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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)	
)	
██████████,)	OHA Case No. 08-FH-607
)	
Claimant.)	Division Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) submitted a proposed Plan of Care Amendment in the MRDD Medicaid Home and Community Base Waiver Program on June 10, 2008. (Ex. E) On August 4, 2008, the Division of Senior and Disabilities Services (Division) sent him notice the services previously approved would remain unchanged, but the environmental modification (bathroom remodel) was denied. (Ex. D) The Claimant requested a fair hearing contesting the denial on September 2, 2008. (Ex. 5). This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on October 2, 2008. The Claimant was represented by his parents, ██████ and ██████████, who appeared in person. ██████████, a Medical Administrator II, with the Division, represents the Division and was present at the hearing. ██████████, Operations Integrity Unit Manager, with the Division, testified on behalf of the Division.

ISSUE

Was the Division correct to deny the Claimant's June 10, 2008 environmental modification (bathroom remodel) proposal?

FINDINGS OF FACT

1. The Claimant, a minor, currently living in his parent's home, has a disorder known as dystonia. He had been receiving MRDD Medicaid Home and Community Based Waiver services prior to June 10, 2008. On that day, Claimant submitted a plan of care which included services previously approved and provided on an ongoing basis. The plan of care also had a new service request - an environmental modification. (E. D). The environmental modification consisted of a bathroom remodel. The proposal/contract of this remodel states the following:

1. We will remove existing bathtub, vanity & sink, toilet and relocate plumbing/drains
2. Demo walls expand bathroom and bedroom area to accommodate new jetted therapy bathtub supplied entirely by owners – See pictures
3. We intend to set new tub on 8” high platform built and finished by us. This will facilitate access with Hoyte lift from bedroom and bathroom side of tub. Installation will be as per ADAG including anti scald shower valve, handheld shower system and grab bars.
4. Electric heater and plumbing will be relocated as necessary to maximize floor space in bathroom. This will require framing new walls, sheetrock, tape texture and paint including a fire door.
5. We will install a new 4” vanity cabinet and sink including lever action faucet
6. Sheetrock, tape, texture and paint all inside bathroom and outside bathroom on living room side but not inside bedroom. We will install 6x6 ceramic tile around bath unit and shower area only
7. We will provide new access into bedroom, and accesses into bathroom from bedroom and from living room re-using existing doors and new lever action locksets.
8. Install ADA toilet and grab bars
9. Prep floor and put down vinyl flooring and four [sic] trim inside bathroom only
10. We will need to run a designated electrical circuit and GFI to new tub and also install a waterproof ceiling light above bath area.
11. Clean up job site and haul away debris

(Ex. E, p. 6).

2. On June 10, 2008, the Division approved all services that had been approved in previous plans, but denied the above described environmental modification. The Division's denial was based on a regulation, which it believed prohibited payment for the installation of privately purchased hot tubs or permanently installed hydrotherapy devices. (Ex. D).

3. At hearing, the Division explained it could only authorize the entire a proposal or reject the entire proposal. The Division stated some aspects of the bathroom remodel would have been approved. However, because the environmental modification proposal involved an installation of a jetted tub, the entire proposal had to be denied. The words “hot tub” and “jetted tub” were used interchangeably. Furthermore, the Division and Mr. ██████████ testified it would be very difficult if not impossible to piecemeal out the cost of the installation of the hot tub. Some work would need to be done differently

if a jetted tub was installed, as opposed to a regular tub. An example is the electrical work. The wiring would have to be done differently if a hot tub was installed as opposed to a jetted tub.

4. The [REDACTED] testified the Claimant is in need of the jetted tub for his condition.

PRINCIPLES OF LAW

This case involves a modification of a service plan. A modification is a change in the status quo. “Ordinarily the party seeking a change in the status quo has the burden of proof.” *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). The burden of proof in this hearing is by a preponderance of the evidence.¹

Applicable Alaska regulation 7 AAC 43.1054(d) states: “The department will not reimburse under this section for . . . (6) installation of privately purchased specialized medical equipment that would not be reimbursed under 7 AAC 43.1055.” 7 AAC 43.1055(d)(1) states “The department will not reimburse under this section for hot tubs, spas, saunas, or permanently installed hydrotherapy devices.”

ANALYSIS

The issue in this case is whether the Division was correct to deny the Claimant’s June 10, 2008 environmental modification (bathroom remodel) proposal. A modification is a change in the status quo and the party seeking a change in the status quo has the burden of proof. Therefore, the Claimant has the burden of proof.

The Claimant’s proposal entails the installation of a jetted tub, which is clearly a hot tub or hydrotherapy device. 7 AAC 43.1054(d)(6) and 7 AAC 43.1055(d)(1) are very clear. These regulations prohibit the Division from reimbursing recipients for the installation of a hot tub or permanently installed hydrotherapy device. The Claimant’s proposal entails the installation of a jetted tub, which is clearly a hot tub or hydrotherapy device. Therefore, the Division was correct to deny the Claimant’s June 10, 2008 environmental modification proposal which included the installation of a jetted tub.

Even if the Division could pick and chose which aspects of the environmental modification proposal could be reimbursed, both parties agree it would be very difficult if not impossible to piecemeal the installation cost of the jetted tub from the remainder of the remodel proposal.

CONCLUSIONS OF LAW

Pursuant to state regulations 7 AAC 43.1054(d)(6) and 7 AAC 43.1055(d)(1), the Division is prohibited from reimbursing the Claimant for the installation of a jetted tub.

¹ *Amerada Hess Pipeline v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, 1179 n. 14 (Alaska 1986). Preponderance of the evidence is evidence which as a whole shows the fact sought to be proved is more probable than not.

DECISION

The Division was correct when it denied the Claimant's June 10, 2008 environmental modification (bathroom remodel) proposal.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. To do this, the Claimant must send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

An appeal request must be sent within 15 days from the date of receipt of this decision. Filing an appeal with the Director could result in the reversal of this decision.

DATED this ____ day of December, 2008.

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this ____ day of December, 2008, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

_____, Director
_____, Policy & Program Development
_____, Staff Development & Training
_____, Fair Hearing Representative

Al Levitre
Law Office Assistant I