



**DECISION OF
STATE AGENCY
ON APPEAL**

In the Appeal of: [REDACTED] by [REDACTED]

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

Agency: Minnesota Department of Human Services
[REDACTED] County Department of Human Services

Docket: 201756

On January 23, 2018, Human Services Judge Kathleen McDonough held an evidentiary hearing under Minn. Stat. §§ 256B.0911, subd. 3a(h)(9), and 256.045, subd. 3.

The following persons appeared at the hearing:

[REDACTED], Appellant's Mother
[REDACTED], Supervisor Developmental Disabilities Unit, [REDACTED] County
[REDACTED], Case Manager, [REDACTED] County
[REDACTED], Human Services Judge, Observing

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.

STATEMENT OF ISSUE

The issue raised in this appeal is:

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

FINDINGS OF FACT

1. On December 1, 2017, the agency sent [REDACTED] (appellant) a notice of action. On December 14, 2017, the state appeals office received a letter appealing the action. On January 23, 2018, Human Services Judge Kathleen McDonough held an evidentiary hearing via telephone conference. The Judge accepted two exhibits into the record.¹ The Judge closed the record at the conclusion of the hearing.

2. Appellant is a 17 year old girl who lives with her parents. She has multiple disabilities including autism, complex brain malformation with diffuse polymicrogyria, complex partial seizures, migraines, cyclical vomiting syndrome, quadriplegic cerebral palsy, facial telangiectasias, chronic ear infection, multiple ear tubes, ear canal polyps, history of staph infections, mitochondrial disease, strabismus, disturbed sleeping disorder, vitamin D deficiency, bifacial weakness, axial hypotonia, spasticity of her limbs, significant knee contracture and developmental delay (she tests at a 1-2 year old level) and very low muscle tone which makes her unable to reposition herself in bed. In November 2016, [REDACTED] began having non-epileptic seizures 3 to 15 times per day. The seizures last anywhere from 3 to 30 minutes. During a seizure she is in danger of choking on her own saliva and of stopping breathing because her tongue gets in the way due to weak muscles. She is also subject to having grand mal seizures. *Testimony of [REDACTED] and Exhibit 1.*

3. Appellant participates in the Community Access for Disability Inclusion (CADI) Waiver. *Exhibit 2.* On an unknown date, appellant's parents requested an exception to the yearly EAA home modification amount of \$40,000. *Exhibit 1.* On December 15, 2017, the Department of Human Services (DHS) sent a letter to appellant's case manager stating the following:

- DHS approved a ramp, ceiling mounted lifts in bath and bedroom, widening of bedroom and bathroom doorways, power flush and taller toilet and bathroom flooring for a total of \$64,284.00.
- DHS denied a request to enlarge a therapeutic tub and enlargement of [REDACTED]'s bedroom.
- DHS found that the enlarging the therapeutic bathtub and bedroom do not

¹ Exhibit 1 – letter of Appeal and Attachments; exhibit 2 – State Agency Appeal Summary and Attachments.

meet EAA exception criteria of reasonable access to community integration and functional use of the house.

- DHS further stated that enlarging the bedroom is not the least costly alternative to monitor [REDACTED] and that CADI would cover an advanced monitoring technology system when its use meets a person's assessed needs.
- The county was not part of approving or denying the appellant's modification request. The decision was made by DHS.

Agency Testimony and Exhibit 2.

4. At the hearing [REDACTED]'s mother clarified that they were no longer seeking enlargement of the therapeutic tub. [REDACTED]'s mother stated that they have tried three video monitors since June 2001. There are Excel Energy power lines in their backyard.

Photographs provided by [REDACTED]'s parents document this. Because of interference of the power lines the monitors are fuzzy and have a lot of static. Thus, they are not able to rely on the monitors to see if [REDACTED] is having a seizure or cyclical vomiting. The [REDACTED] have moved [REDACTED]'s twin bed into the master bedroom next to their queen size bed so they can hear her at night. The bedroom is very cramped and it is difficult to carry [REDACTED] into the master bedroom and between the two beds as she is now 5 feet tall and weighs 120 pounds. Photographs provided by [REDACTED]'s parents document this. They are not able to put a lift on the master bedroom ceiling. The [REDACTED] want this modification so they can continue to care for [REDACTED] in their home and not have her institutionalized. [REDACTED]

[REDACTED] Testimony and Exhibit 1.

