

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2011-52444 REH

██████████

Appellant

_____ /

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 24.287(1); MSA 3.560(187) (1) and 1993 AACRS R 400.919 upon request of the Department. The undersigned Administrative Law Judge reviewed all documentary evidence and the entire hearing recording prior to rendering this Reconsideration Decision.

ISSUE

Did the Administrative Law Judge (ALJ) err in his reversal of the Department of Community Health (Department) decision to deny reimbursement for travel expenses?

FINDINGS OF FACT

This Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On ██████████, Administrative Law Judge (ALJ) Dale Malweska issued a Decision and Order in which he reversed a Department decision to deny the Appellant's prior authorization for reimbursement for travel expenses
2. On ██████████, the Michigan Administrative Hearing System for the Department of Community Health received the Department's Request for Reconsideration.
3. On ██████████, the Michigan Administrative Hearing System for the Department of Community Health granted the Department's request for reconsideration and issued an Order of Reconsideration.

4. ALJ Malewska's Findings of Fact 1 through 16 except 4 and 7 in the ██████████, Decision and Order are incorporated by reference into this Reconsideration Decision.
5. The Appellant's treating Neurologist, ██████████, indicated in his ██████████, letter that there are no approved treatments for the Appellant's Aicardi- Goutieres Syndrome and all treatment approaches are experimental.
6. The Appellant treating Orthopedic physician, ██████████, indicated in his ██████████, letter that the Appellant has been diagnosed with Aicardi-Goutieres Syndrome and that expert medical treatment is not available in Michigan.

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 Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

The undisputed facts are as follows: The Appellant is a 15 year-old male with multiple medical issues. The Appellant has been diagnosed with Aicardi-Goutieres syndrome rare genetic, neuro-metabolic disorder resulting in severe development delay and seizure disorder. He is non ambulatory.

On ██████████ the Department received the Appellant's request for prior authorization from the Appellant's mother for reimbursement for travel expenses for the Appellant's parents and two (2) aides to attend the Children's National Medical Center Conference in ██████████ on ██████████. On ██████████, the Department sent the Appellant a letter in which it informed the Appellant that the Department had denied the Appellant's prior authorization request. The Department indicated in its denial letter that the denial was based upon Attachment 3.1-A of the Michigan Medicaid State Plan and Medicaid Provider Manual policy.

On ██████████, the Michigan Administrative Hearing System received the Appellant's request for hearing. On ██████████, ALJ Dale Malewska presided over a properly noticed hearing. On ██████████ the ALJ issued a Hearing Decision in which he reversed the Department's decision to deny the Appellant's prior authorization request. On ██████████, the Michigan Administrative Hearing System received the Department's request for reconsideration. On ██████████ the Department's request was granted.

The Department argues in its reconsideration request that the ALJ erred when the ALJ failed to correctly apply Section 3.1-A of the Medicaid State Plan which prohibits Medicaid reimbursement for experimental or investigative services. The Department argues that the treatment of the Appellant's diagnosed condition is experimental and investigative and is not a Medicaid covered service. The Department further argues that transportation reimbursement is not available for cost of non-covered services to and from non-Medicaid providers. In support of this argument, the Department relies upon Section 3.1-A of the Medicaid State Plan and a letter from the Appellant's treating physician ██████████ indicated in his ██████████ letter, while referring to the Appellant's diagnosis of Aicardi-Goutieres syndrome that "there is no approved treatment and all treatment approaches are experimental".

The Department also argues that Medicaid transportation policy at BAM 825 page 2 of 17 provides that 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, and medical supplies, onetime occasional and ongoing visits for medical care...

The Department argues that the services obtained by the Appellant at the Children's National Medical Center Conference in ██████████ were not Medicaid covered services and the physicians involved were not Michigan Medicaid enrolled providers. The Department further argues that the non-Medicaid enrolled physicians participating in the conference provided no direct medical care or treatment to the Appellant and as a result issued no treatment plan or physician orders including prescriptions for medication. The Department finally argues that while the information obtained during the conference may have been informative, and may have resulted in some changes to the Appellant's medical treatment by the Appellant's Michigan based physicians, the Appellant, while attending the conference, did not receive Medicaid covered services from a Michigan Medicaid enrolled provider.

I find that the ALJ erred when he concluded that Section 3.1-D allows for the reimbursement for medical transportation expenses for non-Medicaid covered services provided by non Michigan Medical enrolled providers. Section 3.1-D provides

In addition to the ambulance benefits covered under the Medical Assistance Program (Attachment 3.1A, Item 23a), provision is made for assuring other essential medical transportation of recipients to and from providers of service by the following methods:

- a) For the categorically needy who receive AFDC and SSI grants, transportation expenses related to the

client's use of medical services are paid outside of the grant if not otherwise available without cost to the clients. Transportation cost for visits to a physician's office, pharmacy, or to a clinic are allowable for this purpose. A medical transportation payment requires an initial verification of need for the trip by the client's physician. Physician is defined for this purpose as a licensed doctor of medicine, dentistry, osteopathy, podiatry or chiropractic.

