

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████

Appellant

Docket No. 22011-45115 EDW
Case No. 64106387

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 hearing was held on ██████████. ██████████, Appellant's daughter, represented the Appellant.

██████████, LBSW, Waiver Services Director, Region ██████ Area Agency on Aging (AAA) was present on behalf of the Department of Community Health (Department) waiver program.

ISSUE

Did the Department properly deny the Appellant's request for a home modification for an updated bathroom?

FINDINGS OF FACT

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

1. Appellant is a Medicaid beneficiary and enrolled in the MI Choice Waiver program. (Exhibit 1).
2. The Appellant resides in her home with Appellant's chore provider-daughter. (Exhibit 2).
3. The Appellant has services authorized through the MI Choice Waiver program. In ██████████ Appellant's chore provider-daughter requested that the bathroom be modified so that it would be easier for her to bathe Appellant. (Exhibit 2)
4. The Appellant's current MI Choice waiver services include 25 hours per

week CLS through self determination with daughter as the primary care worker. (Exhibit 2)

5. In ██████████, the Department sent two contractors to Appellant's residence to obtain an estimate to modify the bathroom. The contractors informed the Department that the modifications could not be completed because the bathroom, as currently configured, did not meet local building codes, and, as such, they would not be able to pull a permit to modify it further. (Exhibit 2)
6. The contractors also indicated that the only way the bathroom could be modified to meet local building codes would involve expanding the square footage of the home by extending the exterior wall of the bathroom. The contractors also indicated that they observed numerous other code violations in Appellant's home that would be discovered if a local building inspector was called out to sign off on any work done in the bathroom. (Exhibit 2)
7. Based on the above, the Department notified Appellant's daughter that her request to modify the bathroom was denied. (Exhibit 2).
8. On ██████████, the Appellant, through her daughter, requested a hearing to contest the denial of the bathroom modification. (Exhibit 1)
9. The Michigan Administrative Hearing System received the request for hearing on ██████████. (Exhibit 3).

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.

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 Centers for Medicare and Medicaid (formerly HCFA) to the Michigan Department of Community Health (Department). Regional agencies, in this case an Area Agency on Aging (AAA), 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)*

A waiver under section 1915(c) of the Social Security Act allows a State to include as “medical assistance” under its plan, home and community based services furnished to recipients who would otherwise need inpatient care that is furnished in a hospital, SNF [Skilled Nursing Facility], ICF [Intermediate Care Facility], or ICF/MR [Intermediate Care Facility/Mentally Retarded], and is reimbursable under the State Plan. *42 CFR 430.25(c)(2)*

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)*.

Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

- 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 CMS as cost effective and necessary to avoid institutionalization. *42 CFR 440.180(b)*.

The Operating Standards applicable to the MI Choice Waiver Program list services available under the waiver program and address the standards expected for each service. The Operating Standards for Environmental Accessibility Adaptations provide, in part, the following:

SERVICE NAME	Environmental Accessibility Adaptations
SERVICE DEFINITIONS	Those physical adaptations to the home, required by the recipient’s plan of care, which are necessary to ensure the health, welfare, and safety of the individual or which enable the individual to function with greater independence in the home and without which, the recipient would require institutionalization. Such adaptations may include the installation of ramps and grab-bars, widening of doorways, <u>modification of bathroom facilities</u> , or installation of specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies necessary for the welfare of the client. Excluded are those adaptations or improvements to the home which are not of general utility, and are not of direct medical or remedial benefit to the waiver client, such as carpeting, roof repair, central air conditioning, etc. <u>Adaptations which add to the total square footage of the home are excluded from this benefit. All services shall be provided in accordance with applicable State or local building codes.</u> Emphasis added.

Minimum Standards

* * * *

9. The contracted provider shall check each domicile for compliance with local building codes. The waiver agent may not approve repairs, modifications, or adaptations to a condemned structure.

10. Within fourteen calendar days or ten working days of completion, each waiver agent shall utilize a job completion procedure which includes, at a minimum:
 - a. Verification that work is complete and correct,
 - b. Verification by a local building inspector(s) that the work satisfies building codes (as appropriate), and,
 - c. Acknowledgement by the participant that the work is acceptable.

*MI Choice Waiver, Updated September 2005;
Attachment H, pages 23 and 24*

Here, the Appellant's daughter testified that it was difficult for her to bathe the Appellant because the shower in the downstairs bathroom was too small. The Appellant's daughter indicated that there is a full bathroom upstairs, but that the Appellant is no longer able to go up and down stairs. The Appellant's daughter also indicated that the shower in the downstairs bathroom was added to a half-bathroom that existed previously and that the area is very cramped.

The MI Choice waiver agency's representative testified that she sent two contractors to Appellant's home to provide estimates for modifying the downstairs bathroom. The contractors informed the agency's representative that the modifications could not be completed because the bathroom, as currently configured, did not meet local building codes, and, as such, they would not be able to pull a permit to modify it further. The contractors also indicated that they observed numerous other code violations in Appellant's home that would be discovered if a local building inspector was called out to sign off on any work done in the bathroom. The contractors also indicated that the only way the bathroom could be modified to meet local building codes would involve expanding the square footage of the home by extending the exterior wall of the bathroom.

This ALJ finds the MI Choice agency did properly deny the Appellant's request for a bathroom modification because the work could not legally be done or could only be done by expanding the square footage of the home. The MI Choice policy clearly states that coverage of adaptations can be excluded if they cannot be legally performed, and because the MI Choice agency established the adaptation requested could not be legally performed, it was proper to deny the Appellant's request. The Appellant failed to establish by a preponderance of the evidence, that the work could be legally done, or done without expanding the square footage of the home. As such, the Appellant failed to establish that the work could be authorized based upon the evidence of record. 42 CFR 440.230.

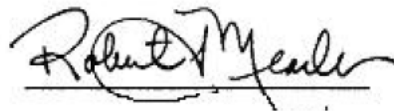
Docket No. 2011-45115
Hearing Decision & Order

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge finds the Department properly denied the Appellant's request for a bathroom modification.

IT IS THEREFORE ORDERED that:

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



Robert J. Meade
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 9/8/2011

***** 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.