



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
MAHS Docket No.: 16-005417
[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 a request for a hearing filed on Petitioner’s behalf.

After due notice, a telephone hearing was held on [REDACTED] [REDACTED], Petitioner’s daughter and legal guardian, appeared and testified on Petitioner’s behalf. [REDACTED], registered nurse/manager, appeared and testified on behalf of the Department of Health and Human Services’ Waiver Agency, the [REDACTED] [REDACTED] [REDACTED], supports coordinator, also testified as a witness for Respondent.

ISSUE

Did the Respondent properly deny Petitioner’s request for home repairs?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole:

1. Since [REDACTED], Petitioner has been receiving services through Respondent and the MI Choice Waiver Program. (Testimony of Respondent’s Supports Coordinator).
2. Petitioner lives in a home with a two-story back porch. (Testimony of Petitioner’s representative).
3. The porch was built in [REDACTED] but unbeknownst to Petitioner and her guardian at the time, it was built improperly and without the required permits. (Testimony of Petitioner’s representative).

4. Years later, after Petitioner and/or her guardian filed a complaint against the builder; he was cited by the [REDACTED]; and he was ordered to return the money, which he never did. (Testimony of Petitioner's representative).
5. On [REDACTED], Petitioner's guardian notified Respondent that the back porch of Petitioner's home was slanted and there was a danger of it collapsing. (Testimony of Respondent's Supports Coordinator).
6. Petitioner's guardian then tried to obtain assistance in fixing the porch through other resources, but was unsuccessful. (Exhibit A, pages 3-4).
7. Subsequently, Respondent reviewed the request for assistance, gathered bids and quotes from contractors, and inspected Petitioner's property. (Exhibit A, pages 3-14).
8. Respondent also offered to help install a ramp on the front porch and/or tear down the back porch, but Petitioner's representative declined. (Testimony of Petitioner's representative; Testimony of Respondent's Supports Coordinator).
9. On [REDACTED], Respondent sent Petitioner written notice that the request for home repairs was denied. (Exhibit A, pages 16-17).
10. Regarding the reason for denial, the notice provided: "The reason for this action is: Your request for home repair has been denied as your structure was built without a [REDACTED] which could result in liability issues for [REDACTED]." (Exhibit A, page 16).
11. On [REDACTED] the Michigan Administrative Hearing System (MAHS) received the full and complete request for hearing filed by Petitioner's guardian with respect to Respondent's decision. (Exhibit 1, pages 1-4).

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. 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 seeking 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 to the Michigan Department of Health and Human Services. 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)

The Medicaid Provider Manual (MPM) outlines the governing policy for the MI Choice Waiver program and, while home repairs are not expressly covered, the applicable version of the MPM does identify environmental accessibility adaptations as a covered service:

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, January 1, 2016 version
MI Choice Waiver Chapter, pages 16-19*

Here, Petitioner's guardian requested assistance in repairing Petitioner's two-story back porch and, while Respondent offered to assist Petitioner in tearing down the back porch or installing a ramp on the front porch, it denied the specific request made by Petitioner on the basis that the porch was originally built without a [REDACTED] and could result in liability issues for Respondent.

In response, Petitioner's guardian testified that she and Petitioner did not know that the porch was built without permits and that, while they eventually learned of it, got the builder cited and received an order for the builder to repay them, the builder did not pay them back or repair the porch. She also testified that she requested a repair of the entire two-story back porch and cannot have it torn down because the second floor of the back porch is needed to access the attic. Petitioner's representative further testified that Petitioner uses a wheelchair and there is no ramp into the home currently, but that she only recently requested a ramp for the back porch after the denial in this case and it was not the subject of the original request at issue here.

Petitioner bears the burden of proving by a preponderance of the evidence that the Respondent erred in denying her request.

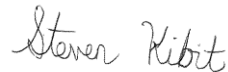
Given the record in this case and the request that was made, Petitioner has failed to meet that burden of proof and Respondent's decision must be affirmed. Petitioner and her guardian requested repairs of the back porch and such repairs appear to be needed. However, per policy, Respondent can only provide modifications 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, and that is not the case here. Instead, Petitioner appears to seek general home repairs that are of general utility and that are considered to be standard housing obligations of the participant or homeowner, and such repairs are expressly excluded from coverage in the MPM. Accordingly, in light of that clear policy, Petitioner's request was properly denied.

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 repairs.

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

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]
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