



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: April 12, 2016
MAHS Docket No.: 16-001995
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Petitioner's request for a hearing.

After due notice, a hearing was held on [REDACTED]. Petitioner did appear at the hearing. Petitioner's Power of Attorney (POA) and granddaughter [REDACTED], appeared and testified on behalf of the Petitioner. [REDACTED], Registered Nurse; [REDACTED], Intake Nurse; [REDACTED], Intake Social worker; and [REDACTED], Worker Supports Coordinator appeared to testify in representation of [REDACTED], MI Choice Program Waiver Agency (MORC or Waiver Agency) for the Department of Health and Human Services (Department or Respondent or State).

Respondent's Exhibits A-D and Petitioner's Exhibits 1-33 were admitted as evidence.

ISSUE

Did the Waiver Agency properly deny Petitioner's request for funding for Bathroom renovations?

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 is [REDACTED] year old a Medicaid recipient.
2. Petitioner was in nursing home care.
3. On [REDACTED], there was a meet and greet with Petitioner's Representative indicating that the home needs a bathroom. The

representative indicated that Petitioner did not own the home and unless the family could prove that they could not pay the cost, the waiver program could not help with the cost. (Respondent's Exhibit A-24)

4. Petitioner's POA moved Petitioner into her home from the nursing home without barriers for discharge.
5. On [REDACTED], the Petitioner's Representative contacted Jo Ann Rogers in Lansing regarding renovations.
6. [REDACTED] suggested a portable shower with the assistance of the Waiver Program.
7. On [REDACTED] [REDACTED] [REDACTED], the Supports Coordinator performed an environmental check on Petitioner's discharge home.
8. On [REDACTED] Petitioner was discharged home with a wheelchair and a hospital bed that the social worker at the nursing home arranged for discharge.
9. Petitioner went home without barriers and natural supports participation available to make certain that any barriers were accommodated.
10. Post discharge, Petitioner was returning (or being returned by her natural supports) to her apartment to shower.
11. On [REDACTED], there was a discussion related to home therapy and the difficulty of managing the showers at Petitioner's apartment.
12. The Waiver Agency gave the options of: portable shower, bed bath and/or informal caregiver to meet the aide at the apartment to have the shower. There were not medical needs, safety hazards or sub-standard conditions that would prohibit the options as suggested.
13. On [REDACTED], Petitioner's Representative informed the supports coordinator that the apartment was relinquished and petitioner was having showers at one of their rental properties.
14. On [REDACTED], the State of Michigan denied the bathroom renovation financial aid stating: this request is being denied because the individual transitioned on [REDACTED] and enrolled in MI choice. Per MI Choice Services Standards, if a home modification is not a barrier to transitioning, then it needs to be billed as a MI Choice Home Modification, not as a home modification NFT service. MDHHS does not need to approve MI Choice home modification services (S5165). As a prepaid

ambulatory health plan (PAHP), it is up to [REDACTED] to determine if the request meets the specified criteria to be considered for a home modification (environmentally necessary adaptation) MI Choice service. (Respondent's Exhibit A-4)

15. On [REDACTED], financial assistance for renovation of the bathroom was denied because it was not a barrier for Petitioner's [REDACTED] discharge from the nursing home and because the MI Choice Waiver is the funding of last resort.
16. On [REDACTED], the Advance Negative Action Notice was sent to Petitioner informing her that her request for bathroom renovations was denied.

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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.

This Petitioner is claiming eligibility for services through the Department's Home and Community Based Services for Elderly and Disabled (HCBS/ED). The waiver is called MI Choice in Michigan. The program is funded through the federal Centers for Medicaid and Medicare Services to the Michigan Department of Community Health (Department). Regional agencies, in this case, A&D Home Health Care, Inc., 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)*

1915(c) (42 USC 1396n (c) allows home and community based services to be classified as "medical assistance" under the State Plan when furnished to recipients who would otherwise need inpatient care that is furnished in a hospital SNF, ICF or ICF/MR and is reimbursable under the State Plan. (42 CFR 430.25(b))

Policy for the MI Choice Waiver Program is found in the Medicaid Provider Manual (MPM). With regard to Services, the MPM states, in relevant part:

SECTION 4 - SERVICES

The array of services provided by the MI Choice program is subject to the prior approval of CMS. Waiver agencies are required to provide any waiver service from the federally approved array that a participant needs to live successfully in the community, that is:

- indicated by the current assessment;
- detailed in the plan of service; and
- provided in accordance with the provisions of the approved waiver.

