

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,
Appellant
_____ /

Docket No. 15-000625 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 a request for a hearing filed on Appellant's behalf.

After due notice, an in-person hearing was held on ██████████ Appellant's brother and co-legal guardian, appeared and testified on Appellant's behalf. ██████████, Manager, appeared and testified on behalf of the Michigan Department of Community Health's Waiver Agency, the ██████████ ("Waiver Agency" or "██████████", Home Repair Manager; ██████████, Housing Specialist; ██████████, Transition Specialist; ██████████ Social Worker; and ██████████ Social Worker; also testified as witnesses for the Waiver Agency.

ISSUE

Did the Waiver Agency properly close Appellant's case?

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 man who has co-legal guardians and who has been diagnosed with cerebrovascular disease, hypertension, atrophy, paralysis on the right side, and depressive disorder. (Exhibit 1, page 4; Exhibit A, page 10).
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 in its service area.

3. In ██████████ Appellant's representative contacted ██████ on Appellant's behalf and requested Nursing Facility Transition ("NFT") services. (Exhibit A, page 7).
4. On ██████████ sent Appellant's representative/co-legal guardian enrollment documents to complete. (Exhibit A, page 7).
5. On ██████████ Appellant and his representative signed an agreement to participate in NFT services and an interview was conducted. (Exhibit A, pages 8-10).
6. During that interview, Appellant and his representative reported that they would like to transition Appellant out of the nursing facility he was living in and into an apartment with his sister. (Exhibit A, page 10).
7. They also requested assistance in the apartment once Appellant moved in and ██████ staff noted that Appellant would require assistance with bathing, transferring, medication set-up, toileting, and all Instrumental Activities of Daily Living. (Exhibit A, page 10).
8. However, Appellant was unable to move into an apartment with his sister because he failed to pass a background check conducted by the potential landlord. (Testimony of Appellant's representative; Testimony of ██████████).
9. ██████ began looking for other apartments for Appellant. (Exhibit A, page 12; Testimony of ██████████).
10. On or about ██████████, Appellant moved into a new nursing facility and, soon after, ██████ decided to close his case because Appellant's representative was indecisive as to whether Appellant should move out or remain in a nursing facility. (Exhibit A, page 13).
11. On or about ██████████, Appellant's representative called ██████ and requested that Appellant's case be reopened and that ██████ assist Appellant in transitioning from the nursing facility to an apartment on the west side of ██████t, which would be close to where Appellant's supports lived. (Exhibit A, page 13).
12. ██████ reopened Appellant's case and, with Appellant's representative, began searching for an appropriate apartment. (Exhibit A, pages 14-15; Testimony of ██████████).
13. By ██████████ had located such an apartment and received a commitment letter from the apartment complex. (Exhibit A, page 15; Testimony of ██████████).

14. On ██████████, after Appellant's representative amended the request to make it for a ██████-bedroom apartment, ██████ received a revised commitment letter from the apartment complex and Appellant was scheduled to move in on ██████████. (Exhibit A, pages 16, 20).
15. ██████ also paid part of Appellant's delinquent bill with an energy company so that he could get utilities installed. (Exhibit A, page 16).
16. However, just a few days before Appellant was scheduled to move in, ██████ discovered that Appellant's Medicaid was inactive, due to Appellant and his representative failing to timely submit documents, and it advised Appellant's representative that the move and any services in the home would be put on hold until the Medicaid issue was resolved. (Exhibit A, pages 16-17; Testimony of Appellant's representative).
17. ██████ also advised the apartment complex that the transition was postponed and the property manager agreed to keep the apartment open for Appellant. (Exhibit A, page 17; Testimony of ██████████).
18. On ██████████, the Senior Manager of the Transition Services Unit at ██████, sent Appellant's representative a letter summarizing the history of Appellant's case; noting that an apartment is still being held for Appellant; and asking Appellant's representative to notify ██████ when Appellant's Medicaid issues are resolved. (Exhibit 2, pages 1-3).
19. By ██████████ Appellant's Medicaid was again active. (Exhibit A, page 21).
20. However, at that time, Appellant's representative indicated that he was no longer interested in the previous apartment placement for Appellant and wanted something closer to the representative's home. (Exhibit A, page 21; Testimony of Appellant's representative).
21. ██████ subsequently provided a list of adult foster care homes to Appellant's representative, but none of them proved to be acceptable. (Exhibit A, pages 22-23; Testimony of Appellant's representative).
22. In ██████████ Appellant's representative advised ██████████ that he was going to try something different and was thinking about purchasing a home and renting it to Appellant. (Exhibit A, page 23).
23. On ██████████ sent a letter to Appellant's representative requesting an update and stating that, if it did not hear back from the representative, it would close Appellant's case on ██████████ (Exhibit A, page 24).

