



Appellant: [REDACTED]

For: Community Alternatives for Disability
Inclusion (Consumer Directed
Community Supports)

Agency: [REDACTED] County

Docket: 228370

**DECISION OF
STATE AGENCY
ON APPEAL**

On December 9, 2019, Human Services Judge Kevin T. Slator held a hearing under Minnesota Statutes, section 256.045, subdivision 3.¹

The following people appeared at the hearing:

[REDACTED], appellant;

[REDACTED], appellant's personal care assistant (PCA);

[REDACTED], Appeals Lead, [REDACTED] County;

[REDACTED], Supervisor, [REDACTED] Inc. (for [REDACTED], appellant's case manager, who was unable to attend).

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.

¹The 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 the agency correctly denied appellant's request for the agency to pay for an elevator in his future home.

Recommended Decision: AFFIRM the agency's decision as correct.

PROCEDURAL HISTORY

1. On October 17, 2019, [REDACTED] County (the agency) sent [REDACTED] (appellant) a written notice of action to inform him that his request for approval of a home modification to install an elevator from the main level of his future home to the basement had been denied. *Exhibit 1, Attachment 2 and 4.* On November 1, 2019, appellant filed an appeal. *Exhibit A.*

2. On December 9, 2019, the human services judge held an evidentiary hearing on the matter by telephone conference. On December 10, 2019, appellant emailed an estimate of the cost of installing an elevator in his future home. This was marked as Exhibit D, and the agency was given an opportunity to respond to it. The agency's response, which was copied to appellant, was received on January 3, 2020, and marked Exhibit 2. On that date, the record was closed, consisting of the hearing testimony and six exhibits.²

FINDINGS OF FACT

1. Appellant was born on [REDACTED], and is 46 years old. Appellant has a diagnosis of cerebral palsy and "needs complete assistance with all ADL/IADLs cares," including eating, dressing, transferring, bathing and grooming. *Exhibit 1, Attachments 5 and 7.* According to appellant's Coordinated Services and Supports Plan for 2019, appellant receives 15.5 hours of PCA services and extended PCA services per day, including "complete assistance with housework and laundry." *Exhibit 1, Attachments 5 and 6.*

² Exhibit A – Appeal to State Agency. Exhibit B – 11/27/19 fax from appellant. Exhibit C – 12/5/19 email from appellant. Exhibit D – 12/10/10 email from appellant with 9/28/18 proposal from Ability Solutions & TwinCity Stairlifts for elevator installation. Exhibit 1 – Agency appeal summary. Exhibit 2 – 1/3/20 response from agency.

2. Appellant receives medical assistance under a Community Alternatives for Disability Inclusion (CADI) waiver. [REDACTED] is appellant's case manager. *Exhibit 1, Attachment 7.*

3. On October 9, 2018, appellant underwent a MnCHOICES assessment. The assessment stated the following regarding appellant's mobility:

[REDACTED] is non-weight bearing, non-ambulatory, wheelchair bound. He utilizes both electric wheelchair and manual wheelchair. When using electrical wheelchair, he is able to navigate himself independently around the home but needs total assist with a manual wheelchair. Also, needs assist to plug in wheel chair so it charges overnight.

Exhibit 1, Attachment 5.

4. Appellant currently lives alone in a condominium that does not have a basement. Appellant soon plans to move to his parent's home, which has a basement. *Appellant testimony; Exhibit 1, Attachment 6; Exhibit 2.*

5. In July 2019, appellant submitted a request for approval of the purchase and installation of an elevator in his future home. An elevator would allow appellant to have access to the basement in case of severe weather and to a storage area, and would allow appellant to help his PCA with laundry. [REDACTED] testimony; *appellant testimony; Exhibit A.* Appellant stated that helping his PCA with laundry makes him "feel normal and useful," and improves his dignity and self-worth. Appellant also believes that being able to access the basement would allow him to monitor plumbing issues that might arise. *Exhibit A; [REDACTED] testimony.*

6. On October 17, 2019, the agency sent appellant a Notice of Action to inform him that his request for an elevator was denied. The agency wrote:

You recently requested a home modification to have an elevator installed in your home. This request has been DENIED as this modification has not been identified as a health or safety need.

Exhibit 1, Attachment 4.

The agency cited DHS policy on environmental accessibility adaptations (EAA), which include "physical adaptations to a person's primary home or primary vehicle to ensure his/her health and safety or enable him/her to function with greater independence."³ *Exhibit 1, Attachment 9.*

7. Appellant submitted an estimated cost of installation of an elevator to be \$30,812. *Exhibit D.* The agency asserted that this is the cost of an elevator alone, and the total cost

³ 10/8/19 "Environmental accessibility adaptations," DHS Community-Based Services Manual (CBSM).

would actually be approximately \$80,000. The agency also noted there is a \$40,000 limit under a CADI waiver for EAA. [REDACTED] testimony.

