

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

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IN THE MATTER OF:

[REDACTED]

Appellant

_____ /

**Docket No. 2011-6112 CMH
Case No. 8855514**

DECISION AND ORDER

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

After due notice, a hearing was held [REDACTED]. [REDACTED], the Appellant's [REDACTED] appeared on behalf of the Appellant. [REDACTED] the Appellant's [REDACTED] was present. [REDACTED] acting case manager was present at the hearing.

[REDACTED] represented the Department of Community Health's contracted PIHP. [REDACTED] appeared as a witness on behalf of the PIHP.

ISSUE

Did [REDACTED] properly deny the 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 [REDACTED] Medicaid beneficiary.
2. The Appellant receives services (respite, community living supports, supports coordination, medication reviews, family therapy, occupational therapy and LLP services) through the [REDACTED].
3. The Appellant is enrolled in the Habilitation and Supports Waiver Program.

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4. The Appellant is diagnosed with autism, moderate mental retardation, and Soto's syndrome. The Soto's syndrome results in growth and aggressive behavior. He also has a psychiatric diagnosis of unspecified disturbance of behavior and is described as impulsive and physically reactive in an aggressive manner. He engages in proprioceptive movement, examples of which include body slamming and hitting. (Exhibit A, page 17)
5. The Appellant must be physically re-directed when acting out at home as he has not been responsive to verbal redirection.
6. The Appellant has engaged in more appropriate conduct in the school setting. It is suggested this demonstrates he has some control over his conduct. (Exhibit A, page 17)
7. The Appellant's physician wrote a recommendation on a prescription pad stating "clt is recommended due to severe autism that materials listed below are used to prevent injury – unbreakable laminated glass for windows in house! – plytanium plywood 19/32 for walls."
8. The Appellant submitted a request for environmental modification to the [REDACTED] on [REDACTED].
9. The aforementioned request for modifications specifically included a reimbursement request for the following home modifications: 10 vinyl sash windows with tempered glass with interior laminate and ½ inch screens; wall coverings for the front room and the Appellant's bedroom of either bead board or Plytanium plywood; base trim; extension on all windows and doors; 57 feet cover trim for ceiling; prime and paint both rooms plus trim. The total is \$ [REDACTED].
10. The Appellant has left holes in the walls of the family home and broken "many windows" according to his [REDACTED].
11. The Appellant has never sought or obtained medical treatment for injury related to actions that resulted in holes in the walls or breaking of windows.
12. On [REDACTED], the request for environmental modification was denied by [REDACTED].
13. The Appellant appealed the denial [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

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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 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

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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 ██████████ ██████████ SP contracts with the Michigan Department of Community Health to provide services under the (HAB) HSW. Services are provided by ██████████ pursuant to its contract obligations with the Department.

In this case the Appellant's ██████████ seeks to have ██████████ windows replaced, her living room and the Appellant's bedroom walls repaired with special drywall or plywood (it is not entirely clear which), the walls primed and painted and 57 feet of crown molding aka ceiling trim, installed in her home by her ██████████.

The CMH representative testified that they applied the Medicaid Provider Manual (MPM) environmental modification criteria to the request and found that the requested construction was not a Medicaid covered service.

The controlling policy is stated below:

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 asserts the home modification is necessary for the safety of the Appellant. She did not present any evidence of why repairing the holes in the wall and covering them with special drywall, bead board or plytanium plywood would enhance the Appellant's safety when he engages in aggressive behavior. The benefit to the wall is obvious however, the benefit to the Appellant is not. There is no evidence clarifying which of the wall coverings is being sought as there are estimates for bead board and a flyer describing plytanium plywood. In any event, there is no evidence describing how any of the coverings sought would medically benefit the Appellant were he to strike it and slam his body against it. It is not obvious to this ALJ what the medical benefit to the Appellant would be. Perhaps if the request were for a soft covering for his bedroom walls the medical benefit would be obvious. Here it is not. A direct medical benefit is a requirement of the controlling policy.

The benefit of having unbreakable glass in the Appellant's bedroom window or any window is obvious to this ALJ. However, there is no evidence that complete window replacement is the most cost effective alternative. There is no evidence in the record that others options were explored and/or why they are not viable. Specifically, is there a window covering that could be used to enhance safety in case of breakage? If so, is this more or less costly than complete window replacement? It is noted by this ALJ that at least one estimate indicated an interior laminate would be placed on the replacement windows. It is not shown why interior laminate could not be placed on the existing windows. Also, the idea of simply replacing the glass in the existing windows is not

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addressed. Finally, it is noted the doctor's prescription states glass is recommended, not new windows.

The evidence of record does not demonstrate the least costly effective means of addressing the safety needs of the Appellant is what was requested in this case. This ALJ does harbor concerns for the Appellant's safety needs and well being, however, the criteria delineated in policy must be adhered to. The evidence of record does not support a finding that the criteria has been satisfied. This ALJ cannot reasonably find a direct medical benefit is established by the evidence of record. It is undisputed the Appellant is destructive towards property, however, again, there is no evidence his destructive behavior resulted in a medical issue for him or how that is addressed by much of what was requested including the wall coverings, paint and crown molding. Finally, the Medicaid policy listed above explicitly states: "All modifications must be prescribed by a physician." The Appellant's [REDACTED] did not present a physician executed prescription for complete window replacement, ceiling molding or painting.

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**.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 1/28/2011

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***** 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.