24. In response, Appellant's representative contacted ██████ and advised it that he and his wife had purchased a two family home and were fixing up the lower flat in order to rent it to Appellant. (Exhibit A, page 24; Testimony of Appellant's representative).
25. On ██████████, Appellant requested assistance in obtaining a ramp for the home and widening the doors to the bathroom. (Exhibit A, page 24; Testimony of Appellant's representative).
26. Smith Plump then asked him to send in a letter outlining his request and indicating whether the landlord could pay for them and whether the flat would be a permanent home for Appellant. (Exhibit A, page 24; Testimony of Appellant's representative).
27. Appellant's representative subsequently sent in a letter stating in part:

Dear ██████████

As you are aware, I have been diligently searching for permanent living arrangements for my brother, ██████████, for whom I along with my wife are legal guardians of. I have not been successful in finding suitable and affordable living quarters.

After searching for almost a year without any prospects, I have purchased a unit at ██████████. The property taxes as well as utilities are current. As the owner of the property, I would like to rehab it to accommodate ██████ as a permanent home.

The cost to adapt the residence is more than I can afford at this time. I am requesting and giving permission for your assistance in obtaining any resources at your disposal to assist me in this task. Among the assistance I would need is, but not limited to:

- Making the unit wheelchair accessible
- Widening doorways to accommodate wheelchair

- Wheel chair ramp
- Furnishings to accommodate Melvin's disability
- Bed with lift
- Chair with lift
- Bathroom fixtures
- Monitors
- Person to help care for the needs of Melvin
- As well as any other resources you may have to assist in this transition.

Exhibit A, page 26

28. Fouche, ██████ Home Repair Manager, then examined the property and gathered price quotes for the work. (Exhibit A, page 25; Testimony of ██████).
29. ██████ also submitted some of Appellant's requests for assistance to the Department for approval. (Exhibit A, pages 25, 27).
30. The Department initially denied the requests, but later, on ██████ approved assistance in widening doors and installing a ramp. (Exhibit A, page 27; Testimony of Appellant's representative; Testimony of ██████).
31. By ██████ the work was completed. However, Appellant's representative did not believe it was safe to move Appellant in until further work was done, including repair and modification of the bathroom and bathroom fixtures. (Exhibit A, page 29; Testimony of Appellant's representative).
32. ██████ subsequently gathered price quotes and submitted Appellant's request to the Department. (Exhibit A, pages 28-29).
33. On ██████ the Department denied the request and ██████ left a voicemail for Appellant's representative informing him of that decision. (Exhibit A, page 28; Testimony of ██████).

34. Appellant's representative called back on ██████████ to indicate his disagreement with that decision and to state that he wanted to file a complaint. (Exhibit A, page 28).
35. On ██████████ Appellant's representative also spoke with ██████ Director regarding his complaints. (Exhibit A, page 28).
36. On ██████████ sent a letter to Appellant's representative advising him to contact the agency by ██████████ or Appellant's case would be closed. (Exhibit A, page 30).
37. Appellant's representative subsequently called in and a meeting was set for ██████████. (Exhibit A, page 30).
38. During that meeting, and a phone call on ██████████, staff from ██████ again reiterated that Appellant's representative would have to seek other resources for assistance in repairing the home. (Exhibit A, page 30).
39. On ██████████ also spoke with a representative of the Department, who advised her to close out Appellant's case. (Exhibit A, page 30).
40. On ██████████ sent Appellant's representative a letter summarizing the history of Appellant's case and indicating that Appellant's case was being closed because ██████ had provided them with all possible options to transition Appellant and none had been accepted. (Exhibit A, pages 31-35).
41. On ██████████ the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on Appellant's behalf in this matter by his representative/co-legal guardian. (Exhibit 1, pages 1-4).
42. In that request, Appellant's representative asserts that ██████ has failed to properly administer the necessary services for the past ██████ years. (Exhibit 1, pages 1-2).

