



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: December 3, 2020
MOAHR Docket No.: 20-006737
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

Following Petitioner's request for hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 *et seq*; 42 CFR 438.400 *et seq*; and Mich Admin Code, R 792.11002.

After due notice, a telephone hearing was held on December 3, 2020. Petitioner appeared on her own behalf. Allison Pool, Appeals Review Officer, represented the Department. Carlene Krepps, Manistee DHS, appeared as a witness for the Department.

The Department's Hearing Summary packet was admitted as Exhibit A, pp 1-46.

ISSUE

Did the Department properly deny Petitioner's request for medical transportation reimbursement to a medical provider outside the community?

FINDINGS OF FACT

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

1. Petitioner is Medicaid beneficiary eligible for Non-Emergency Medical Transportation (NEMT) through the Department. (Exhibit A, p 2; Testimony)
2. Petitioner lives in Manistee, Michigan. (Exhibit A, p 5; Testimony)
3. On October 8, 2020, Petitioner submitted a mileage reimbursement request for trips to a urologist in Muskegon, Michigan on August 17, 2020, and September 25, 2020. (Exhibits A, pp 7-8; Testimony)
4. The urologist's office in Muskegon, Michigan is 82 miles from Petitioner's

- home in Manistee, Michigan (164 miles round trip)¹. (Exhibit A, pp 17-19; Testimony)
5. There is a urologist's office in Manistee, Michigan that is three miles from Petitioner's home. (Exhibit A, pp 20-21; Testimony)
 6. There are also urologists in Ludington, Michigan and Traverse City, Michigan, which are both closer to Petitioner than Muskegon, Michigan. (Testimony)
 7. Petitioner was notified back in March 2020 that she would no longer be reimbursed for mileage to travel to the urologist in Muskegon, Michigan because comparable care was available locally. (Exhibit A, p 22.)
 8. Petitioner recently appealed another mileage reimbursement denial for the same reason she was denied in this case and the administrative law judge upheld the Department's denial. (Exhibit A, pp 26-39; Testimony)
 9. On October 8, 2020, the Department issued a Medical Transportation Notice denying Petitioner's request for medical transportation assistance because Petitioner had chosen a provider who is located outside the community when comparable care is available locally. (Exhibit A, pp 9-11; Testimony)
 10. On October 30, 2020, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, pp 6-8; Testimony)

CONCLUSIONS OF LAW

The Medicaid program (MA) was established pursuant to Title XIX of the Social Security Act (SSA) and is implemented by 42 USC 1396 *et seq.*, and Title 42 of the Code of Federal Regulations (42 CFR 430 *et seq.*). The program is administered in accordance with state statute, the Social Welfare Act (MCL 400.1 *et seq.*), various portions of Michigan's Administrative Code (1979 AC, R 400.1101 *et seq.*), and the State Plan promulgated pursuant to Title XIX of the SSA.

Policy addressing non-emergency medical transportation coverage under the State Medicaid Plan is found in the Medicaid Provider Manual. In part, this policy states:

SECTION 1 – INTRODUCTION

This chapter applies to non-emergency medical transportation (NEMT) providers and authorizing parties. The Medicaid NEMT benefit is covered for Medicaid, MIChild, and Healthy Michigan Plan (HMP) beneficiaries, and for Children's Special Health Care Services (CSHCS) beneficiaries who also have Medicaid coverage.

¹ In her request for reimbursement, Petitioner indicated the round-trip distance was 180 miles.

Federal law at 42 CFR 431.53 requires Medicaid to ensure necessary transportation for beneficiaries to and from services that Medicaid covers. The NEMT benefit must be administered to beneficiaries in an equitable and consistent manner.

Beneficiaries are assured free choice in selecting a Medicaid medical provider to render services. A beneficiary's free choice of medical provider selection does not require the Medicaid program to cover transportation beyond the standards of coverage described in this policy in order to meet a beneficiary's personal choice of medical provider.

