

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 15-008649 TRN

██████████

██████████

██████████

Appellant.

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon a request for a hearing filed on the minor Appellant's behalf.

After due notice, a telephone hearing was held on ██████████, the minor Appellant's mother, appeared and testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Health and Human Services (DHHS or Department). ██████████, Departmental Analyst, also testified as a witness for the Department.

ISSUE

Did the Department properly deny Appellant's request for air fare?

FINDINGS OF FACT

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

1. Appellant is a ██████-year-old Medicaid beneficiary who has been diagnosed with severe congenital heart disease consisting of double outlet right ventricle, mitral stenosis, hypoplastic left ventricle, pulmonary atresia, and multiple aortopulmonary collaterals status post initial palliation. (Exhibit A, pages 11-17, 19).
2. Appellant required heart surgeries and it was determined that the surgeries would be performed at the ██████████, ██████████. (Exhibit A, page 19; Testimony of Appellant's representative).

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3. In [REDACTED] Appellant and his mother flew to [REDACTED] for the first surgery. (Exhibit A, page 22; Testimony of Appellant's representative).
4. The cost of their air fare was paid for by a charitable organization. (Exhibit A, page 22; Testimony of Appellant's representative).
5. Appellant's second surgery was scheduled for [REDACTED] (Exhibit A, page 19; Testimony of Appellant's representative).
6. However, the charitable organization indicated that it would not pay for two flights in one year. (Exhibit A, page 22; Testimony of Appellant's representative).
7. Appellant's representative therefore contacted [REDACTED] [REDACTED] about having Medicaid pay for their air fare, meals and lodging. (Exhibit A, page 22; Testimony of Appellant's representative).
8. [REDACTED] contracts with the Department to manage Medicaid non-emergency transportation. (Testimony of [REDACTED]).
9. Appellant was required to go through [REDACTED] and could not submit requests directly to the Department. (Testimony of [REDACTED]).
10. In making approvals or denials, the Department also only deals with [REDACTED] and [REDACTED] is responsible for informing the beneficiaries. (Testimony of [REDACTED]).
11. When contacting [REDACTED], Appellant's representative indicated that she and Appellant were flying to [REDACTED]. (Exhibit A, page 22; Testimony of Appellant's representative).
12. However, in addition to requesting meals and lodging for Appellant's mother while Appellant was admitted inpatient, when [REDACTED] submitted the request to the Department, it asked for mileage reimbursement for driving [REDACTED] miles instead of air fare. (Exhibit A, pages 11-17).
13. The Medical Necessity Form attached to the request did not indicate or discuss a need to fly to [REDACTED]; and it also indicated that Appellant could travel by a clinic van/car or a wheelchair lift-equipped van if he was assisted by others. (Exhibit A, pages 12, 15).
14. On [REDACTED], the Department sent [REDACTED] written notice that the mileage, meals and lodging were approved. (Exhibit A, page 10).

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15. A representative from ██████████ then informed Appellant's representative verbally that she had been approved for meals, lodging and mileage. (Testimony of Appellant).
16. Appellant's representative did not specifically ask if the miles approved were for air travel or car travel. (Testimony of Appellant's representative).
17. In ██████████ Appellant and his representative flew to Boston and the second surgery was performed. (Testimony of Appellant's representative).
18. Appellant's representative subsequently gathered together the receipts from the trip and submitted them to ██████████. (Testimony of Appellant's representative).
19. On ██████████, the Quality Assurance, Facilities and Reports Manager at ██████████ sent an email to Ramey stating in part:

This approval needs a little tweaking, the mom paid out of pocket for the airfare this time and the approval is for miles. I can correct if you like.

Exhibit A, page 23

20. On ██████████ sent ██████████ written notice that the request was denied. (Exhibit A, page 21).
21. Specifically, the notice of denial stated in part:

Michigan Medicaid/Children's Special Health Care (CSHCS) has reviewed your request for air fare for child and parent and denied this service. Initial request started ██████████, air fare was not requested anytime. The referring physician did not state that it was medically necessary for the child to travel out of state via air. Medicaid approved round trip mileage for parent on ██████████ and again on ██████████ (due to DOS change).

See BAM825, page 9, Prior Authorization: All prior authorization requests must be submitted before the service is provided and payment is made. Exceptions will only be granted for emergency situations or when extenuating circumstances exist and are clearly

documented. No exceptions will be made for requests submitted one month or more after the service is provided.

Exhibit A, page 21

22. On ██████████ sent ██████████ a second email stating in part:

An organization paid for the member and her son to transport the first time and she had to pay this time and states they can't afford to be without the reimbursement. The organization only will pay once a year and he needed to go twice this year. Our representative did ask if she was flying and the mother stated she was but neither went further into specifics about who was paying as the mom did not say she had to pay this time. If there is any way to review this again we'd appreciate it.