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).

Types of services that may be offered through the waiver program 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)

Here, the services at issue include Community Transition Services (CTS), Environmental Accessibility Adaptations, and Nursing Facility Transitions (NFT) services. With respect to those services, the Michigan Medicaid Provider Manual (MPM) states in part:

4.1.I. COMMUNITY TRANSITION SERVICES

Community Transition Services (CTS) are non-recurrent expenses for participants transitioning from a nursing facility to a community setting. Allowable transition costs include the following:

Housing or Security Deposits	A one-time expense to secure housing or obtain a lease.
Utility Hook-ups and Deposits	A one-time expense to initiate and secure utilities (television and internet are not included).
Furniture, Appliances, and Moving Expenses	One-time expenses necessary to occupy and safely reside in a community residence (diversion or recreational devices are not included).
Cleaning	A one-time cleaning expense to assure a clean environment, including pest eradication, allergen control, and over-all cleaning.
Coordination and Support Services	To facilitate transitioning of participant to a community setting.
Other	Services deemed necessary and documented within the participant's plan of service to accomplish the transition

	into a community setting. Costs for CTS are billable upon enrollment into the MI Choice program.
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CTS do not include monthly housing rental or mortgage expense, regular utility charges, or items that are intended for purely diversional and recreational purposes. Additional limitations on the amount, frequency, or duration of services are identified in the contract between the waiver agencies and MDCH.

*MPM, April 1, 2015 version
MI Choice Waiver Chapter, page 16*

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.

Adaptations may include:

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

Assessments and specialized training needed in conjunction with the use of such environmental adaptations are included as a part of the cost of the service.

The case record must contain documented evidence that the adaptation is the most cost-effective and reasonable alternative to meet the participant'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. Environmental adaptations 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 participant's home.

The waiver agency must assure there is a signed contract or bid proposal with the builder or contractor prior to the start of an environmental adaptation. It is the responsibility of the waiver agency to work with the participant and builder or contractor to ensure the work is completed as outlined in the contract or bid proposal. All services must be provided in accordance with applicable state or local building codes.

The existing structure must have the capability to accept and support the proposed changes.

The environmental adaptation 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 participant, with the direct assistance of the waiver agency's 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. The participant's case record must include evidence of efforts to apply for alternative funding sources and the acceptances or denials of these funding sources. The MI Choice program is a funding source of last resort.

Adaptations may be made to rental properties when the lease or rental agreement does not indicate the landowner is responsible for such adaptations and the landowner agrees to the adaptation in writing. A written agreement between the landowner, the participant, and the waiver agency must specify any requirements for restoration of the property to its original condition if the occupant moves.

Excluded are those adaptations or improvements to the home that:

- Are of general utility
- Are considered to be standard housing obligations of the participant or homeowner
- Are not of direct medical or remedial benefit

Examples of exclusions include, but are not limited to:

- Carpeting
- Roof repair
- Sidewalks and driveways
- Heating
- Central air conditioning (except under exceptions noted in the service definition)
- Garages and raised garage doors
- Storage and organizers
- Hot tubs, whirlpool tubs, and swimming pools
- Landscaping
- General home repairs

MI Choice does not cover general construction costs in a new home or additions to a home purchased after the participant is enrolled in the waiver. If a participant or the participant's family purchases or builds a home while receiving waiver services, it is the participant's or family's

responsibility to assure the home will meet basic needs, such as having a ground floor bath or bedroom if the participant has mobility limitations. MI Choice funds may be authorized to assist with the adaptations noted above (e.g., ramps, grab bars, widening doorways, bathroom modifications, 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 MI Choice program may be used to fund the difference between the standard fixture and the modification required to accommodate the participant's need.

