

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

IN THE MATTER OF:

Docket No. 15-000570 CMH

████████████████████,

██████████ ██████████

Appellant

_____ /

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 the minor Appellant's behalf.

After due notice, a telephone hearing was held on ██████████ ██████████, Appellant's mother, appeared and testified on Appellant's behalf. ██████████ Appellant's father, also testified on Appellant's behalf. ██████████, Assistant Manager of Due Process, represented the Respondent ██████████ County Community Mental Health Authority (██████████). ██████████, Unit Director of Supports Coordination; ██████████ Compliance Coordinator; and ██████████, Supervisor of Children and Family Unit, from the M██████████, ██████████) testified as witnesses for the ██████████, Manager of Due Process with the ██████████, was also present for the hearing.

ISSUE

Did the ██████████ properly deny Appellant's requests for assistance with 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 female who has been diagnosed with Rett Syndrome, seizure disorder, apnea, scoliosis, dysphasia, bilateral hip dysphasia, and asthma. (Exhibit 1, page 10; Exhibit A, page 9).
2. Appellant is enrolled in the Habilitation Supports Waiver (HSW) and has been receiving services through ██████████ and ██████████. (Exhibit A, page 11).

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3. On or about ██████████, Appellant's home was evaluated by an Occupational Therapist and that therapist subsequently recommended that a number of home modifications be made to accommodate Appellant's disabilities and needs. (Exhibit 1, pages 10-15).
4. During a ██████████ monthly meeting between Appellant's parents and ██████████, Appellant's supports coordinator at ██████████, they discussed the modifications and ██████████ subsequently noted that the case manager at Appellant's family's primary insurance was coordinating the modifications and that contractors had already submitted bids, but that it was not expected that the modifications would be initiated, if approved by the insurance company, until ██████████. (Exhibit A, page 46).
5. On ██████████, Appellant's family's primary insurance sent a letter to Appellant's representative regarding the approval of home modifications. (Exhibit C, pages 1-2).
6. The cost for the work that was to be completed however, exceeded the amount approved by the primary insurance company. (Testimony of Appellant's representative).
7. On ██████████, Appellant's representative emailed Weise in order to follow up on earlier conversations and determine how to proceed with a request for the HSW to cover some of the home modifications. (Exhibit 1, page 5).
8. The email also stated that Appellant's family's primary insurance was covering some of the cost for the modifications, but that it would be a huge help if the HSW could cover the rest. (Exhibit 1, page 5).
9. The email further stated that Appellant's representative was not sure if signing a contract with a construction company would affect any HSW services, but that they needed to sign the contract soon in order to get started and avoid losing the approval of the primary insurance. (Exhibit 1, page 5).
10. The next day, ██████████ emailed Appellant's representative back and stated that "Home Modifications: HAB Waiver funds can't be utilized to cover home modifications that are not covered by primary insurance." (Exhibit 1, page 6).
11. Appellant's representative then continued to try to get ██████████ involved in the home modifications, to get them to put anything more in writing, and to get them to pay for the gap in funding between what the home modifications would cost and what the primary insurance would pay for. (Testimony of Appellant's representative).

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12. On [REDACTED], Appellant's representative signed a contract with the construction company. (Exhibit B, pages 7-8)
13. On [REDACTED] sent Appellant's representative written notice that the request for environmental accessibility modifications/funding to supplement home modifications being provided by third party insurance was denied. (Exhibit 1, pages 8-9; Exhibit A, pages 2-3).
14. Regarding the reason for the denial, the notice stated: 'Not a Medicaid covered service'. (Exhibit 1, page 8; Exhibit A, page 2).
15. The notice also informed Appellant's representative of her right to request a Medicaid Fair Hearing with respect to the denial within [REDACTED] days of the date of the notice. (Exhibit 1, pages 8-9; Exhibit A, pages 2-3).
16. Appellant's representative did not request a hearing with respect to the denial at that time. (Testimony of Appellant's representative).
17. According to her, she did not do so because they needed to get started on the work before winter and thought they were still involved in an ongoing process with [REDACTED]. (Testimony of Appellant's representative)
18. Work on the home modifications began in [REDACTED]. (Testimony of Appellant's representative).
19. Appellant's representative subsequently requested that [REDACTED] specifically pay for the widening of doors. (Testimony of Appellant's representative).
20. On [REDACTED] reviewed that request and determined that it must be denied because Appellant's primary insurance has funded the home modifications and all other funding sources must be exhausted before Medicaid funds can be utilized. (Exhibit A, pages 31-33; Testimony of [REDACTED])
21. [REDACTED] then contacted Appellant's father and requested that he send in any denials from the primary insurance company. (Exhibit A, page 32).
22. On [REDACTED] also sent Appellant's representative written notice that the request "for home modifications is denied pending receipt that other insurances will not cover cost. If denial received, resubmit request." (Exhibit A, page 4).
23. On [REDACTED], Appellant's father emailed [REDACTED] a letter, dated [REDACTED] from the primary insurance company in which the insurance company identified several home modifications it had determined to be non-covered. (Exhibit A, pages 34-35).