Exhibit A, page 22

23. On ██████████ sent ██████████ an email stating: ██████████ it's ██████████ months later and the physician did not order air fare. Sorry." (Exhibit A, page 22).
24. A representative from ██████████ verbally informed Appellant's representative of the denial and asked her to get a letter from Appellant's doctor. (Testimony of Appellant's representative).
25. Appellant's representative subsequently acquired a letter from Appellant's surgeon. (Testimony of Appellant's representative).
26. In that letter, dated ██████████, Appellant's surgeon wrote that Appellant needed surgeries in ██████████ in ██████████ and ██████████ and that it "was medically necessary that he fly to ██████████ in ██████████ for the next stage of surgery as well as catheterizations for pulmonary artery rehabilitation." (Exhibit A, page 19).
27. On ██████████ sent another email to ██████████ asking that the matter be reviewed again now that the physician's letter had been received. (Exhibit A, page 20).
28. On ██████████ sent ██████████ written notice that the request for retroactive approval of the air fare was denied as all out-of-state

borderland services/transportation must be prior authorized and the parent did not request approval of air fare until after the services were rendered. (Exhibit A, page 18).

29. Appellant's representative was verbally informed of the denial and, at some point, received a copy of the written notice of denial ██████████ sent ██████████ (Testimony of Appellant's representative).
30. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter regarding the denial of reimbursement for air fare. (Exhibit 1, pages 1-5).

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.

Medical transportation is a Medicaid covered service and the applicable Department policy governing medical transportation coverage in this case is found in Bridges Administrative Manual 825 ("BAM 825"). That policy states in part:

Each Michigan Department of Human Services (MDHS) office 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 Medicaid (MA) covered services. Michigan Department of Community Health (MDCH) Publication 669, Medicaid Handbook Fee-for-Service, may be used to provide written information.

It is important that DHS staff verify client eligibility prior to the authorization of transportation in order to determine who is responsible for payment.

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.

* * *

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.
- Onetime, occasional and ongoing visits for medical care.

Exception: Payment may be made for transportation to U.S. Department of Veteran Affairs hospitals and hospitals which do not charge for care.

MEDICAL TRANSPORTATION NOT COVERED

Do not authorize payment for the following:

- Transportation for noncovered services (for example a 12 step program, 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.
- Transportation services that are billed directly to MA; see **BILLED DIRECTLY TO DCH**.
- MDCH authorized transportation for a client enrolled in managed care is limited; see **CLIENTS IN MANAGED CARE** in this item.

Medicaid Exception: For MA clients enrolled in managed care, medical transportation related to dental, substance abuse, and/or community mental health services program (CMHSP) is the responsibility of the county DHS office and not the managed care plan.

Healthy Michigan Plan Exception: For HMP clients enrolled in managed care, medical transportation related to substance abuse or CMHSP services is the responsibility of the county DHS office and not the managed care plan. **Transportation to dental services for HMP clients enrolled in managed care is the responsibility of the managed care plan.**

MEDICAL TRANSPORTATION EVALUATION

Evaluate a client's request for medical transportation to maximize use of existing community resources.

- If a client has resources available to provide transportation without reimbursement-either by their own means or via family or friends-they are expected to do so. DHS staff is encouraged to explore whether such arrangements exist before authorizing transportation. However, if the client informs the DHS worker that transportation resources are not available, or that providing transportation without reimbursement is a financial hardship, transportation should be approved regardless of whether or not the service has been provided without reimbursement in the past. .
- Do not routinely authorize payment for medical transportation. Explore why transportation is needed and all alternatives to payment.
- Do not authorize payment for medical transportation unless first requested by the client.
- Use referrals to public or nonprofit agencies who provide transportation to meet individual needs without reimbursement.
- If available, utilize free delivery services that are offered by a recipient's pharmacy.

- Use bus tickets or provide for other public transit arrangements.
- Refer to volunteer services or use state vehicles to transport the client if payment for a personal vehicle is not feasible.

* * *

Prior Authorization

All prior authorization requests must be submitted before the service is provided and payment is made. Exceptions will only be granted for emergency situations or when extenuating circumstances exist and are clearly documented.

No exceptions will be made for requests submitted 30 days or more after the service is provided.

The following transportation expenses require prior authorization from MDCH:

- All outstate travel that is non-borderland; see BAM 402.
- Overnight stays if within 50 miles from recipient's home (one way).
- Overnight stays beyond five days (14 days for Children's Hospital of Michigan, C.S. Mott Children's Hospital, or Helen DeVos Children's Hospital).
- Overnight stays or travel outside the normal service delivery area if expenses for two or more family members are included.
- Meals for trips not involving overnight stays; see exhibit 1, Essential **Medical Transportation Rate Schedule**.
- Special allowance when two or more attendants are medically necessary.

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- Mileage and food costs for daily long-distance trips.
- Methadone treatment that extends beyond 18 months (DCH/CMH).
- Prior authorization may be requested for up to 6 months in cases where prolonged treatment requires multiple transports.

