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Appellant: [REDACTED]

For: Medical Assistance  
Community Access for Disability Inclusion  
Waiver  
Environmental Accessibility Adaptions

**DECISION OF  
STATE AGENCY  
ON APPEAL**

Agency: [REDACTED] County

Docket: 212102

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On September 27, 2018, Human Services Judge Joan G. Hallock held a hearing under Minnesota Statutes, section 256.045, subdivision 3.<sup>1</sup>

The following people appeared at the hearing:

[REDACTED] appellant;

[REDACTED] [REDACTED] County.

The Human Services Judge, based on the evidence in the record and considering the arguments of the parties, recommends the following Findings of Fact, Conclusions of Law, and Order.

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<sup>1</sup>The Minnesota Department of Human Services conducts state fair hearings pursuant to Minnesota Statutes, section 256.045, subdivision 3. The Department also conducts maltreatment and disqualification hearings on behalf of the Minnesota Departments of Health and Education pursuant to Minnesota Statutes, sections 626.556, subdivision 10i; and 626.557, subdivision 9d.

## **STATEMENT OF ISSUES**

The issue raised in this appeal is:

Whether [REDACTED] County (agency) properly denied [REDACTED] (appellant's) request for an Environmental Accessibility Adaption (EAA) of her home.

## **PROCEDURAL HISTORY**

1. On August 2, 2018, [REDACTED] County (agency) sent [REDACTED] (appellant) a written notice of action denying appellant's request for home modification to add a bathroom to the main level of her home. *Exhibit 1.* On August 29, 2018, the appellant filed an appeal. *Exhibit 2.*
2. On September 27, 2018, the Human Services Judge held an evidentiary hearing on the matter by telephone. On September 27, 2018, the record closed consisting of the hearing testimony and seven exhibits.<sup>2</sup>

## **FINDINGS OF FACT**

1. Appellant is a 47 year old woman who was diagnosed with multiple sclerosis in 1987. The disease began to progress in 2000. It affects mostly her left side, but also causes fatigue and bowel/bladder control issues. She testified that her symptoms are especially bad after 3 p.m. At that point of the day, she has problems with balance and difficulty lifting her legs. *Testimony of [REDACTED]*
2. Appellant participates in the Community Access for Disability Inclusion (CADI) Waiver. *Exhibit 3.* On an unknown date, appellant requested home modification in order to add a bathroom to the main level of her home. The agency's Modification, Equipment and Supplies (MES) department denied the request. On August 2, 2018, the agency advised appellant that "MES does not pay to modify homes by adding additional rooms. MES supports with modifying already existing rooms. Thus, MES is not able to fund adding a bathroom on the main level of the home as one currently does not exist." *Exhibit 1.*
3. [REDACTED] testified on behalf of the agency. She stated that the agency needs an itemization of the bathroom project so they can determine disability needs versus

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<sup>2</sup> Exhibit 1 – Notice of Action. Exhibit 2 – Appeal. Exhibit 3 – Appeal Summary. Exhibit 4 – Community Based Services Manual. Exhibit 5 – Community Based Services Manual. Exhibit 6 – Assessment and Recommendations Report. Exhibit 7 – Bid Estimate.

homeowner needs. The assessment to add the bathroom had an estimate above the \$40,000.00 limit. *Testimony of* [REDACTED]

4. The Home Access Assessment provided by [REDACTED] indicates that appellant lives in a two-level home, with her bedroom and the sole bathroom located on the upper level of the home. The bathroom is not in an accessible location and does not have accessible modifications. *Exhibit 6*. The estimate to build a new bathroom is \$34,750.00. The estimate does not itemize individual items, but merely provides a grand total. *Exhibit 7*.

### **APPLICABLE LAW**

1. The Commissioner of Human Services has jurisdiction over appeals involving matters listed in Minnesota Statutes, section 256.045, subdivision 3(a).

2. Unless federal or Minnesota law specifies a different time frame in which to file an appeal, an individual or organization specified in this section may contest the specified action by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action or within 90 days of such written notice if the person shows good cause why the request was not submitted within the 30 day time limit. *Minn. Stat. § 256.045, subd. 3(i)*. The individual filing the appeal has the burden of proving good cause by a preponderance of the evidence. *Id.*

3. The burden of persuasion is governed by state or federal laws that apply to the hearing. *Minn. Stat. § 256.0451, subd. 17*. When there is no specific burden of persuasion provision, the party seeking that a certain action be taken must prove the facts at issue by a preponderance of the evidence. *Id.* Therefore, in this case involving appellant's request for a home modification, the appellant has the burden of showing the agency's actions should be reversed.