24. Appellant's father also asked ██████ to let him and Appellant's representative know what the next steps were to obtain approval and funding through ██████. (Exhibit A, page 35).
25. Work on the home modifications was completed in late ██████ (Testimony of Appellant's representative).
26. On ██████, Appellant's father received an invoice from the construction company. (Exhibit B, pages 17-18).
27. ██████ again reviewed the request for payment for the door widening and determined that it should still be denied as the work had already been completed. (Testimony of ██████).
28. However, no written notice of denial was ever sent to Appellant's representative. (Testimony of ██████n).
29. During a monthly meeting between ██████ and Appellant's parents, on ██████ did inform them that the funding for the door widening was denied as the work had already been completed and ██████ is unable to provide monies for work already completed. (Exhibit A, pages 36-39).
30. On ██████, an Individual Plan of Service (IPOS) meeting was held with respect to Appellant and, during that meeting, it was noted that all the home modifications had been completed through private insurance or at cost to the family. (Exhibit A, pages 10-11).
31. On ██████ the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on the minor Appellant's behalf in this matter. (Exhibit 1, pages 1-11).

CONCLUSIONS OF LAW

As discussed above, this matter involves environmental modifications and the Habilitation Supports Waiver (HSW). With respect to that waiver and its covered services, the Medicaid Provider Manual (MPM) states:

SECTION 15 – HABILITATION SUPPORTS WAIVER FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

Beneficiaries with developmental disabilities may be enrolled in Michigan's Habilitation Supports Waiver (HSW) and receive the supports and services as defined in this section. HSW beneficiaries may also receive other Medicaid state plan or additional/B3 services. A HSW beneficiary must receive at least one HSW service per month in order to

retain eligibility. Medical necessity criteria should be used in determining the amount, duration, and scope of services and supports to be used. The beneficiary's services and supports that are to be provided under the auspices of the PIHP must be specified in his individual plan of services developed through the person-centered planning process.

HSW beneficiaries must be enrolled through the MDCH enrollment process completed by the PIHP. The enrollment process must include annual verification that the beneficiary:

- Has a developmental disability (as defined by Michigan law);
- Is Medicaid-eligible;
- Is residing in a community setting;
- If not for HSW services, would require ICF/IID level of care services; and
- Chooses to participate in the HSW in lieu of ICF/IID services.

The enrollment process also includes confirmation of changes in the beneficiary's enrollment status, including termination from the waiver, changes of residence requiring transfer of the waiver to another PIHP, and death. Termination from the HSW may occur when the beneficiary no longer meets one or more of the eligibility criteria specified above as determined by the PIHP, or does not receive at least one HSW service per month, or withdraws from the program voluntarily, or dies. Instructions for beneficiary enrollments and annual re-certification may be obtained from the MDCH Bureau of Community Based Services. (Refer to the Directory Appendix for contact information.)

The PIHP shall use value purchasing for HSW services and supports. The PIHP shall assist beneficiaries to examine their first-and third-party resources to pursue all reimbursements to which they may be entitled, and to make use of other community resources for non-PIHP covered activities, supports or services.

Reimbursement for services rendered under the HSW is included in the PIHP capitation rate.

Beneficiaries enrolled in the HSW may not be enrolled simultaneously in any other §1915(c) waiver.

Habilitation services under the HSW are not otherwise available to the beneficiary through a local educational agency under the Individuals with Disabilities Education Act (IDEA) or the Rehabilitation Act of 1973.

15.1 WAIVER SUPPORTS AND SERVICES

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Environmental Modifications	<p>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.</p> <p>Adaptations may include:</p> <ul style="list-style-type: none">▪ 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
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	<p>and supplies necessary for the welfare of the beneficiary; and</p> <ul style="list-style-type: none">▪ Environmental control devices that replace the need for paid staff and increase the beneficiary's ability to live independently, such as automatic door openers. <p>Excluded are those adaptations or improvements to the home that are of general utility, are considered to be 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.</p> <p>"Direct medical or remedial" benefit is a prescribed specialized treatment and its</p>
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	<p>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.</p> <p>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</p>
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	<p>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.</p> <p>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.</p> <p>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</p>
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	<p>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.</p> <p>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.</p> <p>The existing structure must</p>
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	<p>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.</p> <p>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.</p> <p>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</p>
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	<p>well as acceptances or denials by these funding sources. The HSW is a funding source of last resort.</p> <p>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.</p> <p>All services must be provided in accordance with applicable state or local building codes.</p>
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*MPM, April 1, 2015 version
Mental Health/Substance Abuse Chapter, pages 96-97, 100-102*

In this case, there were essentially ██████ requests for environmental modifications. The ██████ involved a request for ██████ to pay for difference between the cost of the home modifications and the amount approved by the primary insurance company, and it was ultimately denied in an ██████ written notice stating that the requested funding was not a Medicaid covered service. The ██████ request was for specific modifications, but it was denied in a ██████ written notice stating that Appellant must first demonstrate that her primary insurance was not covering the cost of the modifications. In that notice, Appellant's representative was also specifically advised that she could resubmit the request if a denial from the primary insurance company was received. The ██████ request was an updated version of the ██████ request in which Appellant's father also submitted a denial letter from the primary insurance company. Even with the letter from the insurance company however, ██████ still denied the request on the basis that the work had already been completed and that could not pay for completed modifications. No written notice of the ██████ denial was ever sent.

Given the above record, it is clear that ██████ and ██████ erred in their handling of Appellant's case. For example, while the first request was broadly denied, first in an email and then in written notice, on the basis that the request was not for a Medicaid covered service, the above policy and the Respondent's subsequent actions clearly

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***** 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.