STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted],

Appellant
_____/

Docket No. 2009-20543 TRN
Case No. [redacted]
Load No. [redacted]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, following the Appellant's request for a hearing.

After due notice, an in-person hearing was held on [redacted]. [redacted] (Appellant) appeared and testified on his own behalf. Also present with the Appellant was his wife, [redacted].

[redacted], represented the Department of Community Health (Department). Also appearing on behalf of the [redacted] were [redacted], and [redacted].

ISSUE

Did DHS properly deny the Appellant's transportation reimbursement request?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

1. The Appellant is a Medicaid beneficiary.

2. On [redacted], [redacted] for

[redacted], sent the Appellant a Medical Transportation Notice informing him that the transportation requests to [redacted] in [redacted], Michigan were being denied because he had chosen a provider outside the local community when comparable care was available locally.

3. On [redacted], the Appellant filed a Request for Hearing with the State Office of Administrative Hearings and Rules.

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

The Medical Transportation coverage under the State Medicaid Plan is addressed in the DHS Program Administrative Manual 825. That policy provides the Medicaid coverage requirements for medical transportation. The Department of Human Services is responsible for decisions regarding Medicaid funded medical transportation.

The DHS Program Administrative Manual 825 provides in pertinent part:

> **COVERED MEDICAL TRANSPORTATION** Medical transportation is available to obtain medical evidence or receive any MA-covered service from any MA-enrolled provider, including:
>
> • Chronic and ongoing treatment
> • Prescriptions
> • Medical supplies
> • One time, occasional and ongoing visits for medical care
>
> ***Exception:*** Payment may be made for transportation to V.A. hospitals and hospitals which do not charge for care (e.g., St. Jude Children's Hospital, Shriners Hospital).
>
> **MEDICAL TRANSPORTATION NOT COVERED** Do not authorize payment for the following:
>
> - Transportation for non-covered services (e.g., AA meetings, medically unsupervised weight reduction, trips to pharmacies for reasons other than obtaining MA-covered items).

- Reimbursement for transportation for episodic medical services and pharmacy visits that has already been provided.
- Transportation costs for long-term care (LTC) residents. LTC facilities are expected to provide transportation for services outside their facilities.
- *Transportation costs to meet a client's personal choice of provider for routine medical care outside the community when comparable care is available locally. Encourage clients to obtain medical care in their own community unless referred elsewhere by their local physician. (Emphasis supplied by ALJ)*
- DCH authorized transportation for clients enrolled in managed care is limited. See **"CLIENTS IN MANAGED CARE."**

Exception: Dental, substance abuse or community mental health services are not provided by managed care; therefore, a DCH authorization for medical transportation for these services may still be necessary.

Pam 825; Medical Transportation
Program Administrative Manual;
State of Michigan
Department of Human Services
PPB 2009-001
1-1-2009
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A Medicaid beneficiary bears the burden of proving he or she was denied a medically necessary and appropriate service. See, e.g., *J.K By and Through R.K. v Dillenberg*, 836 F Supp 694, 700 (Ariz, 1993). Whether the Appellant satisfied that burden here must be determined in accord with the preponderance of the evidence standard. See, e.g., *Aquilina v General Motors Corp*, 403 Mich 206, 210; 267 NW2d 923 (1978).

The Michigan Supreme Court defines proof, by a preponderance of the evidence, as requiring the fact finder to believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence. See, e.g., *Martucci v Detroit Police Comm'r*, 322 Mich 270, 274; 33 NW2d 789 (1948).

Regarding an appeal filed with the State Office of Administrative Hearing and Rules for the Department of Community Health, the Administrative Law Judge is given ultimate discretion to determine the weight and credibility of the evidence presented. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 491; 668 NW2d 402 (2003); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996) (the fact finder is provided with the unique opportunity to observe or listen to witnesses; and, it is the fact finder's responsibility to determine the credibility and weight of the testimony and other evidence provided).

It is the province of the Administrative Law Judge to adjudge the credibility and weight to be afforded the evidence presented. *Maloy v. Stuttgart Memorial Hosp.*, 316 Ark. 447, 872 S.W.2d 401 (1994).

Has DHS violated policy by denying the Appellant's transportation reimbursement request to [redacted] in [redacted] Michigan?

[redacted], credibly testified that the Appellant failed, upon request, to provide her office with a valid local physician referral to the [redacted] provider.

The Appellant asserts that, because he is a fee-for-service Medicaid recipient, he is lawfully entitled to treat with any physician anywhere within the State of Michigan. This assertion is without merit, as it is simply untrue. Medicaid policy requires both fee-for-service and Medicaid Health Plan enrollees to utilize local service network providers, if available, before out of network coverage can be approved.

The Appellant provided the record with *Exhibit 2*, a [redacted], document that references an attached letter documenting his referral by [redacted] to [redacted], both [redacted] physicians/opthamologists. The attached letter was not provided. *(See Exhibit 2)*

The Appellant also failed to provide the record with any evidence of why he is treating with a primary care provider located in [redacted], as opposed to treating with a local, [redacted], Medicaid-enrolled physician. He asserts that there are no Medicaid-enrolled providers in [redacted], and that he is the victim of discrimination.

While referencing a [redacted] County phone book, [redacted] provided the record with a list of Medicaid-enrolled providers from whom the Appellant would be eligible to receive services.

Based on a preponderance of the evidence presented, I conclude that DHS has appropriately applied policy in denying the Appellant's transportation reimbursement requests regarding his treatment by an out of network provider.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide the DHS properly denied the Appellant's requests for reimbursement for medical transportation.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Stephen B. Goldstein
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 6/16/2009

***** NOTICE *****

The law provides that within 30 days of receipt of the above Decision and Order the Appellant may appeal it to the circuit court for the county in which he/she lives. The State Office of Administrative Hearings and Rules for the Department of Community Health, on its own motion, or on request of a party within 30 days of the receipt of this Decision and Order, may order a rehearing. The Administrative Tr bunal will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request.