



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
MAHS Docket No.: 15-023267
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon the Petitioner's request for a hearing.

After due notice, an in-person hearing was held on [REDACTED] [REDACTED] [REDACTED], Petitioner's co-legal guardian, appeared and testified on Petitioner's behalf. Petitioner was also present on his own behalf. [REDACTED], Manager, appeared and testified on behalf of the Respondent [REDACTED]. [REDACTED], Social Worker, further testified as a witness for Respondent. [REDACTED], Transition Specialist, and [REDACTED], Housing Specialist, were also present for Respondent.

ISSUE

Did Respondent properly deny Petitioner's request for home modifications and close his 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. Petitioner resides in a nursing facility and has co-full legal guardians. (Exhibit 1, page 2; Testimony of Petitioner's representative).
2. Beginning in approximately [REDACTED] [REDACTED] [REDACTED] Petitioner's representative/co-legal guardian contacted Respondent and requested assistance in transiting Petitioner out of the nursing facility and into the community. (Testimony of Petitioner's representative).

3. After multiple years of trying to place Petitioner in the community and after some assistance was provided, including assistance in widening doors and installing a ramp in a home Petitioner's guardians had purchased, Respondent ultimately closed Petitioner's case. (Exhibit A, page 1; Testimony of Respondent's representative).
4. Petitioner and his representative then appealed that decision and an administrative hearing was held. (Testimony of Respondent's representative).
5. On [REDACTED], the undersigned Administrative Law Judge issued a Decision and Order reversing Respondent's decision and ordering it to reopen Petitioner's case and reassess his request for services. (Exhibit A, page 1).
6. Following that order being issued, Respondent attempted to re-enroll Petitioner, but Petitioner's representative refused to complete new paperwork or meet with Respondent. (Exhibit 1, pages 4-5).
7. Petitioner's representative also filed another request for hearing on the basis that Respondent had not complied with the [REDACTED] order and that it should therefore be held in contempt and forced to comply. (Exhibit 1, pages 4-5).
8. However, on [REDACTED] and following a telephone pre-hearing conference, the undersigned Administrative Law Judge ordered that the second matter be dismissed for a lack of jurisdiction after finding that Respondent had attempted to comply with the previous order and had not taken any new negative action that would confer jurisdiction. (Exhibit 1, pages 4-5).
9. Petitioner's representative subsequently completed the re-enrollment and clarified the requested modifications. (Testimony of Petitioner's representative; Testimony of Respondent's representative).
10. Respondent then obtained bids regarding those modifications and submitted the requested home modifications to the Department of Health and Human Services. (Testimony of Respondent's representative).
11. On [REDACTED], the Department sent Respondent a response to the request in which it both stated that the requests were being denied and identified the reasons for the denial. (Exhibit B, page 1; Testimony of Respondent's representative).

12. On [REDACTED] [REDACTED], Respondent sent Petitioner's representative written notice that the home modifications would not be authorized because the Department had denied the request. (Exhibit 1, page 3).
13. On [REDACTED], Respondent also sent Petitioner's representative a letter stating in part:

The exception request for Home Modifications was not approved by Michigan Department of Health and Human Services (MDHHS).

The exception request is being denied for the following reasons:

- 1) The request is for a total of [REDACTED] there is a lifetime limit on transition expenses of [REDACTED]. We have already spent [REDACTED] in NFT services for this individual, this leaves [REDACTED] left on the limit. The [REDACTED] does not include expenses that have not been billed to MDHHS.
- 2) Tub modifications: It is not clear why a bath chair/bench could not be used as an alternative to the requested improvements. A bath chair would be the most prudent use of state funds.
- 3) Toilet modification: It is not clear why a raised toilet seat or a commode could not be used as a more prudent option than replacing the toilet.
- 4) Rear porch repairs: These repairs are due to homeowner negligence and would be considered standard home maintenance, which is not covered by the NFT program.
- 5) Kitchen Modification: Case records currently indicate participant cannot use arms well enough to cook for himself. Therefore, this modification would not be a barrier to discharging from the nursing facility. If enrolled in MI Choice

after transition and is able to use kitchen with increased use of arms, could make modifications at that time.

The Waiver contract section 4.1K Environmental Accessibility Adaptions (EAA) reads EAA includes physical adaptations to the home required by the participant's plan of services 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.

Exhibit C, page 1

14. Petitioner's representative then telephoned Respondent in order to request an appeal/meeting with Respondent, but canceled his request. (Testimony of Respondent's representative).
15. Petitioner's representative's wife, who is also Petitioner's co-legal guardian, met with Respondent, but Respondent declined her request to see the bids submitted. (Testimony of Petitioner's representative; Testimony of Respondent's representative).
16. On [REDACTED], Respondent sent Petitioner's representative a written Warning Closure Letter stating that Petitioner's application for the waiver program would be closed in twelve days given the lack of progress in the transition plan unless Petitioner's representative contacted Respondent within twelve days. (Exhibit D, page 1).
17. Petitioner's representative never contacted Respondent and Petitioner's case was closed on [REDACTED]. (Testimony of Respondent's representative).
18. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the complete request for hearing, along with Letters of Guardianship, filed in this matter. (Exhibit 1, pages 1-5).

