



State Plan, which address an identified need (including improving and maintaining the participant's opportunities for full membership in the community) and meet the following requirements: the item or service would decrease the need for other Medicaid services; and/or promote inclusion in the community; and/or increase the participant's safety in the home environment; and, the participant does not have the funds to purchase the item or service or the item or service is not available through another source." Section 17.9.1 Supports Program Manual.

The item in question here is an already purchased swim spa. Petitioner's parents purchased the \$11,995 swim spa for their home in April 2020. R-1. On May 20, 2020 his parents asked Petitioner's support coordinator how to request that the Supports Program budget pay for the swim spa. R-7 at 15. A request was submitted on June 1, 2020 stating the spa was needed to "continue physical therapy (PT), and get exercise without having to leave his home." A copy of the April 2020 purchase invoice was attached. After a review, DDD denied the request and Petitioner appealed this denial.

The spa was denied because it was not disability related; it could be used by others and that it was available through another entity. ID at 3. For the reasons that follow, I hereby ADOPT the Initial Decision's finding that the request was properly denied as it could be used by others and was available through other sources but REVERSE the finding that the spa was disability related.

The finding that the swim spa was disability-related was based on the parents' testimony and R- 3 through 8 which contain Petitioner's Individualized Service Plan (ISP) and notes in the DDD case file. I disagree. It is Petitioner's enjoyment of

swimming that was relayed in the ISP. That does not comport to the installation of a private swim spa being disability related. Rather swimming could be satisfied by joining a local YMCA; a request that was approved. ID at 3. I understand that the circumstances of the COVID-19 public health emergency changed how the YMCA, which offered a pool, operated and Petitioner could not attend. However, that does not mean that an \$11,995 swim spa could be approved under the Supports Program.<sup>1</sup>

The Initial Decision found that DDD's denial for the spa "not being available through any other entity" was correct. The steps laid out to make a request for Good and Services includes a process wherein a Supports Program coordinator helps to identify entities from which to access the Goods and Services. R-3 at 11. This was not done here. Petitioner's parents had already privately purchased the spa prior to making the request for the Supports Program to reimburse them.

I agree with the finding that, despite the testimony by the parents that the swim spa was only for Petitioner's use, the ALJ could not "ignore what it is and how it can be used" by anyone at the home. ID at 6. Petitioner's parents had purchased the swim spa prior to submitting a request and took delivery of the spa around the time the denial was issued. The determination that others could benefit from the spa is clear and forms an appropriate basis to deny the request.

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<sup>1</sup> Additionally, Petitioner claimed that the spa was related to physical therapy for a medical condition. ID at 4. It must be noted that Goods and Services under the Supports Program cannot be used for services available under the State Plan. R-3 at 10. Physical therapy is a State Plan service. See N.J.S.A. 30:4D-6.

THEREFORE, it is on this <sup>24th</sup> day of MAY 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED in PART and REVERSED in PART as set forth above.



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Jennifer Langer Jacobs, Assistant Commissioner  
Division of Medical Assistance  
and Health Services