

**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.** 2013-68412 EDW

██████████

██████████

**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 held on ██████████ ██████████ Appellant's son, appeared and testified on Appellant's behalf. ██████████ registered nurse/clinical manager, represented the Department of Community Health's Waiver Agency, the ██████████ ("Waiver Agency" or "██████"). ██████████ ██████████, registered nurse/supports coordinator, also testified as a witness for the Waiver Agency.

**ISSUE**

Did the Waiver Agency properly deny Appellant's request for roof repair through the MI Choice waiver program?

**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 an ██████ year-old Medicaid beneficiary who has been diagnosed with unspecified osteomyelitis, multiple sites; chronic obstructive pulmonary disease; hypertension; dementia; Parkinson's disease; renal failure; diabetes mellitus; general muscle weakness; and a history of breast malignancy. (Respondent's Exhibit A, page 1; Respondent's Exhibit C, pages 7-8).
2. ██████ is a contract agent of the Michigan Department of Community Health and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services.

3. Appellant is enrolled in and receiving MI Choice waiver services through ██████████. Specifically, she receives ██████████ hours per week of Community Living Supports; wound care, a Personal Emergency Response System (PERS) unit; and medical transportation. (Respondent's Exhibit C, page 13).
4. In ██████████, Appellant and her representative requested that the Waiver Agency pay to have her leaking roof repaired. (Respondent's Exhibit B, pages 1-2; Testimony of Appellant's representative).
5. ██████████ reviewed the request, with both Appellant's representative and her supports coordinator gathering estimates for the cost of the repairs, before deciding it should be denied. ((Respondent's Exhibit B, pages 1-2; Testimony of ██████████).
6. On ██████████ sent Appellant written notice that her request for roof repairs had been denied because that is not a covered service and is not medically necessary. (Respondent's Exhibit A, page 1).
7. On ██████████, the Michigan Administrative Hearing System (MAHS) received a complete Request for Hearing signed by Appellant. (Petitioner's Exhibit 1, page 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.

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 ██████████, 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. See 42 CFR 430.25(c)(2).

As provided in the Code of Federal Regulations (CFR), types of services that may be offered include:

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)*

Similarly, the Medicaid Provider Manual (MPM) for the State of Michigan identifies the services covered by the waiver program as follows:

Section 4 –Services .....	9
4.1 Covered Waiver Services .....	9
4.1.A. Adult Day Health .....	9
4.1.B. Homemaker .....	9
4.1.C. Personal Care .....	10

4.1.D. Respite Care .....	10
4.1.E. Specialized Medical Equipment and Supplies .....	11
4.1.F. Fiscal Intermediary .....	11
4.1.G. Goods and Services .....	11
4.1.H. Chore Services .....	12
4.1.I. Community Living Supports .....	12
4.1.J. Counseling .....	13
4.1.K. Environmental Accessibility Adaptations .....	13
4.1.L. Home Delivered Meals .....	14
4.1.M. Non-Medical Transportation .....	14
4.1.N. Nursing Facility Transition .....	14
4.1.O. Personal Emergency Response System .....	15
4.1.P. Private Duty Nursing .....	15
4.1.Q. Residential Services .....	15
4.1.R. Training .....	16
4.2 State Plan Services .....	16
4.3 Hospice .....	16
4.4 Medication Assistance .....	17
4.5 Operating Standards .....	17
4.6 Services in Licensed Settings .....	17

*MPM, July 1, 2013 version  
MI Choice Waiver Chapter, pages i-ii*

Here, Appellant and her representative requested that the Waiver Agency pay for repairs to Appellant's leaking roof, but, as asserted by the Waiver Agency's representative and witness, repairs are not identified as a covered service in either the Code of Federal Regulations or the MPM.

Repairs could possibly be deemed to be an adaption of Appellant's environment and such services are listed as covered services. With respect to such adaptations, the MPM specifically states:

**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.

*MPM, July 1, 2013 version  
MI Choice Waiver Chapter, page 13*

However, given that language, Appellant's request for roof repairs would still have to be denied as non-covered. Repairs to a roof do not adapt home to make it more accessible and neither general repairs of any kind, nor specific repairs to a beneficiary's roof are listed among the examples of covered adaptations. Additionally, roof repairs are not of general utility or a direct medical or remedial benefit to Appellant's specific circumstances. If the MPM meant to include repairs as environmental adaptations, then it would have been clearer in doing so.

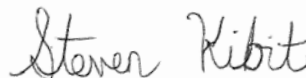
Appellant and her representative bear the burden of proving by a preponderance of the evidence that the Waiver Agency erred in denying the request for roof repairs. Here, given the clear law and policy manual governing this matter, Appellant has failed to meet that burden of proof as the requested service is not covered by the waiver program.

**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 request for roof repairs.

**IT IS THEREFORE ORDERED** that:

The Waiver Agency's decision is **AFFIRMED**.



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

Date Signed: ██████████

Date Mailed: ██████████

[REDACTED]  
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cc:

[REDACTED]

**\*\*\* 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.