The infrastructure of the home involved in the funded adaptations (e.g., electrical system, plumbing, well or septic, foundation, heating and cooling, smoke detector systems, or roof) must be in compliance with any applicable local codes. Environmental adaptations shall exclude costs for improvements exclusively required to meet applicable state or local building codes.

*MPM, April 1, 2015 version
MI Choice Waiver Chapter, pages 16-19*

SECTION 5 - NURSING FACILITY TRANSITIONS

The process of transitioning nursing facility residents to a home or a community-based setting is a priority of MI Choice. The tenet of rebalancing the spectrum of long-term care services in Michigan was given impetus by the 1999 United States Supreme Court decision in *Olmstead v. L. C.*. MDCH provides mechanisms to ensure an individual resides in the most independent setting.

5.1 TRANSITION CANDIDATES

Initial transition work begins prior to enrollment into the MI Choice program and often occurs before the verification of Medicaid eligibility. Candidates for Community Transition Services are nursing facility residents who have expressed a preference to live at home or in a community-based setting and who have barriers to transitioning that cannot be addressed through standard discharge procedures available to nursing facility staff. Nursing facilities are not relieved of their required discharge planning activities.

5.2 TRANSITION SERVICES

Transition services are one-time expenses necessary to assist a nursing facility resident in moving to a home or similar community setting. Examples of transition services that the waiver agency could provide are in the Services section of this chapter.

Community Transition Services are not intended to provide assistance in relocating from communal settings such as, but not limited to, adult foster care (AFC) homes, Homes for the Aged (HFAs), assisted living arrangements, or apartments to another home or homelike setting.

The MI Choice waiver agency must work with the nursing facility resident to develop a transition plan that includes all projected transition costs. The plan must be based on individual goals and needs and must be included in the nursing facility resident's MI Choice record. It must be updated to reflect any changes.

For the contract period, MDCH will reimburse the waiver agency for prudent and allowable transition expenses and supports coordination costs in accordance with Nursing Facility Transition Guidelines. As specified in the contract between MDCH and the waiver agency, the waiver agency must notify MDCH of its intention to transition a nursing facility resident to the MI Choice program when initiating a nursing facility transition plan. Procedures for notification are obtained from the MI Choice program contract manager. (Refer to the Directory Appendix for additional information.) The waiver agency must demonstrate the nursing facility resident has a Medicaid application pending with DHS or has been approved for Medicaid and meets MI Choice program criteria. Once the participant is enrolled in the MI Choice program, MDCH will issue payment to the waiver agency for CTS. Non-waiver nursing facility transition funding is available for those who do not enroll in the MI Choice program upon transition or do not transition.

Additionally, the MPM refers to Operating Standards that ██████ is required to follow:

4.5 OPERATING STANDARDS

MDCH maintains and publishes the "Minimum Operating Standards for MI Choice Waiver Program Services" (known as the Minimum Operating Standards) document. This document defines both general and specific operating criteria for the program. All waiver agencies and service providers are subject to the standards, definitions, limits, and procedures described therein.

For each service offered in MI Choice, the Minimum Operating Standards are used to set the minimum qualifications for all direct service providers, including required certifications, training, experience, supervision, and applicable service requirements. Billing codes and units are also defined in the document.

*MPM, April 1, 2015 version
MI Choice Waiver Chapter, page 25*

With respect to Community Transition Services and Environmental Accessibility Adaptations, those Minimum Operating Standards states in part:

Community Transition Services (CTS) are non-reoccurring expenses for persons transitioning from a nursing facility to another living arrangement in a private residence where the person is responsible for his or her own living arrangement.

* * *

Note: This service standard is applicable to the MI Choice program and nursing facility transition agencies approved by MDCH to use special funding to perform nursing facility transitions. The term "transition agency" refers to both MI Choice waiver agencies and Centers for Independent Living.

