

**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:

Docket No. 2012-47278 EDW
No. [REDACTED]

[REDACTED] Case

Appellant
_____ /

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 [REDACTED] [REDACTED] Appellant's in-home caregiver and caretaker represented the Appellant. The Appellant also appeared, but did not provide any testimony.

[REDACTED] represented the [REDACTED]
[REDACTED] appeared as witnesses for
the [REDACTED]

ISSUE

Did the Waiver Agency properly deny the Appellant's request for a home modification for an additional ramp entry at the rear of his home?

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 [REDACTED] program. (Exhibit 1).
2. The Appellant resides in his own home with [REDACTED] his in-home caregiver and caretaker. (Exhibit 2, Testimony).
3. The Appellant has services authorized through the [REDACTED] program. (Exhibit 1)
4. On [REDACTED] Appellant requested a ramp to be installed at his back

door, in addition to a ramp at the front door that had previously been installed by the Waiver Agency. (Exhibit 1, Testimony)

5. Appellant was informed that his request was denied because two ramps at his home were not of direct medical or remedial benefit. (Exhibit 1, Testimony).
6. On April 13, 2012, the Appellant requested a hearing to contest the denial of the additional ramp. (Exhibit 2)
7. The Michigan Administrative Hearing System received the request for hearing on April 17, 2012. (Exhibit 2).

CONCLUSIONS OF LAW

The [REDACTED] is established pursuant to Title XIX of the [REDACTED] and is implemented by Title 42 of the [REDACTED] (CFR).

It is administered in accordance with state statute, the [REDACTED] 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 [REDACTED] and [REDACTED] for [REDACTED]. The waiver is called MI Choice in Michigan. The program is funded through the federal Centers for Medicare and Medicaid (formerly HCFA) to the [REDACTED] agencies, in this case [REDACTED] 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 [redacted] list services available under the waiver program and address the standards expected for each service. The [redacted] 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, <u>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.</u> Such adaptations may include <u>the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems which are necessary to accommodate the</u>

	medical equipment and supplies necessary for the welfare of the client. <u>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,</u> such as carpeting, roof repair, central air conditioning, etc. 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. Emphasis added.
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*MI Choice Waiver, Updated September 2005;
Attachment H, pages 23 and 24*

██████████ a ramp was installed at Appellant's home to enable him to transition from a nursing home and to have the ability to function with greater independence at home. The Appellant discharged from the nursing home on ██████████ and did not verbalize dissatisfaction with any aspect of the ramp at that time, or during future visits and monthly calls. On ██████████ Appellant then requested a ramp to be installed at his back door so that he would have another exit in case of emergency and because it was too hot to sit out on the front porch. According to ██████████, the ██████████ determined that someone is in the home at all times with Appellant and would be able to assist him in case of emergency. As such, the ██████████ denied Appellant's request for an additional ramp as of direct medical or remedial benefit.

██████████ testified that when Appellant was to be released from the nursing home, they were not sure whether they wanted the ramp at the front door or the back door of the home. ██████████ testified that she believed the original work order called for the installation of ramps at both the front and back doors, but when the workers came they only installed a ramp at the front door. ██████████ testified that she would like the additional ramp to give Appellant an alternate exit in case of emergency and also so that he can sit out in the back yard, where it is shady and ██████████ testified that Appellant has high blood pressure and that sitting out on the front porch/ramp in the heat aggravates his condition. ██████████ indicated that she can get Appellant into the back yard after taking him down the front ramp, but that it is very difficult because the ground is uneven and very bumpy.

This ALJ finds that the Waiver Agency properly denied the Appellant's request for an additional ramp at his back door as not of direct medical or remedial benefit. MI Choice Waiver policy clearly states that environmental modifications are allowed, "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." Here, a ramp was installed at Appellant's home to assist him with transition from a nursing home and so that he can function with

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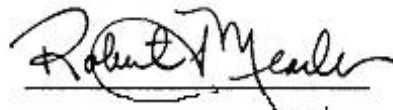
greater independence. Those goals have been met with the ramp at the front door and, more importantly, a ramp at the back door is not necessary to prevent Appellant from becoming institutionalized. A ramp at the back door is also not of direct medical or remedial benefit. The Appellant always has someone in the home to assist him and that person can assist him out of the home in case of emergency. The Appellant failed to establish by a preponderance of the evidence, that a ramp at the back door was of direct medical or remedial benefit or would prevent institutionalization. As such, the Appellant failed to establish that an additional ramp could be authorized based upon the evidence of record. *42 CFR 440.230*.

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 an additional ramp at his back door.

IT IS THEREFORE ORDERED that:

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



Robert J. Meade
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: _____

***** 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.