For all prior authorizations, send or fax (517) 335-0075 a memo to:

Michigan Department of Community Health
Program Review Division/Ancillary Unit
Attention: Medical Transportation
PO Box 30170
Lansing, MI 48909

It is important that documentation include the specific reason(s) why the client requires special transportation. The memo must be attached to the DHS 54-A and must include the following information:

- Client name and recipient ID.
- Case number.
- Client address.
- Reason for requested travel expense(s).
- Effective travel dates (begin and termination).
- Travel origin and destination.
- Diagnosis.
- Specific reason/need for special transportation (if applicable).
- Specialist name and telephone number.

Although it is best to fax or send a memo, local offices can contact the Program Review Division/Ancillary Unit at (800) 622-0276. The Program Review Division will respond to the local/district office with a memo.

BAM 825, pages 1-4, 9-10

Here, pursuant to the above policies, the Department approved driving mileage reimbursement, meals, and lodging, for the minor Appellant and his mother/representative on [REDACTED] after receiving a prior authorization

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request from ██████████ submitted on Appellant's behalf. However, on ██████████ and ██████████ the Department also denied requests for air fare reimbursement from ██████████ submitted on Appellant's behalf. As stated in the denials sent to LogistiCare, all prior authorization requests must be submitted before the service is provided and payment is made; the parent in this case did not request approval of air fare until after the services were rendered; and it is too late for an exception to be made.

The minor Appellant's representative is appealing those denials on his behalf and, in doing so, bears the burden of proving by the preponderance of the evidence that the Department erred. However, the Department also bears the initial burden of going forward with sufficient evidence to show that its action is correct and in accordance with law and policy.

In this case, the Department moved for dismissal on the basis that the request for hearing was untimely and that the undersigned Administrative Law Judge therefore lacked jurisdiction.

The Social Security Act and the federal regulations which implement the Social Security Act require an opportunity for fair hearing to any recipient who believes the Department may have taken an action erroneously. See 42 CFR 431.200 *et seq.* However, the opportunity for fair hearing is limited by a requirement that the request be made within 90 days of the notice of negative action: "The agency must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing." 42 CFR 431.221(d).

The denials in this case clearly occurred prior to 90 days from when the hearing was requested. However, the ██████ day window starts from the date a notice of action is mailed and no notice of action was mailed to Appellant's representative in this case. Instead, per the Department's protocol, the denials were sent from the Department to ██████████ and it was the responsibility of ██████████ to provide proper notice to Appellant. The record does not reflect that ██████████ ever sent written notice of the first denial and, while Appellant's representative reported receiving a copy of second denial the Department sent to ██████████, she was not sure when she received it and, regardless, that denial would have failed to apprise Appellant's representative of her right to appeal the denial or notify her that any request for hearing must be received within ██████ days of the date the notice of action was mailed, as required by 42 CFR 431.210.

Accordingly, the undersigned Administrative Law Judge denies the Department's motion to dismiss Appellant's request for hearing as untimely.

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The Department also argues that, even if the request for hearing is deemed timely, the denials were proper in this case as the air fare reimbursement requested by Appellant requires a prior authorization; all prior authorization requests must be submitted before the service is provided and payment is made; the parent in this case did not request approval of air fare until after the services were rendered; and it is too late for an exception to be made.

However, it is clear from the record that Appellant's representative did in fact request air fare prior to the services be rendered. She credibly testified to that fact during the hearing and her testimony is supported by subsequent emails from ██████████ at ██████████ confirming that Appellant's representative reported that they were flying for the second surgery.

Regardless of what Appellant's representative reported and requested, it is clear that ██████████ did not request air fare for Appellant and his representative and, instead, requested ██████████ miles of driving mileage reimbursement. No one from ██████████ testified during the hearing or explained the error, but the record, including emails from ██████████ confirm that an error was made.

The Department therefore contends that it did not err as it reviewed and approved the request for driving mileage reimbursement that was actually submitted to it. Moreover, the Department's representative also correctly noted that the undersigned Administrative Law Judge is only reviewing the actions taken by the Department in light of the information available at the time it took those actions.

However, the Department's witness also expressly testified that the Department contracts with ██████████ to manage Medicaid non-emergency transportation; Appellant was required to go through ██████████; and Appellant's representative could not submit requests directly to the Department.

Given the requirement that the Appellant had to go through ██████████ and the contract between the Department and ██████████, the undersigned Administrative Law Judge finds that ██████████ is an agent of the Department in this case and that the Department is therefore responsible for ██████████ actions.

Accordingly, the Administrative Law Judge also finds that, given ██████████ mistakes in processing Appellant's prior authorization request, the Department erred in this matter and its decision to deny Appellant's request for air fare must be reversed.

The Department has never determined the merits of Appellant's request and it is not clear from the record that Appellant's request should be granted. Therefore, the undersigned Administrative Law Judge will only order that the Department reassess Appellant's request in this case.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly denied the Appellant's request for air fare.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED** and it must initiate a reassessment of Appellant's request for air fare.

Steven Kibit

Steven Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc: [REDACTED]

***** 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.