STATE OF MICHIGAN MICHIGAN ADMINISTRATIVE HEARING SYSTEM FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

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IN THE MATTER OF:	B = 1 = 4 N = 45 000570 0MH
,	Docket No. 15-000570 CMH
Appellant/	
DECISION AN	D ORDER
This matter is before the undersigned Administ and 42 CFR 431.200 et seq., and upon a r Appellant's behalf.	• • •
After due notice, a telephone hearing was Appellant's mother, appeared and testified Appellant's father, also testified on Appella Manager of Due Process, represented the Foundation; Coordination; Compliance Compliance Compliance (Supervisor of Children and Family Unit, from the Cocess with the Cocess	on Appellant's behalf. ant's behalf. Respondent County Community r, Unit Director of Supports e Coordinator; and n the M , Manager of Due
ISSUE	
Did the properly deny Appendix environmental modifications?	ppellant's requests for assistance with
FINDINGS OF FACT	
The Administrative Law Judge, based upon evidence on the whole record, finds as material	•
1. Appellant is a year-old fem	ale who has been diagnosed with Rett

Syndrome, seizure disorder, apnea, scoliosis, dysphasia, bilateral hip

Appellant is enrolled in the Habilitation Supports Waiver (HSW) and has

and

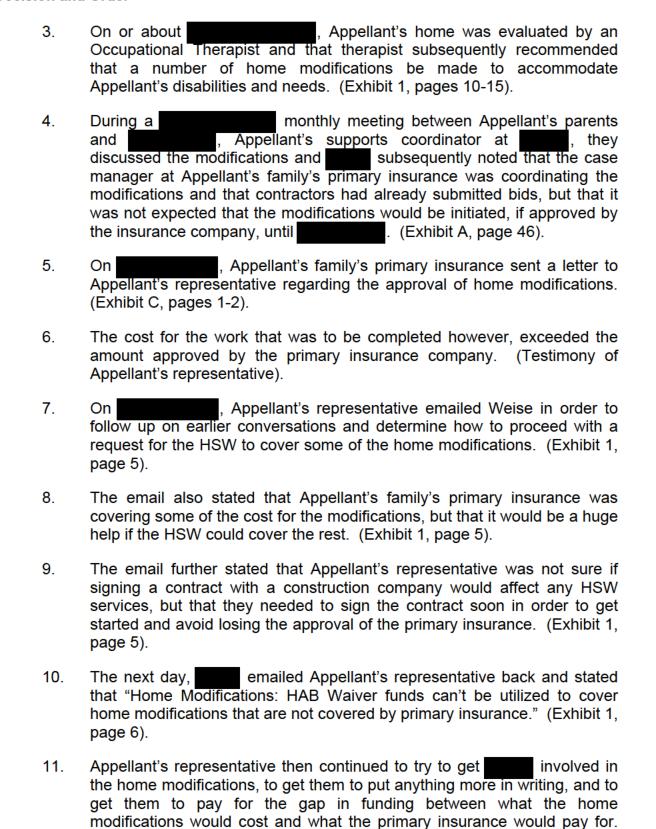
(Exhibit A,

dysphasia, and asthma. (Exhibit 1, page 10; Exhibit A, page 9).