CONCLUSIONS OF LAW

1. Jurisdiction and timeliness of the appeal. 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. *Minnesota Statutes, section 256.045, subdivision 3(i).* The individual filing the appeal has the burden of proving good cause by a preponderance of the evidence. *Id.* This appeal is timely and the Commissioner of Human Services has jurisdiction under Minnesota Statutes, section 256.045, subdivision 3.

3. Burden of proof. In an administrative appeal, the burden of proof is governed by state or federal laws that apply to the hearing. Minnesota Statutes, section 256.0451, subdivision 17. When there is no specific burden of proof provision, the party seeking that a certain action be taken must prove the facts at issue by a preponderance of the evidence. *Id.* Because appellant asserts that the agency erred in denying his request for payment of an EAA under the CADI waiver, he has the burden to show that the agency's denial of his request was incorrect.

4. Preponderance of the evidence. "Preponderance of the evidence" means, in light of the record as a whole, the evidence leads the human services judge to believe that the finding of fact is more likely to be true than not true. *Minnesota Statutes, section 256.0451, subdivision 22.* The legal claims or arguments of a participant do not constitute either a finding of fact or a conclusion of law, except to the extent the human services judge adopts an argument as a finding of fact or conclusion of law. *Id.* The human service judge's recommended order must be based on all relevant evidence. *Minnesota Statutes, section 256.045, subdivision 5.*

5. Expenditures for EAA. Under Minnesota's federally-approved CADI waiver, allowable expenditures "may include traditional goods and services provided by the waiver as well as alternatives that support participants." There are four general categories of services that may be billed:

(1) Personal Assistance

- (2) Treatment and training
- (3) Environmental modifications and provisions
- (4) Self-direction support activities⁴

6. EAA are:

physical adaptations to the participant's home or primary vehicle, required by the participant's community support plan, that are **necessary to ensure the health and safety of the participant or enable the participant to function with greater independence**. Examples of adaptations include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, installation of specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies, or monitoring or surveillance systems including cameras, motion detectors, GPS trackers, home security systems, and door and window alarms. The service also covers the necessary assessments to determine the most appropriate adaptation or equipment. The service may also cover installation, maintenance and repairs of environmental modifications and equipment. Repairs may only be covered when they are cost-effective given the condition of the item and compared to replacement of the item.⁵ (Emphasis supplied.)

EAA must also be "necessary to meet the person's assessed needs." It will not be approved if its purpose is the "comfort and convenience" of the recipient. *Exhibit 1, Attachment 9.*

7. As noted by the agency, the cost of EAA is "limited to a maximum of \$40,000 per year per waiver participant, but a case manager may request an exception to the annual limit of \$40,000 from the commissioner."⁶ *Minnesota Statutes, section 256B.49, subdivision 17(c)(2).*

8. Appellant will not be able to assist his PCA with doing laundry in his future home without an elevator that allows him to access the basement. Appellant's testimony was credible -- helping his PCA with laundry and other household tasks might improve appellant's dignity and self-worth and make him "feel normal and useful." An elevator would also allow appellant to access basement storage and plumbing, and to take shelter during severe weather.

9. However, expenditures for EAA under a CADI waiver must meet certain requirements, including showing that the EAA is necessary to ensure appellant's health and safety or will enable him to function with greater independence. A PCA is present in appellant's

⁴ Environmental Accessibility Adaptations, Appendix C: Participant Services, C-1/C-3: Service Specification, 10/25/18 Application for a §1915(c) Home and Community-Based Services Waiver.

⁵ *Id.* See also 10/8/19 "Environmental accessibility adaptations," DHS Community-Based Services Manual (CBSM). *Exhibit 1, Attachment 9.*

⁶ *Id.*

home 15.5 hours per day. Allowing appellant to access the basement would achieve comfort and convenience, but it would not be necessary for his health and safety. Allowing appellant to assist with laundry, access basement storage, or possibly respond to a plumbing problem would not be necessary for his health and safety, nor to increase his independence. An elevator is also not necessary to meet appellant's needs as assessed by MnCHOICES.

10. The agency's decision to deny appellant's request to pay for installation of an EAA, an elevator between the main floor and basement of his future home, should therefore be affirmed.

RECOMMENDED ORDER

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

- AFFIRM the agency's decision to deny appellant's request for the agency to pay for an elevator in his future home.

KEVIN T. SLATOR
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] County
[REDACTED], DHS

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 7.⁷

⁷ 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.