

**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:

████████████████████

Docket No. 2013-9308 CMH
Case No. ██████████

Appellant

_____ /

DECISION AND ORDER

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

After due notice, a hearing was held on ██████████. ██████████, Appellant's ██████████ and guardian, appeared and testified on Appellant's behalf, as did ██████████, Appellant's ██████████.

██████████, Corporation Counsel, represented the Allegan County CMH Services Program (CMH or Department) ██████████, Utilization Review Coordinator; ██████████, Clinical Supervisor; ██████████, Occupational Therapist; ██████████, Customer Services Representative; ██████████, Customer Services Manager; ██████████, Developmental Disability Director; and ██████████, Supports Coordinator, appeared as witnesses for the CMH.

ISSUE

Did the CMH properly deny the Appellant's request for environmental modifications to her 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. The Appellant is a ██████ year old Medicaid beneficiary, born ██████████, receiving services through Allegan County Community Mental Health (CMH) under the Habilitation Supports Waiver (HAB Waiver) for persons with Developmental Disabilities. (Exhibit A, p 15; Exhibit B, p 4).
2. CMH is under contract with the Michigan Department of Community Health (MDCH) to provide Medicaid covered services to people who reside in the CMH service area.

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3. Appellant is diagnosed with Cerebral Palsy resulting in Spastic Quadriplegia. Appellant is dependent on family members to complete all self-care activities. Appellant uses an electric wheelchair and has some independence with propelling her chair in more open areas within the home. Appellant is only able to minimally bear weight during transfers, and therefore is dependent on others to move her from her chair and other surfaces. In addition, due to hypertonicity and decreased postural control and trunk stability, Appellant requires assistance to maintain proper positioning. (Exhibit B, p 4; Testimony).
4. On [REDACTED], CMH conducted an Updated Primary Assessment for Appellant after Appellant moved with her family to another home. (Exhibit A, pp 12-17). The Assessment recommended, among other services, that Appellant receive unspecified environmental modifications, based on an occupational therapy assessment of need. (Exhibit A, p 17).
5. Also on [REDACTED], CMH completed an Individualized Plan of Service (POS) for Appellant. One of the objectives of the POS was for Appellant to “increase her independence in home mobility and care by receiving medically necessary environmental modifications. (Exhibit A, p 20).
6. On [REDACTED], CMH determined that some of the requested environmental modifications could not be funded through CMH and sent Appellant an Action Notice and Hearing Rights. The Action Notice stated that the environmental modifications requested in the POS were denied because the modifications did not meet Medicaid eligibility for the program. (Exhibit B, pp 1-3).
7. Appellant’s Request for Hearing was received by the Michigan Administrative Hearing System on [REDACTED]. (Exhibit 1).
8. Thereafter, in an attempt to determine whether some of the requested items could be funded by CMH, the Appellant obtained an estimate for the requested environmental modifications on [REDACTED]. (Exhibit A, pp 29-40).
9. On [REDACTED], after considering the estimate, CMH approved payment for some of the requested items, including exterior and interior ramps. (Exhibit A, pp 41-42). CMH also stated in the letter that further consideration of alternate equipment would be required in order to determine whether bathroom alterations could be authorized. The CMH also arranged for an Occupational Therapist to visit Appellant’s home to recommend appropriate modifications. (Exhibit A, p 41).

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10. An occupational therapist visited Appellant's home on [REDACTED] and completed her report on [REDACTED]. In the report, the occupational therapist recommended many of the environmental modifications previously sought by the Appellant. (Exhibit B, pp 9-12). The occupational therapist also concluded, "This current method of bathroom accessibility and self-care management places [Appellant] and her caregiver at serious risk for injury." (Exhibit B, p 7).
11. At the hearing, the CMH indicated that they were still reviewing the occupational therapist's report and would likely be making further offers to Appellant with regard to environmental modifications. (Testimony).

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.

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.

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...

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) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. CMH contracts with the Michigan Department of Community Health to provide services under the waiver pursuant to its contract obligations with the Department.

Medicaid beneficiaries are entitled to medically necessary Medicaid covered services for which they are eligible. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures. See 42 CFR 440.230.