* * *

10. When a transition agency anticipates that a nursing facility resident receiving CTS will require MI Choice services in the community, the transition agency shall immediately contact the appropriate waiver agency. The waiver agency will conduct an assessment of the individual to determine if the nursing facility resident appears to meet MI Choice eligibility requirements. If the waiver agency confirms the

nursing facility resident appears to meet MI Choice eligibility requirements and the nursing facility resident desires to enroll in the MI Choice program upon transition, the case must be transferred to the MI Choice waiver agency. **CMS requires a waiver agency to authorize all CTS to persons expected to enroll in MI Choice upon transition. Therefore, a waiver agency or entity under contract with a waiver agency shall perform all transition activity for a nursing facility resident expected to enroll in MI Choice upon transition.**

11. When the transition agency does not anticipate that a nursing facility resident receiving CTS will require MI Choice services in the community, the transition agency must notify MDCH for prior approval of transition services funding.

12. Using a person-centered planning process, the transition agency must develop a transition plan that includes all projected transition costs, participant goals, and is based on individual needs. This transition plan becomes part of the participant's case record maintained by the transition agency and must minimally include the following elements:

- a. Nursing facility resident name.
- b. Nursing facility resident identifying information including Social Security Number and Medicaid Recipient ID number.
- c. Name and address of nursing facility in which the resident resides.
- d. Date of initial contact.
- e. Estimated date of transition to MI Choice and/or community.
- f. Needed or anticipated Community Transition Services.
- g. Participant goals and expected outcomes of community transition.
- h. Dated signature of participant or legal representative.
- i. Dated signature of supports coordinator assisting with the development of the plan.

* * *

16. When a NFT participant requires a home modification (also known as an environmental accessibility adaptation), the modification shall conform to the MI Choice Environmental Accessibility Adaptation service standards.

17. Transition agencies must submit a complete and accurate “Non-Waiver Funded Nursing Facility Transition Services Expenditure Report” for CTS claims when transitioned persons do not enroll in the MI Choice program. The transition agency must complete at least one report for each transitioned person upon completion of the transition process. The transition agency will not receive reimbursement for CTS until the contract manager receives a completed report including an original signature, and assures the transition agency has made all required submissions to the Nursing Facility Transition portal, and MDCH approved those submissions.

Limitations

1. Where applicable, the participant must use Medicaid state plan, Medicare, or other available payers first.
2. The participant's preference for a certain provider or agency is not grounds for declining another payer in order to access CTS.
3. CTS does not include ongoing monthly rental or mortgage expense, regular utility charges, or items that are intended for purely diversional and recreational purposes.
4. For persons expected to enroll in MI Choice, when a transitioning participant requires a home modification (ramp, widened doorways, etc.) before the transition can take place, the waiver agency shall authorize only those modifications immediately necessary for community transition as CTS. The waiver agency shall authorize all other needed modifications as Environmental Accessibility Adaptation services or Chore services, as appropriate.

*Minimum Operating Standards for
MI Choice Waiver Program Services
Attachment H, FY 2015
Pages 24, 26-28*

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. Assessments and specialized training needed in conjunction with the use of such environmental adaptations are included as a part of the cost of the service.

* * *

Minimum Standards for Traditional Service Delivery

1. All providers of environmental accessibility adaptations must meet the licensure requirements as outlined in MCL 339.601, MCL 339.2401, and/or MCL 339.2412, as appropriate.
2. Each direct service provider must have written policies and procedures compatible with the “General Operating Standards for Waiver Agencies and Contracted Direct Service Providers,” and minimally, Section B of the “General Operating Standards for MI Choice Waiver Providers.”
3. Adaptations may include:
 - a. The installation of ramps and grab bars;
 - b. Widening of doorways;
 - c. Modification of bathroom facilities;
 - d. Modification of kitchen facilities;
 - e. Installation of specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the participant; and
 - f. Environmental control devices that replace the need for paid staff and increase the participant's ability to live independently, such as automatic door openers.
4. The case record must contain documented evidence that the adaptation is the most cost-effective and reasonable alternative to meet the participant’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.

