



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]

Date Mailed: January 27, 2017
MAHS Docket No.: 16-016369
Agency No.: [REDACTED]
Petitioner: [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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on January 5, 2017. [REDACTED] Petitioner's father, appeared and testified on Petitioner's behalf. Petitioner also testified on his own behalf. [REDACTED], Assistant Director of [REDACTED] [REDACTED], appeared and testified on behalf of the Respondent Area Agency on Aging 1-B. [REDACTED], Clinical Manager, also testified as a witness for Respondent.

ISSUE

Did the Respondent properly deny Petitioner's request for a wooden replacement ramp?

FINDINGS OF FACT

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

1. Respondent is a contract agent of the Michigan Department of Health and Human Services and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services in its service area.
2. Petitioner is enrolled in the MI Choice Waiver Program and has been receiving services through Respondent. (Testimony of [REDACTED])
3. In August of 2016, Petitioner requested installation of a ramp at his home to replace the deteriorated wooden ramp that he had been using. (Exhibit A, pages 2-4; Testimony of Petitioner's representative).

4. Respondent subsequently obtained two bids regarding the installation of a ramp. (Exhibit A, pages 13-18; Testimony of [REDACTED]).
5. After the bid period was closed, Respondent's [REDACTED] reviewed what was received and recommended that the existing wooden ramp be demolished and replaced with an aluminum ramp. (Exhibit A, pages 13-14).
6. Petitioner declined the aluminum ramp and wanted a new wooden ramp. (Testimony of Petitioner's representative).
7. On September 23, 2016, Respondent sent Petitioner written notice that his request for a wooden ramp was denied. (Exhibit 1, page 2).
8. Regarding the reason for the denial, the notice stated in part:

MiChoice contractor bids received indicate that aluminum, open-tread ramp is the safest and cost effective option for Home Modification request. Participant's family indicates that they would prefer a wooden ramp which was deemed less safe and less cost-effective for MiChoice funds.

Exhibit 1, page 2

9. On November 10, 2016, the Michigan Administrative Hearing System received the request for hearing filed by Petitioner and his representative with respect to that denial. (Exhibit 1, pages 1-20).

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, with respect to Environmental Accessibility Adaptations, it provides in part:

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, July 1, 2016 version
MI Choice Waiver Chapter, pages 16-19
(Emphasis added)*

Here, as discussed above, Respondent was willing to approve a surface aluminum ramp for Petitioner's home, but he only wanted a wooden replacement ramp and his request was denied.

In support of that decision, Respondent's representatives described the process of requesting and approving the installation of a new ramp for Petitioner's home in this case. They also testified that the aluminum ramp was approved as it is the most cost-effective and reasonable alternative that can meet Petitioner's needs. Ms. [REDACTED] further testified that Petitioner's preference for a wooden ramp appeared to be based on aesthetics and not medical necessity. She also noted that Petitioner has indicated that he may be moving soon and that an aluminum ramp, unlike a wooden ramp, is portable.

In response, Petitioner's representative testified that they purchased Petitioner's home in 2012 and that the previously-attached wooden ramp has worked well since that time, but that it has deteriorated recently and is in need of replacement. He also testified that they want another wooden ramp instead of an aluminum ramp so that the ramp can blend into the home and acknowledged that the request is based on aesthetics. He further testified that Petitioner's situation is not short-term and that, based on his research, wooden ramps are the most popular type of ramps. He also testified that the contractors Respondent sent out only do aluminum ramps and that Respondent failed to fully investigate wooden ramps.

Petitioner testified that he needs a ramp to get in-and-out of the house, and that he has experience with both wooden and aluminum ramps. He further testified that he is thinking about moving out in two or three years.

Petitioner bears the burden of proving by a preponderance of the evidence that the Respondent erred in denying his request for a wooden ramp.

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. Per the above policy, any approved Environmental Accessibility Adaptations must be the most cost-effective and reasonable alternative that can meet a participant's need and the record in this case fails to document that a wooden ramp is the most cost-effective and reasonable alternative for Petitioner. It is undisputed that Petitioner and his representative want a wooden ramp because of the way it looks and there is no suggestion that an aluminum ramp cannot meet his needs.

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 a wooden replacement ramp.

IT IS THEREFORE ORDERED that

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

SK/tm



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

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