5. In the past, DHS purchased the monitors for [REDACTED]'s bedroom so they are aware of the problems with the monitors. The appellant's request is not to achieve cosmetic improvement of their home. The appellant's request is to take down two walls and a closet between the parents' and [REDACTED]'s bedroom, repairing the floor and ceiling and adding two closets on the other side of the room. Ms. [REDACTED] does not know what the remodeling will cost. [REDACTED] *Testimony.*

CONCLUSIONS OF LAW

1. ***Jurisdiction.*** This appeal is timely, and the Commissioner of Human Services has jurisdiction over its subject matter. *Minn. Stat. §§ 256B.0911, subd. 3a(h)(9), and 256.045, subd. 3.*

2. ***Burden of Persuasion.*** 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.

3. The Minnesota Court of Appeals has determined that where a plaintiff proves a *prima facie* case, the plaintiff has met the burden of proof. A *prima facie* case shifts the burden to the opposing party. *See, Johnson v. Minnesota Department of Human Services*, 565 N.W. 2d 453, 458 (1997). In *Johnson*, the evidence showed that appellant, who has multiple sclerosis, would benefit from a stand-up wheelchair and that it was the safest and most effective alternative for his needs. The Department argued that the stand-up wheelchair was not the least expensive appropriate alternative. However, the Department did not present sufficient evidence to rebut the *prima facie* case and did not identify another appropriate alternative. Thus the Court determined that the Department erred in determining that Johnson failed to establish that the stand-up wheelchair was the least expensive alternative. *Id.*

4. ***CADI Waiver and Services.*** 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”).²

5. ***Environmental Accessibility Adaptations (EAA).*** EAAs are physical adaptions 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.*

6. The appellant has proven by a preponderance of the evidence that removing

² 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”.

the wall between the parents' master bedroom and [REDACTED]'s bedroom would benefit [REDACTED]'s health and safety. [REDACTED]'s testimony and the photographs provided by [REDACTED]'s parents confirm that the current arrangement with the beds is very cramped and that it would be difficult to move [REDACTED] in case of an emergency. In denying appellant's request, DHS states appellant can use an "advanced monitoring technology system" to monitor [REDACTED]. [REDACTED] testified credibly that they are not able to use video monitors because of the power lines in the backyard. Her testimony was supported by photographs of the backyard power lines and was unrebutted by the agency. DHS did not present another viable alternative. Thus I find appellant's requested modification is the least costly alternative and is for [REDACTED]'s direct and specific benefit and is necessary to ensure her health and safety. The modification will allow [REDACTED] to stay in her parent's home thus providing an alternative to institutionalization and promoting optimal health, independence, safety and reasonable access to community integration of an individual who would otherwise require a nursing facility level of care. DHS has already approved modifications costing \$64,284. Thus, \$15,716 remains out of the \$80,000 available for the two year period. I recommend that DHS approve up to \$15,716 for appellant's request to modify their home by taking down two walls and a closet between the parents' and [REDACTED]'s bedroom and repairing the floor and ceiling. Adding closets do not fit the requirement that the modifications must be to ensure [REDACTED]'s health and safety.

RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner of Human Services REVERSE the agency's denial appellant's home modification request and approve up to \$15,716 to take down two walls and a closet between the parents' and [REDACTED]'s bedroom and repairing the floor and ceiling.

Kathleen McDonough
Human Services Judge

Date

ORDER OF THE COMMISSIONER

IT IS THEREFORE ORDERED THAT, based upon all the evidence and proceedings, the Commissioner of Human Services adopts the Human Services Judge's recommendation as the Commissioner's final decision.

FOR THE COMMISSIONER OF HUMAN SERVICES:

Date

Cc: [REDACTED] for Appellant
DHS-[REDACTED], 0967
DHS-[REDACTED], 0967
[REDACTED] County Adult Service, [REDACTED]

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. The request must be *in writing* and be made *within 30 days of the date of this decision*. The request may be sent to *Appeals Division, Minnesota Department of Human Services, P.O. Box 64941, St. Paul, MN 55164-0941*. You may also fax the request to *(651) 431-7523*. *A copy of the request must be sent to the other parties*. To ensure timely processing of your request, please include the name of the Human Services Judge assigned to your appeal, along with the docket number for your appeal.
- **Start an appeal in the district court.** This is a separate legal proceeding that you must start *within 30 days of the date of this decision*. You start this proceeding by serving a written copy of a notice of appeal upon the Commissioner of the Department of Human Services and any other adverse party of record, and 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 Statute § 256.045, subdivision 7.³

³ 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 C.F.R. § 273.15(q)(2) and Minnesota Statute § 256J.40.