5. Each waiver agency shall develop working relationships with the weatherization, chore, and housing assistance service providers, as available in the program area to ensure effective coordination of efforts
6. The participant, with the direct assistance of the PAHP 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. The participant's record must include evidence of efforts to apply for alternative funding sources and the acceptances or denials of these funding sources. The MI Choice waiver is a funding source of last resort.
7. Under the environmental accessibility adaptation service, waiver agencies may use MI Choice funds for labor costs and to purchase materials used to complete the modifications to prevent or remedy a sub-standard condition or safety hazard. The direct service provider shall provide equipment or tools needed to perform modifications or adaptations, unless another source can provide the tools or equipment at a lower cost or free of charge and the provider agrees to use such equipment or tools. The waiver agency may purchase supplies for the modification or adaptation, such as grab bars, lumber, or plumbing supplies, and provide them to the direct service provider at their discretion.
8. The waiver agency may not approve environmental accessibility adaptations for rental property without close examination of the rental agreement and the landlord's responsibility (including both legal and monetary) to furnish such adaptations.
9. Adaptations may be made to rental properties when the lease or rental agreement does not indicate the landowner is responsible for such adaptations, and the landowner agrees to the adaptation in writing. A written agreement between the landowner, the participant, and the PAHP must specify any requirements for restoration of the property to its original condition if the occupant moves.

10. The waiver agency shall obtain a written agreement with the participant residing in each domicile to be modified that includes, at a minimum; a) a statement that the domicile is occupied by and is the permanent residence of the participant, and b) a description of the planned modifications.
11. The waiver agency shall document approval of all environmental accessibility adaptations in the participant's record. This documentation shall minimally include dates, tasks performed, materials used, and cost.
12. The direct service provider shall check each domicile for compliance with local building codes. The waiver agency may not approve repairs, modifications, or adaptations to a condemned structure.
13. The PAHP must assure there is a signed contract or bid proposal with the builder or contractor prior to the start of an environmental adaptation.
14. It is the responsibility of the PAHP to work with the participant and builder or contractor to ensure the work is completed as outlined in the contract or bid proposal.
15. All services must be provided in accordance with applicable state or local building codes.
16. The environmental adaptation 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
17. Within fourteen calendar days or ten working days of completion, each waiver agency shall utilize a job completion procedure which includes, at a minimum:
 - a. Verification that the work is complete and correct.
 - b. Verification by a local building inspector(s) that the work satisfies building codes (as appropriate).
 - c. Acknowledgment by the participant that the work is acceptable.

Minimum Standards for Self-Determined Service Delivery

1. When authorizing Environmental Accessibility Adaptations for participants choosing the self-determination option, waiver agencies must comply with item 1 and items 3 through 17 of the Minimum Standards for Traditional Service Delivery specified above.
2. Each chosen provider must minimally comply with Section C of the "General Operating Standards for MI Choice Waiver Service Providers," except item 4.c regarding universal precautions and blood-borne pathogens.

Limitations

1. Where applicable, the participant must use Medicaid state plan, Medicare, or other available payers first.
2. Before approving MI Choice payment for each modification or adaptation, each waiver agency shall determine whether a participant is eligible to receive services through a program supported by other funding sources. If it appears that another resource can serve the participant, the waiver agency shall make an appropriate referral.
3. The participant's preference for a certain provider or agency is not grounds for declining another payer in order to access waiver services.
4. Excluded are those adaptations or improvements to the home that:
 - a. Are of general utility;
 - b. Are considered to be standard housing obligations of the participant or homeowner; and
 - c. Are not of direct medical or remedial benefit to the participant.
 - d. Examples of exclusions include, but are not limited to, carpeting, roof repair, sidewalks, driveways, heating, central air conditioning (unless minimum standard #4 as described above is met), garages, raised garage doors, storage and organizers, hot

tubs, whirlpool tubs, swimming pools, landscaping and general home repairs.