The clear language of Attachment 3.1-D only applies to essential transportation of a recipient to and from providers of a service. The language in 3.1-D (a) clarifies the method of providing transportation to the categorically needy recipients of AFDC and SSI grants. Attachment 3.1-D (i) clearly provides that:

Transportation expenses to and from medical providers for ongoing medically necessary treatment are included as administrative costs of the Title XIX Program for Supplemental Security Income and SSI- related MA only recipients.

The first paragraph of Attachment 3.1-D clearly provides that paragraphs (a) through (j) only cover essential medical transportation for recipients to and from providers of services. There is no language in Attachment 3.1-D which indicates that the services referenced include non-Medicaid covered services provided by non-Medicaid enrolled providers. In addition, there is no language in Attachment 3.1-D which indicates that medical transportation payment for non-Medicaid covered services provided by non-Medicaid enrolled providers may be obtained based solely on the Appellant's physician verification of medical need. If the ALJ's interpretation was correct, any Michigan Medicaid enrolled physician, dentist, podiatrist, or chiropractor provider could, through a written verification of medical need, authorize beneficiaries to obtain any non-Medicaid covered service from any non-Medicaid enrolled provider any where in the United States. It is clear the intent of the Attachment 3.1-D was to limit Medicaid coverage to essential medical transportation to and from Medicaid enrolled providers of Medicaid enrolled services. The ALJ erred when he misapplied Attachment 3.1-D and used his incorrect interpretation as the basis of his decision.

BAM 825 is the Department's policy for medical transportation and implements the medical transportation provisions found in the State Plan. BAM 825 provides in pertinent part:

You must furnish information in writing and orally, as appropriate, to all applicants and to all other **individuals who request it acknowledging that medical transportation is ensured for transportation to and from**

medical services providers for MA-covered services. (Emphasis added) MDCH Publication 141, Medicaid Health Care Coverage, may be used to provide written information. Payment for medical transportation may be authorized only after it has been determined that it is not otherwise available, and then for the least expensive available means suitable to the client's needs.

Medical transportation is available to:

- FIP recipients.
- MA recipients.
- SSI recipients.

BAM 825 page 1

Medical transportation is available to obtain medical evidence or receive any MA-covered service from any MA-enrolled provider, (Emphasis added) including:

- Chronic and ongoing treatment.
- Prescriptions.
- Medical supplies.
- Onetime, 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 (such as St. Jude Children's Hospital, Shriners Hospital).

BAM 825 page 2

Both attachment 3.1-D and BAM 825 provide that medical transportation reimbursement is available for transportation costs required for Medicaid covered services provided by Medicaid enrolled providers. The ALJ erred when he misread and misapplied Attachment 3.1-D and BAM 825 and concluded that transportation reimbursement is available for medical transportation services for non-Medicaid covered services provided by non-Medicaid enrolled providers.

The ALJ also erred when he concluded that Medicaid State Plan Attachment 3.1-A has no nexus with BAM 825 or Attachment 3.1-D. Attachment 3.1-A provides the general State Plan coverage criteria for all Medicaid services. The Medicaid covered services referenced in BAM 825 and in Attachment 3.1-D are the services defined in Attachment 3.1-A. When Attachment 3.1-A, BAM 825, and Attachment 3.1 D are read together it is clear that, in order for transportation services to be reimbursable, the Medicaid services provided by a Medicaid enrolled provider must meet the coverage requirements of Attachment 3.1-A.

[REDACTED]
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In this appeal, the Appellant was transported to and from Children's National Medical Center Conference in [REDACTED]. The evidence shows that the services provided were investigational and experimental and were provided by non-Michigan Medicaid enrolled providers. The Appellant's treating physician indicated in his [REDACTED], letter that the Appellant was diagnosed with Aicardi-Goutieres Syndrome, a rare genetic neuro metabolic disorder with no approved treatment. According to the evidence provided, all treatment approaches for the Appellant's diagnosis are experimental and generally are designed to remediate certain symptoms. No evidence was provided which established that the services provided at the National Medical Center Conference in [REDACTED] were approved non-experimental treatments for the Appellant's diagnosed condition. While the information obtained during the conference was arguably informative and beneficial, the services provided were non-Medicaid covered services. Therefore, the ALJ erred when he concluded the Department erred in denying the Appellant's request for travel reimbursement.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Administrative Law Judge erred in his reversal of the Department's decision to deny the Appellant's prior authorization request for travel reimbursement.

IT IS THEREFORE ORDERED that:

The Administrative Law Judge's decision dated [REDACTED] is REVERSED.

Martin D. Snider
Administrative Law Judge
Michigan Administrative Hearing System
for Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 10/6/2011

[REDACTED]
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***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System 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. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.