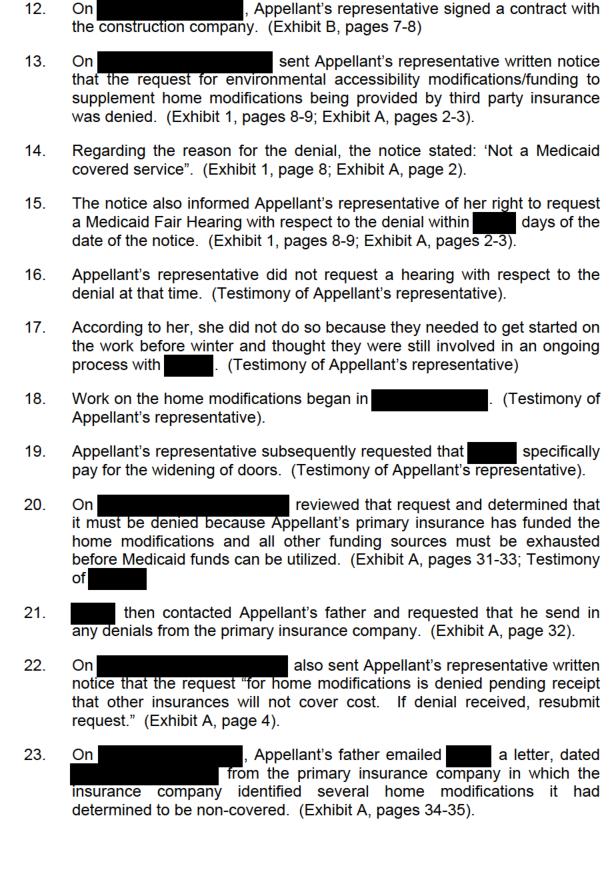
been receiving services through

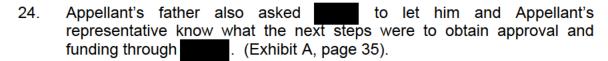
2.

page 11).



(Testimony of Appellant's representative).





- 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).
- 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 processing in the control of the control
- 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 a national and 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

* * *

Environmental Modifications

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.

Adaptations may include:

- 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

- and supplies necessary for the welfare of the beneficiary; and
- Environmental control devices that replace the need for paid staff and increase the beneficiary's ability to live independently, such as automatic door openers.

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.

"Direct medical or remedial" benefit is a prescribed specialized treatment and its

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 costeffective 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.

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

condition. This supporting documentation must demonstrate the costeffectiveness 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.

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.

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

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.

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.

The existing structure must

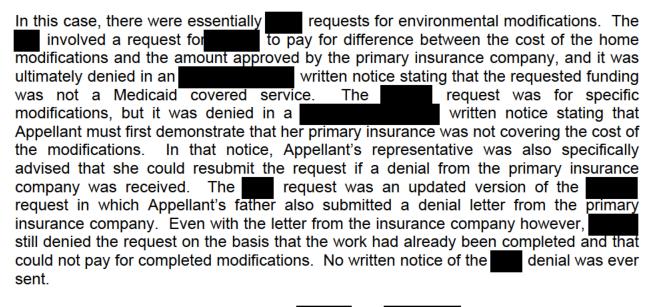
have the capability to accept and support the proposed changes. The infrastructure of the home involved in the funded modifications (e.g., electrical system, plumbing, well/septic, foundation, heating/cooling, smoke detector systems, roof) must be in compliance with any applicable local codes. **Environmental modifications** shall exclude costs for improvements exclusively required to meet local building codes.

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.

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

> well as acceptances or denials by these funding sources. The HSW is a funding source of last resort. 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. All services must be provided in accordance with applicable state or local building codes.

> > MPM, April 1, 2015 version Mental Health/Substance Abuse Chapter, pages 96-97, 100-102



Given the above record, it is clear that and 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

demonstrate that the environmental modifications are a covered service and that should have worked with Appellant and the primary insurance company to approve any necessary modifications as the payor of last resort. Moreover, and also failed to send written notice of the third denial, as required by the Code of Federal Regulations. See 42 CFR 438.400 et seq.

Nevertheless, even with those errors, the Respondent's actions must be affirmed. The above policies regarding environmental modifications contain very specific requirements regarding what must be done prior to the authorization of services and, in this case, those requirements have not been met and can no longer be met because the work has already been completed. Moreover, while the undersigned Administrative Law Judge is sympathetic to Appellant's representative's argument that she tried to get involved in process prior to the work being completed and that she failure to do is its own fault, Appellant's remedy was to request an administrative hearing, as indicated in the first written notice of denial, and Appellant cannot simply go ahead with modifications and then seek reimbursement.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Appellant and her representative have failed to meet their burden of proof in this case.

IT IS THEREFORE ORDERED that:

The Respondent's decision is **AFFIRMED**.

Steven J. Kibit
Administrative Law Judge
for Nick Lyon, Director

Michigan Department of Health and Human Services

Date Signed:

Date Mailed:

SK/db

cc:

*** 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.