5. Environmental adaptations shall exclude costs for improvements exclusively required to meet local building codes.
6. The infrastructure of the home involved in the funded adaptations (e.g., electrical system, plumbing, well or septic, foundation, heating and cooling, smoke detector systems, or roof) must be in compliance with any applicable local codes.
7. Environmental adaptations 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 participant's home.
8. The existing structure must have the capability to accept and support the proposed changes.
9. The MI Choice waiver does not cover general construction costs in a new home or additions to a home purchased after the participant is enrolled in the waiver. If a participant or the participant's family purchases or builds a home while receiving waiver services, it is the participant's or family's responsibility to assure the home will meet basic needs, such as having a ground floor bath or bedroom if the participant has mobility limitations. However, MI Choice waiver funds may be authorized to assist with the adaptations noted above (e.g. ramps, grab bars, widening doorways, bathroom modifications, etc.) for a home recently purchased.
10. If modifications are needed to a home under construction that require special adaptation to the plan (e.g. roll-in shower), the MI Choice waiver may be used to fund the difference between the standard fixture and the modification required to accommodate the participant's need.

Here, the Waiver Agency closed Appellant's case and denied any further services on the basis that it provided Appellant and his representative with all possible options to transition Appellant out of the nursing facility, but that none of those options were accepted and there is nothing more ██████ can do. Specifically, its witnesses testified that they assisted Appellant in trying to move in with his sister, only to have Appellant fail the background check; secured an appropriate apartment for Appellant, only for the move to be delayed due to Appellant's Medicaid eligibility issues and then cancelled months later after Appellant's representative decided against the move; and provided all the modifications and adaptations to the home owned by Appellant's representative approved by DCH, only for the representative to ask for more, non-covered services.

In response, Appellant's representative testified that ██████ has consistently failed to properly provide the services necessary to transition Appellant out of a nursing facility and that he does not believe ██████ staff even understand or care what Appellant's specific needs are. Regarding modifications of the home owned by Appellant's representative and his wife, the representative also testified that the Waiver Agency both delayed in providing assistance and failed to provide all of the assistance it promised it would.

Appellant and his representative bear the burden of proving by a preponderance of the evidence that the Waiver Agency erred in closing his case.

Given the record in this, it is clear that the Waiver Agency diligently attempted to transition Appellant into an apartment or AFC home, but that it was never successful in doing so, due in part because of Appellant's representative's choice, and that, regardless of why it never worked out, Appellant and his representative are no longer interested in having Appellant transition into an apartment or AFC home and, instead, only want to transition Appellant into a private home.

However, with respect to that private home, it is not clear that all options were exhausted and that the subsequent case closure was proper. Appellant's representative made specific requests for assistance in the letter requested by ██████ and, while the Waiver Agency's witnesses testified that, pursuant to its contract with the Department, any environmental modifications and adaptations must be expressly approved by DCH and that the Waiver Agency provided all services that were so approved, it failed to support that testimony with specific evidence or policy. For example, ██████ failed to provide the specific portion of its contract requiring that it receive approval from the Department for the requested modifications. Similarly, while the Waiver Agency's witnesses also alluded to any modifications and adaptations being limited to assisted with accessibility, it failed to provide the specific policy supporting that position. Without such evidence and policy, the undersigned Administrative Law Judge is unable to say that any denial of further environmental adaptations was proper, especially given the language of the MPM and Minimum Operating Standards quoted above suggesting that the modification of bathroom facilities requested by Appellant's representative could be approved if otherwise appropriate.

Moreover, the Waiver Agency failed to provide the written notice required by the Code of Federal Regulations and the MPM when denying Appellant's request for environmental adaptations to a home as part of his NFT services or CTS. For example, with respect to notices of action and appeals, the MPM states in part:

SECTION 11 - APPEALS

The Michigan Department of Community Health has established participant and provider appeal processes that are applicable to MI Choice. The participant appeals process conforms to the Medicaid fair hearing requirements found at 42 CFR Part 431, Subpart E of the Code of Federal Regulations. Provider appeal rights conform to the requirements of Michigan law and rules found at MCL 400.1 et seq. and MAC R 400.3401 et seq.

