

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2012-63928 EDW
Case No. ██████████

DECISION AND ORDER

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

After due notice, a hearing was began held on ██████████ ██████████ Appellant's daughter, appeared and testified on Appellant's behalf. Appellant was also present during the hearing. ██████████ represented the Department of Community Health's Waiver Agency, the Area Agency on Aging 1B ("Waiver Agency" or "AAA").

ISSUE

Did the Waiver Agency properly deny Appellant's full request for home modifications and, instead, only authorize the enlargement of the bathroom doorway and installation of grab bars?

FINDINGS OF FACT

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

1. AAA is a contract agent of the Michigan Department of Community Health (MDCH) and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services.
2. Appellant is a ██████████ who is wheelchair-bound. (Exhibit 1, page 7; Testimony of Appellant's daughter).
3. Appellant has been enrolled in and receiving MI Choice waiver services through AAA. (Testimony of ██████████).
4. Appellant requested an extensive modification of her bathroom. As described by Appellant's daughter, such a modification would include the bathroom door being enlarged, the vanity being removed and replaced

with a smaller, handicapped accessible sink; the bathtub being removed and replaced with a small shower; and the toilet being moved to the other side of the bathroom. (Testimony of Appellant's daughter).

5. In support of the request, Appellant provided a report from her physical therapist dated ██████████ (Exhibit 1, page 7).
6. The physical therapist's report states that, given the size and layout of the bathroom, the lack of grab bars, and the small bathroom door, it is difficult for Appellant to use the bathroom. Appellant is unable to access the bathroom in her wheelchair and there is not much room for someone to assist her. The physical therapist also described the difficult process by which Appellant uses the bathroom. (Exhibit 1, page 7).
7. The physical therapist's report also states that Appellant needed to be able to propel into the bathroom and access her commode and shower, that a wheel-in shower stall would be safer than a bathtub, that Appellant needs to be able to turn the wheelchair around in the bathroom, and that the bathroom needs grab bars. (Exhibit 1, page 7).
8. On ██████████ AAA sent Appellant written notice that it was partially denying her request for home modifications. The reason given was that the "Physical Therapist's written recommendation does not support the need for bathroom modification other than the enlargement of bathroom doorway and installation of grab bars." (Exhibit 1, page 8).
9. On ██████████ the Michigan Administrative Hearing System (MAHS) received a Request for Hearing with respect to the denial in this case. (Exhibit 1, page 9).

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.

Appellant is claiming services through the Department's Home and Community Based Services for Elderly and Disabled. The waiver is called MI Choice in Michigan. The program is funded through the federal Centers for Medicare and Medicaid Services to the Michigan Department of Community Health (Department). Regional agencies, in this case 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).]

Medicaid beneficiaries are only entitled to medically necessary Medicaid covered services and the MI Choice waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary. See 42 CFR 440.230.

Moreover, with respect to the type of service sought in this case, the Medicaid Provider Manual (MPM), MI Choice Waiver Chapter, April 1, 2012, page 37, provides:

4.1.K.ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS

Environmental Accessibility Adaptations (EAA) include physical adaptations to the home required by the participant's plan of service that are necessary to ensure the health and welfare of the participant or that enable 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 unless necessary to complete an adaptation.

Given the above policies, the Waiver Agency's decision to deny Appellant's request for additional home modifications should be sustained. As a preliminary matter, this Administrative Law Judge would note that the problems caused by the smaller doorway and lack of grab bars are documented in the physical therapist's report and testified to by Appellant's daughter, and that the Waiver Agency is willing to authorize some home modifications, such as widening of the bathroom doorway and installing grab bars in the bathroom, to fix those problems.¹

However, Appellant and her representative also request significant additional modifications. As testified to by Appellant's daughter, almost the entire bathroom needs to be changed. In particular, among other possible changes, the vanity needs to be removed and replaced with a smaller, handicapped accessible sink; the bathtub needs to be removed and replaced with a small shower; and the toilet needs to be moved to the other side of the bathroom. Additionally, as described above, the physical therapist's report does state that, given the size and layout of the bathroom, it is difficult for another person to assist Appellant. That report also states that it is necessary for Appellant to be able to turn around in bathroom.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in denying her request for greater modifications than those authorized. Given the evidence in this case, Appellant has failed to meet that burden. Appellant's physical therapist documented and Appellant's daughter testified regarding the difficulties Appellant and her care taker were having in the bathroom. Specifically, the physical therapist identified two major areas of concern, *i.e.* the doorway and the lack of grab bars, and the Waiver Agency is willing to make those modifications. Appellant's daughter testified that, in addition to those changes, the entire bathroom needs to be changed, but it is not clear from the record if such extensive modifications are medically necessary, especially given the modifications already approved. Accordingly, Appellant has failed to meet her burden of proof and AAA's should be affirmed. This Administrative Law Judge would also note that, should the approved modifications prove to be insufficient, the Waiver Agency stated that it would make the necessary, additional modifications.

¹ This Administrative Law Judge would note that Appellant's daughter also testified that it would be impossible to install grab bars in the bathroom. However, the physical therapist's report appears to request grab bars and it suggests that the installation of such bars is possible. AAA is willing to authorize the installation of grab bars and, to the extent the modification can be made, it will be made.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly denied Appellant's full request for home modifications and, instead, only authorized the enlargement of the bathroom doorway and installation of grab bars.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Steven Kibit

Steven J. Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 10-10-2012

***** 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.