



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: May 18, 2022
MOAHR Docket No.: 22-001560
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 42 CFR 431.200 *et seq.* and 42 CFR 438.400 *et seq.* upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on May 12, 2022. [REDACTED], Petitioner's father, appeared and testified on Petitioner's behalf. [REDACTED] Petitioner's mother, appeared as a witness for Petitioner.

Katherine Squire, Fair Hearing Officer, appeared and testified on behalf of Respondent, CMH of Central Michigan (Respondent or CMH).

ISSUE

Did the Department properly deny Petitioner's request for an Environmental Accessible Adaptation (EAA) - elevator?

EXHIBITS

Respondent's Exhibit A: Hearing Summary, pp 001-084¹

Includes: Hearing Summary, pp 001-003

Request for Home Modification, pp 004-057

Notice of Adverse Benefit Determination, pp 058-063

Notice of Appeal Denial, pp 064-069

Request for Hearing, 070-073

Petitioner's PCP², pp 074-084

¹ The undersigned added the below attachments together and added Bates numbering, as indicated.

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 [REDACTED] year-old Medicaid beneficiary who is enrolled in the Children's Waiver Program (CWP). Petitioner is diagnosed with Cerebral Palsy and Severe Apraxia of Speech. Petitioner is non-verbal and non-ambulatory, lacks control of her extremities, and requires total assistance in transferring and complete assistance with ADL's. (Exhibit A, pp 076; Testimony).
2. Petitioner lives at home with her parents and uses an augmentative communication device that she controls with eye gaze or a stylus that she holds in her mouth. Petitioner uses a motorized wheelchair that she controls with a head array or joystick. Petitioner loves music, listening to and reading books and has strong opinions. Petitioner is homeschooled. (Exhibit A, p 074; Testimony).
3. On or about October 27, 2021, Petitioner, through her Supports Coordinator, submitted a Prior Review and Approval Request (PRAR) for an EAA - elevator. (Exhibit A, pp 004-057; Testimony).
4. The request included a Letter of Medical Necessity authored by Petitioner's Occupational Therapist (OT). (Exhibit A, pp 006-009; Testimony). The letter indicates, in pertinent part:

The patient's family has decided to build a new home to meet the needs of their daughter. The patient's current house is not accessible to [REDACTED] and the family has already explored the option of extensive modifications to it. This option is not an effective solution as it will not be able to significantly increase mobility and accessibility and it will come at a significant cost to do very little. This new home will be designed and constructed from the ground up with lifetime accessibility in mind. Therefore, it will need to be outfitted with reliable, expandable/upgradable and universal technology to increase the client's independence now, and as she ages into adulthood.

The patient needs an elevator to gain entry into the basement. The basement will be home to a therapy area where she will complete her therapeutic activities and exercises that require larger spaces than the main floor can provide. The basement will provide the

² Also included in the Request for Home Modification

space to use and store stander, walker / gait trainer, crawler, mattresses, wedges, physio balls and other equipment. In addition, the basement will house the family and recreation space. From a safety perspective, in the event of inclement weather in which the patient needs to take shelter, the basement provides the safest area for her with the entire family.

(Exhibit A, pp 007-008; Testimony)

5. Petitioner's private insurance will not cover the cost of an elevator. (Exhibit A, p 010-025; Testimony).
6. Petitioner parents obtained bids from three companies for an elevator. (Exhibit A, pp 029-040; Testimony).
7. Petitioner's parents are seeking reimbursement for the cost of an elevator, not any of the construction costs for installing an elevator or preparing the home for an elevator. (Exhibit A, pp 029-040; Testimony).
8. On or about September 18, 2021, Petitioner's parents purchased the land where the new home will be built. (Exhibit A, pp 053-057; Testimony).
9. On February 28, 2022, after reviewing Petitioner's request, Mid-State Health Network (MSHN), the Pre-Paid Inpatient Health Plan (PIHP) for Respondent CMH, informed CMH that the request for an elevator was denied based on policy found in the Medicaid Provider Manual (MPM), which indicates that if a family purchases a home, or builds a home or addition while the child is receiving waiver services, it is the family's responsibility to assure that the home will meet the child's basic needs. (Exhibit A, p 002; Testimony).
10. On March 4, 2022, CMH sent Petitioner's parents a Notice of Adverse Benefit Determination, informing the family that the request for an EAA - elevator was denied. The Notice contained Petitioner's appeal rights. (Exhibit A, pp 058-063; Testimony).
11. On March 23, 2022, after conducting an internal appeal, CMH sent Petitioner's parents a Notice of Appeal Denial, upholding the original denial. (Exhibit A, pp 064-069; Testimony). The Denial indicated, in pertinent part:

Your Internal Appeal was denied for the service/item listed above because:

An independent review was completed by a team member who was not part of the original decision. The reviewer upheld the original determination of

denial for the request of Medicaid funding of the Environmental Accessible Adaptation, an elevator.