11.1 PARTICIPANT APPEALS

MDCH has established notice and appeals requirements to which waiver agencies must adhere when adverse action has been taken for program applicants or participants. According to 42 CFR 431.201 "Action" means a termination, suspension, or reduction of Medicaid eligibility or of covered services. This also includes determinations by the waiver agency that the applicant or participant does not meet the nursing facility level of care criteria and other denials of Medicaid eligibility or of covered services.

11.1.A. ADEQUATE ACTION NOTICES

MI Choice waiver agencies must send an Adequate Action Notice to applicants or participants informing them of adverse actions and determinations taken under the following circumstances:

- when the waiver agency is at operating capacity and unable to enroll MI Choice applicants who request a Michigan Medicaid Nursing Facility Level of Care Determination (LOCD).
- when the waiver agency determines applicants to be functionally ineligible for MI Choice services based on the results of a LOCD.

- when a participant requests additional services or additional amounts of services and the waiver agency denies the request
- when an existing benefit is reduced, suspended or terminated, and meets the requirements for an exception from an Advance Action Notice as specified in 42 CFR 431.213.

11.1.B. ADVANCE ACTION NOTICES

An Advance Action Notice must be sent to MI Choice participants when action is being taken to reduce, suspend, or terminate service(s) a participant currently receives. This notice must be provided at least 12 days in advance of the intended action.

An Advance Action Notice is also issued if it is determined that a reduction in level or number of services is warranted based on the participant's current assessment. The notice must inform the participant that services will not be reduced until a formal decision has been rendered through the Medicaid Fair Hearings process if the participant formally requests a hearing before the specified date of the intended action.

11.1.C. NOTICES

Advance Action Notices and Adequate Action Notices that relate to the LOCD process are posted on the MDCH website. (Refer to the Directory Appendix for website information.)

Waiver agencies may use additional notices for actions not related to the LOCD process. These notices must be approved by MDCH prior to use to assure compliance with 42 CFR 431.210. Waiver agencies must supply a copy of the Request for Hearing form (DCH-0092) and a return envelope with each notice sent to an applicant or participant, or any time an applicant or participant requests such material. Waiver agencies are required to assist applicants or participants who request help in filing an LOCD exception review through the Michigan Peer Review Organization (MPRO), or a formal appeal for

any reason through the Medicaid fair hearings process.

*MPM, April 1, 2015 version
MI Choice Waiver Chapter, pages 39-40*

Similarly, 42 CFR 431.210 states:

A notice required under § 431.206 (c)(2), (c)(3), or (c)(4) of this subpart must contain—

- (a) A statement of what action the State, skilled nursing facility, or nursing facility intends to take;
- (b) The reasons for the intended action;
- (c) The specific regulations that support, or the change in Federal or State law that requires, the action;
- (d) An explanation of—
 - (1) The individual's right to request an evidentiary hearing if one is available, or a State agency hearing; or
 - (2) In cases of an action based on a change in law, the circumstances under which a hearing will be granted; and
- (e) An explanation of the circumstances under which Medicaid is continued if a hearing is requested.

In this case, it is undisputed that the Waiver Agency only verbally informed Appellant's representative of the denial of his request and it clearly failed to provide the required written notice outlining the action taken, the reason for that action, and the policy supporting its decision.

Given that failure to provide proper written notice, in addition to the Waiver Agency's failure to provide specific evidence and policy supporting its decision to deny Appellant's request for environmental adaptations and its position that all options were exhausted, the undersigned Administrative Law Judge finds that the Waiver Agency erred in closing Appellant's case and denying any further services at this time.

Accordingly, ████████ decision in this matter is reversed and it must both reopen Appellant's case and reassess his request for environmental adaptations as part of NFT services or CTS. If the Waiver Agency again denies Appellant's request, it must provide

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Appellant and his representative with proper notice of that denial and, if it wishes, another notice of case closure. Appellant and his representative would then have an opportunity to file a new request for hearing.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency improperly decided to close Appellant's case.

IT IS THEREFORE ORDERED that:

The Waiver Agency's decision is **REVERSED** and it must initiate a reassessment of Appellant's request for services.

Steven Kibit

Steven J. Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

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.