellant's son testified it takes some time, the Appellant is able to get up and down the steps with assistance. Accordingly, the waiver agency's denial of a chair lift must be affirmed.

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 properly denied the Appellant's request for a chair lift.

[REDACTED]
Docket No. 2011-16989 EDW
Hearing Decision & Order

IT IS THEREFORE ORDERED that:

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

Kristin M. Heyse
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 5/4/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.