

**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. 2013-49534 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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared on his own behalf.

██████████, Director of Quality, appeared and testified on behalf of the Department of Community Health's waiver agency, ██████████. (Waiver Agency or ██████████). ██████████, RN, Case Manager and ██████████, LMSW, Social Work Manager, appeared as witnesses for the Waiver Agency.

**ISSUE**

Did the Department properly deny Appellant's request for environmental modifications?

**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 5)
2. Appellant lives in a single family, two-story home. (Exhibit A, p 5)
3. Appellant is diagnosed with fibromyalgia, symptoms of multiple sclerosis, depression, anxiety disorder, asthma, and arthritis. (Exhibit A, pp 9-10; Testimony)
4. Appellant is receiving Community Living Services, Supplements, and a Personal Emergency Response System through HHS. (Exhibit A, p 14)

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5. On or about [REDACTED], Appellant requested that a deck be added to the second story of his home off of his bedroom so that he would have an emergency exit in case of fire. Appellant would still have needed to use a ladder to get down from the deck to the ground. (Exhibit A, p 1; Testimony)
6. [REDACTED] obtained three quotes for a deck, but determined that the project did not meet criteria for approval because Appellant is able to ambulate down the stairs from the second story of the home in case of emergency and because the deck would be excessive in nature because it would not have been typical for most homeowners, i.e. most persons do not have a direct emergency exit from the second story of their homes. (Exhibit A, p 1; Testimony)
7. On [REDACTED], Appellant was sent an Adequate Action Notice informing him that his request for a deck had been denied. (Testimony)
8. The Michigan Administrative Hearing System received Appellant's request for hearing on [REDACTED]. (Exhibit 1)
9. HHS considered a smaller deck, but this request was also denied because the medical criteria had not changed. Another Adequate Action Notice was sent to Appellant on [REDACTED]. (Exhibit A, p 1; 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.

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*

The Waiver Agency Director of Quality testified that Appellant requested a second story deck be added to his home to allow for a second exit in case of an emergency. The Waiver Agency Director of Quality indicated that HHS' protocol requires obtaining three bids before making an authorization. Three bids were obtained and the request was considered taking into account the Minimum Operating Standards for MI Choice Waiver Program Services. (See Exhibit A, pp 3-4). The Waiver Agency Director of Quality testified that the Waiver Agency determined that the request was excessive in nature because it is not a normal building code requirement and because Appellant was able to ambulate down the stairs in case of emergency. The Waiver Agency Director of Quality pointed out that typically most homeowners do not have a second floor emergency exit in their homes.

The Waiver Agency's R.N., Case Manager reviewed Appellant's diagnoses and concurred with the denial of his request for a deck as not medically necessary.

The Waiver Agency's Social Work Manager reviewed Appellant's Activities for Daily Living (ADL's) and Instrumental Activities of Daily Living (IADL's) and concurred with the denial of the deck.

Appellant testified that he can only drive on a very limited basis and that his aide does all of his shopping and transportation. Appellant indicated that his furnace is underneath his stairs and that if a fire started there he would have no way to exit the home. Appellant indicated that he lives in a very old house and that the stairs are very narrow. Appellant testified that he is able to pull himself up and slide down the stairs, but otherwise uses a wheelchair to get around the home. (He keeps one wheelchair at the top of the stairs and one at the bottom). Appellant testified that he arranged to have a door placed in his bedroom leading outside as an emergency exit and then asked ██████████ to add the deck. Appellant indicated that he was told that his request was

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approved and that he would only need to obtain three quotes for the work. Appellant testified that when he obtained the quotes, an ██████ representative called him and told him that the cost was too great. According to Appellant, the ██████ representative told him that they wanted him to get a quote from a builder ██████ had used before. Appellant indicated that he obtained the new quote as requested but was then told that the deck had been denied. Appellant admitted that he was planning on using a ladder to get to the ground from the deck.

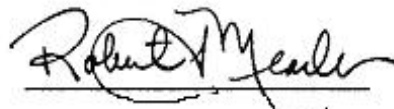
This ALJ finds the Waiver Agency properly denied the Appellant's request for a deck on the second story of his home because the Waiver Agency properly determined that the adaptation was not "necessary to ensure the health and welfare of the participant." Appellant is able to ambulate down the stairs in case of an emergency and most people do not have a direct exit from their home from the second story. Appellant failed to establish by a preponderance of the evidence, that the Waiver Agency's decision to deny a second story deck was improper when the decision was made. As such, 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 environmental modifications.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.



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

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cc: ██████████  
██████████

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Date Signed: 7/31/2013

Date Mailed: 7/31/2013

**\*\*\* 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.