Services must not be provided unless they are defined in the plan of service and must not precede the establishment of a plan of service.

* * * *

4.1.G. GOODS AND SERVICES

Goods and Services are services, equipment or supplies not otherwise provided through either MI Choice or the Medicaid State Plan that address an identified need in the individual plan of services (including improving and maintaining the participant's opportunities for full membership in the community) and meet the following requirements. The item or service would:

- decrease the need for other Medicaid services,
- promote inclusion in the community, and
- increase the participant's safety in the home environment.

These goods and services are only available if the participant does not have the funds to purchase the item or

service or the item or service is not available through another source.

Goods and Services are only approved by CMS for self-direction participants. Experimental or prohibited treatments are excluded. Goods and Services must be documented in the individual plan of services.

*Medicaid Provider Manual
MI Choice Waiver Chapter
April 1, 2014; pp 9-11*

Section 4.1.K. ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS states:

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.

*Medicaid Provider Manual, MI Choice Waiver,
Section 4.1.K, April 1, 2016, page 16-19*

Based on the evidence presented, the Waiver Agency properly denied payment for the requested services. Here, Petitioner was initially housed in a nursing home with no barriers. Petitioner was instructed to see if any informal supports would be able to fix the issue. Acceptable alternatives included a portable shower or bed bath. There were no medical needs, safety hazards or sub-standard conditions that would prohibit the options suggested. Her family removed her from the nursing home before without bathroom renovations. The State of Michigan initially approved Petitioner's request for funding for renovations with a Medicaid Exception (because Petitioner had already transitioned from the nursing home) in the amount of \$[REDACTED]. Petitioner's Representative did not find the fund approval sufficient and submitted a second request for more funds. The State of Michigan denied the approval of additional funds because Petitioner had already transitioned from the nursing home without barriers and the natural supports had chosen alternative methods to provide Petitioner with opportunities and places to bathe. The Petitioner's Representative then requested the bathroom renovation funds from the MI choice Waiver Program Agency. Renovation funds are not entitlement funds. Instead, Petitioner found someone to complete the services and then contacted the Waiver Agency to pay the bill.

Clearly, the Waiver Agency, as payer of last resort, is not required to pay for

environmental accessibility adaptations when they are not necessary to ensure the health and welfare of the participant or enable the participant to function with greater independence in the home, without which the participant would require institutionalization. The very fact that Petitioner was removed from the nursing home before the renovations were made establishes that the renovations are not necessary to her community inclusion.

Petitioner's Representative removed Petitioner from a barrier free facility and provided her with alternative services to ensure that Petitioner was kept clean. The MI Choice Waiver agency is not responsible for renovations just because the Petitioner's Representative has changed the circumstances or removed Petitioner from the nursing home before the approval of funding for the renovations. The lack of a bathroom was not a barrier to Petitioner's discharge from the nursing home. Moreover, Petitioner was approved for funds to renovate the bathroom through the State of Michigan in the amount of \$ [REDACTED] but the Representative was not satisfied with that amount. Petitioner's Representative has thus not availed herself of available resources. MI Choice Waiver is the funding source of last resort. The lack of financial assistance for bathroom renovation was not a barrier for Petitioner's discharge from the nursing home.

The Waiver Agency has established by the necessary competent, material and substantial evidence on the record that it was acting in accordance with Medicaid Policy when it denied Petitioner's request for funding for bathroom renovations through the MI choice Waiver Program under the circumstances. The Agency's determination must be upheld.

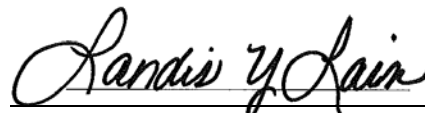
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Waiver Agency properly denied Petitioner's request funding for bathroom renovations.

IT IS THEREFORE ORDERED that:

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

LL [REDACTED]



Landis Lain
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]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

Community Health Rep

[REDACTED]