The Denial was based on The Environmental Accessible Adaptations (EAA) rule and the Home Modification rule of the Michigan Medicaid Provider Manual states:

“If a family purchases a home, or builds a home or addition while the child is receiving waiver services, it is the family’s responsibility to assure that the home will meet the child’s basic needs, such as having a ground floor bath/bedroom if the child has mobility limitations. The CWP does not cover construction costs of a new home or addition or a home purchased, after the beneficiary is enrolled in the waiver.”

Also, The MMPM states “The EAA must be the most reasonable alternative, based on a review of all options, including a change in the use of rooms within the home or alternative housing.”

(Exhibit A, p 064; Testimony)

12. On April 5, 2022, the Michigan Office of Administrative Hearings and Rules received Petitioner’s hearing request. (Exhibit A, pp 070-073).

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.

Title XIX of the Social Security Act, enacted in 1965, authorizes Federal grants to States for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children. The program is jointly financed by the Federal and State governments and administered by States. Within broad Federal rules, each State decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures. Payments for services are made directly by the State to the individuals or entities that furnish the services.

42 CFR 430.0

The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department. The State plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program.

42 CFR 430.10

Section 1915(b) of the Social Security Act provides:

The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection(s) of this section) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State...

The State of Michigan has opted to simultaneously utilize the authorities of the 1915(b) and 1915(c) programs to provide a continuum of services to disabled and/or elderly populations. Under approval from the Centers for Medicare and Medicaid Services (CMS) the Department of Health and Human Services (MDHHS) operates a section 1915(b) and 1915(c) Medicaid Managed Specialty Services and Support program waiver. CMH contracts with the Michigan Department of Health and Human Services to provide services under the waiver pursuant to its contract obligations with the Department.

Medicaid beneficiaries are entitled to medically necessary Medicaid covered services for which they are eligible. Services must be provided in the appropriate scope, duration, and intensity to reasonably achieve the purpose of the covered service. See *42 CFR 440.230*.

The CMH is mandated by federal regulation to perform an assessment for the Petitioner to determine what Medicaid services are medically necessary and determine the amount or level of the Medicaid medically necessary services.

The *Medicaid Provider Manual, Behavioral Health and Intellectual and Developmental Disability Supports and Services Chapter*, articulates Medicaid policy for Michigan. It states in relevant part:

14.3 COVERED WAIVER SERVICES

Covered Medicaid services that continue to be available to CWP beneficiaries are listed in the Covered Services Section of this chapter. Refer to the Children's Waiver Community Living Support Services Appendix of this chapter for criteria for determining number of hours. Services covered under CWP include:

Environmental Accessibility Adaptations (EAAs)

Environmental Accessibility Adaptations (EAAs) include those physical adaptations to the home, specified in the individual plan of services, which are necessary to ensure the health, welfare and safety of the child, or enable him to function with greater independence in the home and without which the child would require institutionalization. Home adaptations may include the installation of ramps, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems that are essential to support the child's medical equipment. Requests for EAAs must be prior authorized by the CWP Clinical Review Team following denial by all applicable insurance sources, e.g., private insurance, Children's Special Health Care Services (CSHCS), Medicaid. All services shall be provided in accordance with applicable state or local building codes. A prescription is required and is valid for one year from the date of signature.

Standards of value purchasing must be followed. The EAA must be the most reasonable alternative, based on the results of a review of all options, including a change in the use of rooms within the home or alternative housing. The existing structure must have the capability to accept and support the proposed changes. The infrastructure of the home involved in the funded EAA (e.g., electrical system, plumbing, well/septic, foundation, heating/cooling, smoke detector systems, roof) must be in compliance with any applicable local codes. EAAs shall exclude costs for improvements exclusively required to meet local building codes.

The EAA 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 EAA must demonstrate cost-effectiveness. The family must apply, with the assistance of the case manager if needed, to all applicable funding sources, such as housing commission grants, MSHDA, and community development block grants, for assistance. Acceptances or denials by these funding sources must be documented in the child's records. The CWP is a funding source of last resort.

Excluded are those adaptations or improvements to the home that are of general utility, are considered to be standard housing obligations of parents, and are not of direct medical or remedial benefit to the child. EAAs that are 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 child's home.

All work must be completed while the child is enrolled in the CWP.

Adaptations may be made to rental properties when the landowner agrees to the adaptation in writing. A written agreement between the landowner and the child's family must specify any requirements for restoration of the property to its original condition if the occupants move and must indicate that the CWP and MDHHS are not obligated for any restoration costs.

If a family purchases a home, or builds a home or addition while the child is receiving waiver services, it is the family's responsibility to assure that the home will meet the child's basic needs, such as having a ground floor bath/bedroom if the child has mobility limitations. The CWP does not cover construction costs in a new home or addition, or a home purchased after the beneficiary is enrolled in the waiver. The CWP funds may be authorized to assist with the adaptation noted above (e.g., ramps, grab bars, widening doorways) for a home recently purchased.

