



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 23, 2016
MAHS Docket No.: 16-013390
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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, a hearing was held on October 25, 2016. [REDACTED], son, represented the Petitioner. [REDACTED], Assistant Director of MI Health Link and New Business Strategies, represented the Department of Health and Human Services' Waiver Agency, Area Agency on Aging 1-B ("Waiver Agency" or "AAA1-B"). [REDACTED], Clinical Manager, and [REDACTED], Supports Coordinator, appeared as witnesses for the Waiver Agency.

During the hearing proceedings, the Waiver Agency's Hearing Summary packet was admitted as Exhibit A, pp. 1-30.

ISSUE

Did the Waiver Agency properly deny a request for an environmental modification of a bathroom through MI Choice Waiver program?

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 a Medicaid beneficiary who has been receiving services through the MI Choice Waiver program.
2. A request was made for an environmental modification of a bathroom for Petitioner.

3. The Waiver Agency approved a less costly alternate solution, installation of a stair lift that will allow Petitioner access to an existing bathroom that is accessible for her. (Assistant Director and Clinical Manager Testimony)
4. On [REDACTED], an Adequate Action Notice-Denial of Services Request was issued to Petitioner stating the bathroom modification was not authorized because an alternate solution to meet the need has been approved. (Exhibit A, pp. 25-26)
5. On [REDACTED], a hearing request was filed on Petitioner's behalf contesting the denial. (Hearing Request)

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.

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 Minimum Operating Standards for MI Choice Waiver Program Services regarding Environmental Accessibility Adaptations, in part, 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. 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.

3. Adaptations may include:

- a. The installation of ramps and grab bars;
- b. Widening of doorways;
- c. Modification of bathroom facilities;

- d. Modification of kitchen facilities;
 - e. Installation of specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the participant; and
 - f. Environmental control devices that replace the need for paid
4. 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.

*Michigan Department of Health and Human Services,
Minimum Operating Standards for
MI Choice Waiver Program Services, Attachment H,
August 24, 2015, p. 30
Exhibit A, p. 27*

In the present case, the Waiver Agency received a request for an environmental modification of a bathroom for Petitioner.

The Clinical Manager explained that the bathroom modification was denied because an alternate solution was agreed upon. The Waiver Agency approved installation of a stair lift that will allow Petitioner access to an existing full bathroom downstairs. This solution would meet Petitioner's need and remains approved. (Clinical Manager Testimony)
The Assistant Director testified that the stair lift is a more cost-effective solution to meet the Petitioner's need than the bathroom modification. (Assistant Director Testimony)
The Clinical Manager explained that the bids for the bathroom modification were around \$10,000 and the bids for the stair lift were under \$2,000. (Clinical Manager Testimony)

Petitioner's son disagrees with the denial and testified about the difficulties they have encountered with the installation of a stair lift. Petitioner's son also stated that the estimates he got for the bathroom modification were between \$6,000 and \$6,500. (Son Testimony)

However, the testimony of both parties indicates there are ongoing attempts to resolve the issues with installing the stair lift, such as changing contractors and looking into modifying the stair lift purchased by the original contractor to see if it can be adapted to work in Petitioner's home. Further, the Waiver Agency indicated that if appropriate, there is a processes to request a modification of the agreement for the authorized work for having a stair lift installed for Petitioner. (Son, Assistant Director, and Clinical Manager Testimony)

Petitioner bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in denying the request for an environmental modification of a bathroom for Petitioner. Given the record in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet that burden of proof. The above cited Minimum Operating Standards requires that the case record contain documented evidence that the adaptation is the most cost-effective and reasonable alternative to meet the participant's need. The Clinical Manger's credible testimony regarding the bid amounts for the bathroom modification, around \$10,000, versus the stair lift, under \$2,000, establish that the stair lift was clearly a more cost effective solution. Further, it was uncontested that at least initially, there was agreement that the stair lift installation would reasonably meet Petitioner's need to have access to a full bathroom. While it is also clear that there have been significant difficulties with having the stair lift installed, the testimony of both parties indicated there are ongoing attempts to resolve these issues. Accordingly, the [REDACTED], determination to deny the request for the bathroom modification was appropriate because an alternate solution that was more cost-effective and was a reasonable alternative to meet Petitioner's need had been approved.

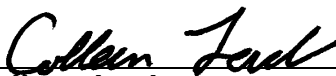
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency's [REDACTED], determination to deny the request for the bathroom modification was appropriate because an alternate solution that was more cost-effective and was a reasonable alternative to meet Petitioner's need had been approved.

IT IS THEREFORE ORDERED that

The Waiver Agency's decision is **AFFIRMED**.

CL/cg



Colleen Lack

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

Authorized Hearing Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Community Health Rep

[REDACTED]

Petitioner

[REDACTED]