The Department's *Medicaid Provider Manual, Mental Health and Substance Abuse Chapter, Section 2.5* provides:

2.5 MEDICAL NECESSITY CRITERIA

The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services.

2.5.A. MEDICAL NECESSITY CRITERIA

Mental health, developmental disabilities, and substance abuse services are supports, services, and treatment:

- Necessary for screening and assessing the presence of a mental illness, developmental disability or substance use disorder; and/or

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- Required to identify and evaluate a mental illness, developmental disability or substance use disorder; and/or
- Intended to treat, ameliorate, diminish or stabilize the symptoms of mental illness, developmental disability or substance use disorder; and/or
- Expected to arrest or delay the progression of a mental illness, developmental disability, or substance use disorder; and/or
- Designed to assist the beneficiary to attain or maintain a sufficient level of functioning in order to achieve his goals of community inclusion and participation, independence, recovery, or productivity.

2.5.B. DETERMINATION CRITERIA

The determination of a medically necessary support, service or treatment must be:

- Based on information provided by the beneficiary, beneficiary's family, and/or other individuals (e.g., friends, personal assistants/aides) who know the beneficiary; and
- Based on clinical information from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary; and
- For beneficiaries with mental illness or developmental disabilities, based on person centered planning, and for beneficiaries with substance use disorders, individualized treatment planning; and
- Made by appropriately trained mental health, developmental disabilities, or substance abuse professionals with sufficient clinical experience; and
- Made within federal and state standards for timeliness; and
- Sufficient in amount, scope and duration of the service(s) to reasonably achieve its/their purpose.
- Documented in the individual plan of service.

2.5.C. SUPPORTS, SERVICES AND TREATMENT AUTHORIZED BY THE PIHP

Supports, services, and treatment authorized by the PIHP must be:

- Delivered in accordance with federal and state standards for timeliness in a location that is accessible to the beneficiary; and
- Responsive to particular needs of multi-cultural populations and furnished in a culturally relevant manner; and
- Responsive to the particular needs of beneficiaries with sensory or mobility impairments and provided with the necessary accommodations; and
- Provided in the least restrictive, most integrated setting. Inpatient, licensed residential or other segregated settings shall be used only when less restrictive levels of treatment, service or support have been, for that beneficiary, unsuccessful or cannot be safely provided; and
- Delivered consistent with, where they exist, available research findings, health care practice guidelines, best practices and standards of practice issued by professionally recognized organizations or government agencies.

2.5.D. PIHP DECISIONS

Using criteria for medical necessity, a PIHP may:

- Deny services that are:
 - deemed ineffective for a given condition based upon professionally and scientifically recognized and accepted standards of care;
 - experimental or investigational in nature; or
 - for which there exists another appropriate, efficacious, less-restrictive and cost effective service, setting or support that otherwise satisfies the standards for medically-necessary services; and/or

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- Employ various methods to determine amount, scope and duration of services, including prior authorization for certain services, concurrent utilization reviews, centralized assessment and referral, gate-keeping arrangements, protocols, and guidelines.

A PIHP may not deny services based solely on preset limits of the cost, amount, scope, and duration of services. Instead, determination of the need for services shall be conducted on an individualized basis.

Medicaid Provider Manual
Mental Health and Substance Abuse
[REDACTED], pages 12-14

With regard to environmental modifications under the Habilitation Supports Waiver for Persons with Developmental Disabilities, the Medicaid Provider Manual indicates:

Environmental Modifications

Physical adaptations to the home and/or workplace required by the beneficiary's support plan that are necessary to ensure the health, safety, and welfare of the beneficiary, or enable him to function with greater independence within the environment(s) and without which the beneficiary would require institutionalization.

Adaptations may include:

- The installation of ramps and grab bars;
- Widening of doorways;
- Modification of bathroom facilities;
- Installation of specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the beneficiary; and
- Environmental control devices that replace the need for paid staff and increase the beneficiary's ability to live independently, such as automatic door openers.

