

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) 373-4147

IN THE MATTER OF:

██████████.

Appellant

Docket No. 2013-46421 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. upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's daughter, appeared and testified on Appellant's behalf. Appellant also appeared and testified.

██████████, Quality and Training Manager, represented the Department's MI Choice Waiver Agency, The ██████████, (Waiver Agency or ██████████). ██████████ott, Supports Coordinator, appeared as a witness for the Waiver Agency.

ISSUE

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

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 ██████ year old Medicaid beneficiary, born ██████████, who is enrolled in the MI Choice Waiver program. (Exhibit A, p 11)
2. Appellant resides alone in his own home. Appellant's children and grown grandchildren rotate spending the night with him. (Exhibit A, p 12)
3. Prior to Appellant's spouse passing away on ██████████, her Supports Coordinator was in the process of receiving bids to remove a large jetted bathtub and replacing it with a walk-in shower. After Appellant's spouse passed away, Appellant asked if the bathroom modifications could be completed anyway because he would also benefit

from the modification. In preparation for the walk-in shower, the Appellant's family also paid to have a wall in the bathroom moved approximately 8 inches. (Exhibit A, pp 1, 5; Testimony)

4. On ██████████, the Waiver Agency sent Appellant an Adequate Action Notice informing him that the requested modification was denied. The reason given in the Notice for the denial was: "Bathroom modification will not be authorized. The 22.5 inch high transfer bench has been authorized and appears to address the need of getting in and out of the tub safely." (Exhibit A, p 4)
5. On ██████████, the Waiver Agency applied for an ██████████ and CHORE grant on Appellant's behalf to fund moving the bathroom wall back to its original location. (Exhibit A, p 1; Testimony)
6. The Michigan Administrative Hearing System received Appellant's request for hearing on ██████████. (Exhibit 1)

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 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 Medicaid Provider Manual provides the following with regard to environmental adaptations:

4.1.K. ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS

Environmental Accessibility Adaptations (EAA) includes 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.

Medicaid Provider Manual
MI Choice Waiver Section
April 1, 2013, p 13

Appellant's daughter testified that the family had never asked for the wall to be moved back and that they needed either a lower tub or a walk-in shower for Appellant to bathe safely. Appellant's daughter testified that Appellant cannot get into the tub now because the ledge is 19 inches off the floor. Appellant's daughter also testified that the recommended shower chair does not work because the bottom of the tub is not flat and the chair is very unstable. Appellant's daughter also indicated that there is not enough room between the current tub and the toilet to use the transfer chair that was provided. Appellant's daughter indicated that currently Appellant's son or son-in-law have to lift him into and out of the tub.

The Waiver Agency's Quality and Training Manager testified that she believed that the only issue at hand was moving the wall because it did present a safety hazard because wires were exposed. The Waiver Agency's Quality and Training Manager testified that Appellant's request to continue with the installation of the walk-in shower after his wife passed was denied because the Waiver Agency believed that Appellant's needs could be met with a shower chair and a transfer bench. Given that it now appears that the shower chair and transfer bench will not work, the Waiver Agency's Quality and Training Manager testified that the Waiver Agency would review the bids that have recently been prepared and that either Appellant's supports coordinator or the Waiver Agency manager will get in touch with Appellant and his daughter to see what the next steps will be.

This ALJ finds the Waiver Agency properly denied the Appellant's request for a bathroom modification at the time the decision was made because, at that time, the Waiver Agency believed that Appellant's needs could be met with a shower chair and transfer bench. Now that it seems to have been determined that a shower chair and transfer bench is not going to work, the Waiver Agency will continue to work with Appellant and his family to figure out what modification will work best. Given that the MI Choice Waiver Program is the payor of last resort, the Waiver Agency will still be obligated to seek alternative methods of payment before making any such modifications. Here, the Waiver Agency is seeking grants on Appellant's behalf to assist with the cost of modifications through a CHORE grant. Appellant failed to establish by a preponderance of the evidence, that the Waiver Agency's decision to

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Docket No. 2013-46421 EDW
Hearing Decision & Order

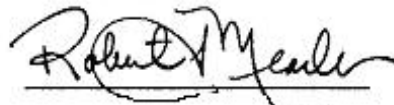
deny bathroom modifications was improper when the decision was made on ██████████
██████████. As such, the Appellant failed to establish that the work could have been
authorized at that time based upon the evidence of record. 42 CFR 440.230.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law
Judge finds that 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 James K. Haveman, Director
Michigan Department of Community Health

██████████
cc: ██████████
██████████
██████████
██████████

Date Signed: June 28, 2013

Date Mailed: June 28, 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.