Additional square footage may be prior authorized following a MDHHS specialized housing consultation if it is determined that adding square footage is the only alternative available to make the home accessible and the most cost-effective alternative for housing. Additional square footage is limited to the space necessary to make the home wheelchair-accessible for a child with mobility impairments to prevent institutionalization; the amount will be determined by the

direct medical or remedial need of the beneficiary. The family must exhaust all applicable funding options, such as the family's ability to pay, housing commission grants, MSHDA and community development block grants. Acceptances or denials by these funding sources must be documented in the child's records.

*Medicaid Provider Manual
Behavioral Health and Intellectual and
Developmental Disability Supports and Services Chapter
January 1, 2022, pp 100-102
Emphasis added*

The CMH's witness explained that the elevator was denied pursuant to the above policy.

Petitioner's father testified that Petitioner is a ■-year-old quadriplegic with cerebral palsy and although non-verbal she is sharp and very friendly, just like any other teenager. Petitioner's father indicated that Petitioner uses a power wheelchair for mobility, controlled either by a head array or a joystick. Petitioner's father testified that Petitioner uses an eye gaze computer device to interact with and communicate with her environment. Petitioner's father noted that Petitioner is entirely dependent on caregivers for her ADL's.

Petitioner's father testified that they have been looking for years to buy a house that they could adapt to make wheelchair accessible, or make adaptations to their own house, but neither choice made financial sense. Petitioner's father indicated that they decided then to build a new home from the ground up that could be designed to be Petitioner's forever home, meeting her needs now and in the future.

Regarding the denial, Petitioner's father testified that there is nothing in the denial that disputes Petitioner's medical need for an elevator, so that is not a question. Petitioner's father also indicated that the denial does not mention the cost in general, so he does not believe that is an issue, nor is whether the elevator is the most reasonable alternative. Petitioner's father pointed out that the MPM does not specifically exclude elevators from coverage. Petitioner's father testified that they are not asking for CMH to pay for the cost of construction to prepare for or install the elevator – just the elevator itself. Petitioner's father indicated that there is no way to design basement access without an elevator as they are limited by the lot size, which they already own, and how big the house can be. Petitioner's father testified that they also cannot design everything to be on one floor and Petitioner's therapy room and the family room will need to be in the basement. Petitioner's father pointed out that in Michigan's long, cold winters, Petitioner will need a place to exercise when she cannot go outside.

Petitioner's father testified that the home cannot be designed for safety for Petitioner unless she can access the basement because, during a tornado, the basement is the safest place to be. Petitioner's father noted that there are many tornado warnings in the

area every year and it is very difficult for anyone to carry Petitioner into the basement given her weight (80 pounds) and the uncontrolled movement of her limbs. Petitioner's father testified that he had to carry Petitioner into their current basement during a tornado warning last year, which was very tricky and resulted in him having back issues for the next two weeks. Petitioner's father indicated that Petitioner is not on the same footing regarding safety with other members of the household if she cannot get into the basement.

Petitioner's father also testified that putting an elevator in now, while the house is being built, would be significantly cheaper than putting one in later. Petitioner's father noted that they looked into putting an elevator in their current home and the cost was three times as much as the estimate to put one in the new home. Petitioner's father testified that it would be a violation of Petitioner's civil rights to not approve an elevator here.

Petitioner's mother testified that she is very active in the community helping persons with disabilities and that this new home will be a reasonable solution for Petitioner now and in the future. Petitioner's mother indicated that Petitioner should be able to access everywhere a person without disabilities can access. Petitioner's mother testified that they are trying to create a forever home for Petitioner and they have consulted many people. Petitioner's mother noted that there is already a higher cost for building a home that is handicap accessible, with wider doorways and hallways and an elevator is absolutely only for Petitioner use.

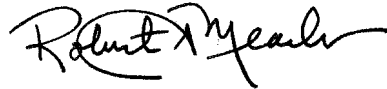
Based upon the preponderance of the evidence submitted in this case, Petitioner has failed to meet her burden of showing that the CMH erred when it denied the request for an elevator. While Petitioner's parents must be commended on the substantial, ongoing care that they provide to Petitioner, the policy here is clear that when purchasing a home once a beneficiary is in the CWP, the family must ensure that the home meets the beneficiary's basic needs. Accessing a therapy room and a family room is a basic need, so it is incumbent on the family to choose and design a home that meets these needs for Petitioner. And, while a basement is the safest place during a tornado, Petitioner's safety during such adverse weather events is also a basic need that Petitioner's family must design into any new home while Petitioner is enrolled in the CWP. Of course, there are many people who do not have access to a basement during such weather events and they take shelter in other interior areas of their homes. The undersigned understands the difficulty Petitioner's parents face designing a home that meets Petitioner's needs in this case, but the policy is clear and the undersigned has no authority to ignore clear policy, consider Petitioner's constitutional arguments, or provide Petitioner with any equitable relief. As such, CMH's decision was proper and must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the CMH properly denied Petitioner's request for an elevator.

IT IS THEREFORE ORDERED that:

The CMH's decision is AFFIRMED.

A handwritten signature in black ink, appearing to read "Robert J. Meade", written in a cursive style.

RM/dh

Robert J. Meade
Administrative Law Judge

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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

DHHS -Dept Contact

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