Excluded are those adaptations or improvements to the home that are of general utility, are considered to be

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standard housing obligations of the beneficiary, and are not of direct medical or remedial benefit. Examples of exclusions include, but are not limited to, carpeting, roof repair, sidewalks, driveways, heating, central air conditioning (except under exceptions noted in the service definition), garages, raised garage doors, storage and organizers, hot tubs, whirlpool tubs, swimming pools, landscaping and general home repairs. The HSW does not cover construction costs in a new home or additions to a home purchased after the beneficiary is enrolled in the waiver.

"Direct medical or remedial" benefit is a prescribed specialized treatment and its associated equipment or environmental accessibility adaptation that are essential to the implementation of the individual plan of service. The plan must document that, as a result of the treatment and its associated equipment or adaptation, institutionalization of the beneficiary will be prevented. There must be documented evidence that the item is the most cost-effective alternative to meet the beneficiary's need. An example of a reasonable alternative, based on the results of a review of all options, may include changing the purpose, use, or function of a room within the home or finding alternative housing. Assessments and specialized training needed in conjunction with the use of such environmental modifications are included as a part of the cost of the service. All items must be ordered on a prescription as defined in the General Information Section of this chapter. An order is valid for one year from the date it was signed.

Central air-conditioning is included only when prescribed by a physician and specified with extensive documentation in the plan 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, are limited to the requirements for safe operation of the specified equipment and are not intended to correct existing code violations in a beneficiary's home.

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The PIHP must assure there is a signed contract or bid proposal with the builder prior to the start of an environmental modification. It is the responsibility of the PIHP to work with the beneficiary and builder to ensure that the work is completed as outlined in the contract or bid proposal.

Adaptations may be made to rental properties when the landowner agrees to the adaptation in writing. A written agreement between the landowner, the beneficiary, and the PIHP must specify any requirements for restoration of the property to its original condition if the occupant moves. If a beneficiary or his family purchases or builds a home while receiving waiver services, it is the beneficiary's or family's responsibility to assure that the home will meet basic needs, such as having a ground floor bath/bedroom if the beneficiary has mobility limitations. HSW funds may be authorized to assist with the adaptations noted above (e.g., ramps, grab bars, widening doorways, etc.) for a home recently purchased. If modifications are needed to a home under construction that require special adaptation to the plan (e.g., roll-in shower), the HSW may be used to fund the difference between the standard fixture and the modification required to accommodate the beneficiary's need.

Environmental modifications for **licensed settings** includes only the remaining balance of previous environmental modification costs that accommodate the specific needs of current waiver beneficiaries, and will be limited to the documented portion being amortized in the mortgage, or the lease cost per bed. Environmental modifications exclude the cost of modifications required for basic foster care licensure or to meet local building codes.

The existing structure must have the capability to accept and support the proposed changes. The infrastructure of the home involved in the funded modifications (e.g., electrical system, plumbing, well/septic, foundation, heating/cooling, smoke detector systems, roof) must be in compliance with any applicable local codes. Environmental modifications shall exclude costs for improvements exclusively required to meet local building codes.

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The environmental modification must incorporate reasonable and necessary construction standards, excluding cosmetic improvements. The adaptation cannot result in valuation of the structure significantly above comparable neighborhood real estate values.

The beneficiary, with the direct assistance by the PIHP supports coordinator when necessary, must make a reasonable effort to access all available funding sources, such as housing commission grants, Michigan State Housing Development Authority (MSHDA), and community development block grants, for assistance. A record of efforts to apply for alternative funding sources must be documented in the beneficiary's records, as well as acceptances or denials by these funding sources. The HSW is a funding source of last resort.

Adaptations to the **work environment** are limited to those necessary to accommodate the person's individualized needs, and cannot be used to supplant the requirements of Section 504 of the Rehabilitation Act or the Americans with Disabilities Act (ADA), or covered by the Michigan Rehabilitation Services.

All services must be provided in accordance with applicable state or local building codes.