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.

Petitioner 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 Respondent, 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, October 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, October 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.

*MPM, October 1, 2015 version
MI Choice Waiver Chapter, page 26*

Here, Respondent denied Petitioner's request for home modifications and closed his case.

In support of those decisions, Respondent's witnesses testified that, after Petitioner's second appeal was dismissed, they met with Petitioner's representative and completed the necessary paperwork; he submitted a new request for home modifications; and Respondent subsequently obtained bids regarding the costs of the requested modifications. Respondent's representative also testified that it submitted the request for home modifications and bids to the Department, which denied the requests, and Respondent then sent Petitioner's representative written notices of the decision and the reasons for the denial. With respect to the reasons for the denial, Respondent's representative noted that, as provided in the letter, the requested modifications to the bathroom were denied because less costly alternatives could meet Petitioner's needs; the requested rear porch repairs were denied because the repairs were necessary because of homeowner negligence and were therefore considered non-covered standard home maintenance; and the requested kitchen modifications were denied because the case records indicate that Petitioner cannot use his arms well enough to cook for himself and that the modifications would not be addressing barriers to discharging him from the nursing facility. Respondent's representative further testified that, after the requested modifications were denied, Respondent closed Petitioner's case because no progress was being made on the transition and Petitioner's representative did not contact Respondent after the closure warning letter.

In response, Petitioner's representative testified that, with the exception of widening a door and improperly installing a ramp, all Respondent has done for Petitioner over the years is repeatedly deny his request for necessary services. He also testified that he has done everything he possible can, but that Respondent will not sit down with him and work out a plan or provide the modifications needed to allow Petitioner to fully access the home. Petitioner's representative could not recall when he provided his most recent request for services or if it was provided in person or not, but he did testify that no one from Respondent met with him after Petitioner's re-enrollment, though his wife did meet with some contractors making bids on the modifications. He also noted that his wife went to a scheduled meeting with Respondent, but Respondent refused to discuss the case any further with her at that time and he is not sure he is interested in working with Respondent further. Petitioner's representative further testified that the hearing was the first time he was informed of any lifetime limit on transition expenses and he would question the amount identified by the Department as having been spent on the ramp and the widening of doors. He also noted that Respondent improperly affixed the ramp to an unstable structure and has repeatedly ignored his complaints and/or request for repairs.

Petitioner bears the burden of providing by a preponderance of the evidence that Respondent erred in denying the request for home modifications and closing Petitioner's case.

Given the record in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet that burden of proof and that Respondent's decisions must therefore be affirmed. Petitioner's representative generally argues that Respondent has

consistently refused to meet with him or provide proper notice of its decisions to deny requested services and close Petitioner's case. However, the undersigned Administrative Law Judge does not find Petitioner's representative's testimony to be credible given Petitioner's representative's past failures to cooperate with Respondent; his general dissatisfaction with Respondent and the hesitancy he expressed during the hearing to even work with it further; his inconsistent or unclear testimony about how he conveyed the most recent request for services and when or where he or his wife met with Respondent; and how all of the relevant notices in this case were sent around the same time and to the same address, but Petitioner's representative only claims to have not received some of them. Moreover, the few specific claims that Petitioner's representative does make regarding the requested modifications are likewise unpersuasive. For example, while Petitioner questions the existence of any lifetime limit on transition expenses and how the prior expenses identified by Respondent were calculated, any limit is irrelevant in this case at this time as it was not the basis for the denial and even Respondent acknowledges that Petitioner has funds remaining that could be approved for home modifications if appropriate, which none were found to be. Similarly, while Petitioner's representative argues that the requested rear porch repairs are necessary and appropriate given that the ramp was improperly affixed to the unsafe porch, the undersigned Administrative Law Judge agrees with the finding that any such repair is non-covered general home repair given that Petitioner's guardians chose to purchase the home; the ramp was installed years ago; and, as noted by Respondent, a permit would have had to have been obtained prior to the installation of the ramp.

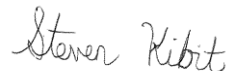
Accordingly, given that Petitioner has failed to meet his burden of proving by a preponderance of the evidence that Respondent erred by denying the request for home modifications and closing Petitioner's case, the undersigned Administrative Law Judge finds that Respondent's decisions must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly denied Petitioner's request for home modifications and closed Petitioner's case.

IT IS THEREFORE ORDERED that

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



SK/db

Steven Kibit
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS -Dept Contact

[REDACTED]
[REDACTED]
[REDACTED]

DHHS -Dept Contact

[REDACTED]
[REDACTED]
[REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Community Health Rep

[REDACTED]
[REDACTED]
[REDACTED]