4. The Minnesota Department of Human Services has authorization from the federal government to offer services exceeding the scope and limitations of the standard Minnesota Medicaid program, known as Medical Assistance. *Minn. Stat. § 256B.49, subd. 11; 42 U.S.C. §§ 1396 et seq.* The authorized federal waivers are intended to avoid institutionalization, to not exceed the cost of institutionalization, and to make broader services available to address recipient needs unmet by Medical Assistance. *Id.* These home and community-based waiver programs include the CADI waiver program. The CADI program provides funding for home and community-based services that offer an alternative to institutionalization and promote the optimal health, independence, safety and integration of those who would otherwise require a nursing facility level of care. *Minnesota*

*Department of Human Services Community-Based Services Manual (“CBSM”).*<sup>3</sup>

5. Environmental Accessibility Adaptations (EAAs) are physical adaptations to a person’s primary home to ensure health and safety or that enable a person to function with greater independence. A person is eligible to receive EAA if the home modification is for the person’s direct and specific benefit; necessary to ensure her health and safety or to enable her to function with greater independence; and is necessary to meet her assessed needs. Modifications that are for comfort and convenience are not covered. The person may receive up to \$40,000 of EAA per service agreement or waiver year. The lead agency may request an exception to exceed the annual limit. Approved exceptions allow the lead agency to authorize an additional \$40,000. The additional \$40,000 comes from the person’s EAA budget for the following year. Given an approved exception, the person may receive a maximum of \$80,000 of EAA funds during a two-year period. Modifications must be cost-effective and necessary for the person to live in the most integrated community setting and other options must be explored and will provide the person reasonable access to community integration and functional use of a home. *CBSM, Waiver Programs, Environmental Adaptations; Exhibit 4.*

6. For new construction in existing homes, EAA “only covers the additional costs directly related to the person’s disability needs. It does not cover the typical costs related to building or finishing a room.” *CBSM, Waiver Programs, Environmental Adaptations; Exhibit 5.*

### **CONCLUSIONS OF LAW**

1. This appeal is timely and the Commissioner of Human Services has jurisdiction over this appeal under Minnesota Statutes, section 256.045, subdivision 3.

2. The Home Access Assessment and estimate failed to itemize the cost of adding a bathroom to the main level of appellant’s home. Such an itemization would allow the agency to determine the additional costs directly related to appellant’s disability needs.

3. Because the itemization is not available, the agency is correct in denying appellant’s request for an EAA to her home. Should appellant provide the itemization, the agency can revisit the issue.

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<sup>3</sup> The Community-Based Services Manual can be accessed from the Minnesota Department of Human Services website at <http://mn.gov/dhs>. Specifically, select “General Public,” then “Publications, forms and resources,” then “Manuals,” and then “Community-Based Services Manual.”

### **RECOMMENDED ORDER**

Based on all of the evidence, I recommend that the Commissioner of Human Services:

- AFFIRM the agency's denial of appellant's request for an Environmental Accessibility Adaption (EAA) of her home.

\_\_\_\_\_  
Joan G. Hallock  
Human Services Judge

\_\_\_\_\_  
Date

### **ORDER**

On behalf of the Commissioner of Human Services and for the reasons stated above, I adopt the recommended Findings of Fact, Conclusions of Law, and Recommended Order as the final decision of the Department of Human Services.

\_\_\_\_\_  
Date

cc: [REDACTED]  
[REDACTED] County  
[REDACTED] - 0967

### **FURTHER APPEAL RIGHTS**

**This decision is final unless you take further action.**

Appellants who disagree with this decision should consider seeking legal counsel to identify further legal action. If you disagree with this decision, you may:

- **Request the appeal be reconsidered.** The request must state the reasons why you believe your appeal should be reconsidered. The request may include legal arguments and may include proposed additional evidence supporting the request. If you propose additional evidence, you must explain why the evidence was not provided at the hearing. **The request must be in writing and be made within 30 days of the date this decision was issued by the co-chief human services judge.** You can mail the request to: Appeals Division, Minnesota Department of Human Services, P.O. Box 64941, St. Paul, MN 55164-0941. You can also fax the request to (651) 431-7523. **You must send a copy of the request to the other parties.** To ensure timely processing of your request, please include the name of the human services judge assigned to your appeal and the docket number. The law that describes this process is Minnesota Statutes, section 256.0451, subdivision 24.
- **Start an appeal in the district court.** This is a separate legal proceeding that you must start **within 30 days of the date this decision was issued by the co-chief human services judge.** You start this proceeding by: 1) serving a written copy of a notice of appeal upon the Commissioner of Human Services and upon any other adverse party of record; and 2) filing the original notice and proof of service with the court administrator of the county district court. The law that describes this process is Minnesota Statutes, section 256.045, subdivision 7.<sup>4</sup>

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<sup>4</sup> County agencies do not have the option of appealing decisions about Supplemental Nutrition Assistance Program (SNAP), Minnesota Family Investment Program (MFIP), or Diversionary Work Program (DWP) benefits to district court under 7 Code of Federal Regulations, section 273.15(q)(2), and Minnesota Statutes, section 256J.40. A prepaid health plan may not appeal this order under Minnesota Statutes, section 256.045, subdivision 7.