*Medicaid Provider Manual
Substance Abuse/Mental Health Section
[REDACTED], pp 91-93*

The Respondent's Utilization Review Coordinator testified that she conducted a Utilization Management Review in [REDACTED] to address Appellant's request for environmental modifications to determine the medical necessity for the services requested. (Exhibit C) The Respondent's Utilization Review Coordinator indicated that Appellant relies on caregivers to meet even her basic needs, that she requires full manual transfers by Hoyer lift or person, an electric wheelchair, a wheelchair accessible vehicle and an accessible living environment. The Respondent's Utilization Review Coordinator testified that Appellant needs supervision in the community and at home due to impaired judgment and problem solving deficits. The Respondent's Utilization Review Coordinator testified that regarding the environmental modifications requested, Appellant had moved from a home where bathroom modifications had already been provided and, as such, the current modifications could not be provided. In support of this opinion, the Respondent's Utilization Review Coordinator referred to Section 17.3.D of the MPM, which indicates, "If the beneficiary purchases an existing home while receiving Medicaid services, it is the beneficiary's responsibility to assure that the home

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will meet basic needs, such as a ground floor bath/bedroom if the beneficiary has mobility limitations. Medicaid funds may be authorized to assist with adaptations noted (ramps, grab bars, widening doorways) for a recently purchased home.” (Exhibit C, p 8) However, Section 17.3.D applies to environmental modifications for persons who are receiving Additional Mental Health Services, or B3 services. Here, Appellant is receiving services under the Habilitation Supports Waiver (HSW), which is covered in Section 15 of the MPM. Section 15 of the MPM contains no such limitation with regard to moving under the Environmental Modifications section. And, while persons who are receiving services under the HSW may also receive B3 services, that does not mean that Appellant is held to the standards for environmental modifications under the B3 services section of the MPM when she is clearly receiving services under the HSW.

The Respondent’s Utilization Review Coordinator opined that Appellant’s current accessibility needs, as covered by the Medicaid Provider Manual, are met and that any additional needs might be met through Assistive Technology, as defined in Section 17.3.A of the MPM. While Assistive Technology is not a covered service under the HSW, HSW beneficiaries may also receive B3 services so long as they are receiving at least one HSW service. As such, the CMH may consider whether Appellant’s needs can be met through assistive technology.

Appellant’s ██████ testified that she currently has to support Appellant to get her into the bathroom because the wheelchair does not fit. Appellant’s ██████ also testified that she then has to lift Appellant into the tub and kneel down next to the tub to hold Appellant in place while bathing her. Appellant’s ██████ indicated that she no longer has the physical ability to do these tasks and that she is putting both herself and Appellant in danger by doing so.

Appellant’s ██████████ testified that there were no previous modifications done to the bathroom in their prior home by the CMH.

The Appellant bears the burden of proving by a preponderance of the evidence that the requested environmental modifications are a medical necessity in accordance with the Code of Federal Regulations (CFR). Based on the evidence presented, the Appellant has at least partially met this burden of proof. It is clear that Appellant needs the bathroom to be modified in order to be accessible and safe to her and to her caregivers. Appellant’s wheel chair cannot fit into the bathroom and there is not room in the bathroom for a lift. The recent occupational therapy evaluation supports the assertion that modifications do need to be made to the bathroom and that the current bathroom configuration is unsafe for both Appellant and her caregivers. In addition, one of the reasons given by CMH for denying the request for environmental modifications was based on the wrong section of the MPM, as discussed above. Furthermore, even if Section 17.3.D of the MPM applied to Appellant, the evidence does not support that the CMH completed any environmental modifications to the bathroom in Appellant’s previous home. This is not to say that every modification contained in the bid submitted by Appellant needs to be implemented, only that the CMH must modify Appellant’s

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bathroom in the most cost-effective manner possible. This may include the use of assistive technology.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that CMH improperly denied Appellant's request for environmental modifications to Appellant's bathroom.

IT IS THEREFORE ORDERED that:

The CMH decision is **MODIFIED**. The CMH shall continue to work with the Appellant to determine the most cost effective method of modifying Appellant's bathroom so that she and her caregivers can access it safely. These modifications may include the use of assistive technology.

/s/ _____
Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: February 22, 2013

***** 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.