SECTION 11 – NON-COVERED SERVICES

The following transportation services are not reimbursable:

- Waiting time;
- Trips that were provided prior to approval from the authorizing party;
- Multiple trips for a single Medicaid service;
- When a beneficiary failed to keep their appointment;
- Trips to and from services that are not covered (e.g., grocery store, non-Medicaid covered medical services);
- Routine medical care outside a beneficiary's community when comparable care is available locally, unless prior authorized;
- Transportation to and from services for individuals who have not met their spend-down;
- Expenses for services that have already occurred;
- Services for long-term care beneficiaries. Routine, non-emergency medical transportation provided for long-term care residents in a van or other non-emergency vehicle is included in the facility's per diem rate. This includes transportation for medical appointments, dialysis, therapies, or other treatments not available in the facility. (Refer to the Nursing Facility Coverages chapter of this manual for additional information regarding NEMT for long-term care beneficiaries);

- Transportation for managed care program enrollees for services covered under the program contract (refer to the Managed Care Programs section of this chapter for additional information); and
- Transportation for services provided in FQHCs.

*Medicaid Provider Manual (MPM)
Non-Emergency Medical Transportation Chapter,
July 1, 2020, pp 1; 18-19*

The Department's witness testified that on October 8, 2020, Petitioner submitted a mileage reimbursement request for trips to a urologist in Muskegon, Michigan on August 17, 2020 and September 25, 2020. The Department's witness indicated that the urologist's office in Muskegon, Michigan is 82 miles from Petitioner's home in Manistee, Michigan (164 miles round trip), while there is a urologist's office in Manistee, Michigan that is three miles from Petitioner's home. The Department's witness further indicated that there are urologists in Ludington, Michigan and Traverse City, Michigan, which are both closer to Petitioner than Muskegon, Michigan. The Department's witness testified that Petitioner was notified back in March 2020 that she would no longer be reimbursed for mileage to travel to the urologist in Muskegon, Michigan because comparable care was available locally. The Department's witness further indicated that Petitioner recently appealed another mileage reimbursement denial for the same reason she was denied in this case and the administrative law judge upheld the Department's denial. The Department's witness testified that based on this information, on October 8, 2020, she issued a Medical Transportation Notice denying Petitioner's request for medical transportation assistance because Petitioner had chosen a provider who is located outside the community when comparable care is available locally.

Petitioner testified that she has been having medical issues requiring a urologist for many years. Petitioner indicated that her primary care physician was trying to treat her for these issues, but they were beyond his scope of practice, so he referred her to the urologist in Muskegon. Petitioner testified that she had previously seen the urologist in Muskegon so had a long history with him. Petitioner read into the record a letter from her primary care physician which indicates that he prefers that Petitioner see the urologist in Muskegon because she has a long history with him.

Petitioner indicated that when she was notified in March 2020 that she would no longer be reimbursed for mileage to see the urologist in Muskegon, she contacted the local urologist's office and was told that they did not have a urologist on staff. Petitioner testified that when she contacted the local urologist's office in September 2020, she was told that she could not get in to see the urologist until December 2020 or January 2021. Petitioner testified that the problem in the local area is that urologists do not stay so she cannot establish a long-term relationship and must start from scratch with each physician. Petitioner also testified that while she understands that Department policy needs to be followed, her PCP's referral should carry more weight. Petitioner indicated that Traverse City is only about 20 miles closer than Muskegon.

Based on the evidence presented, the Department's denial of Petitioner's request for medical transportation was in accordance with the above cited policy. Petitioner traveled 82 miles one way, or 164 miles roundtrip to see a urologist when there is a urologist who accepts Medicaid patients three miles from her home. Additionally, there are urologists who accept Medicaid in Ludington and Traverse City, which are both closer to Petitioner than Muskegon. And, while it is possible that there was no urologist at the local practice in March 2020 when Petitioner contacted the practice, Petitioner admits that there was a urologist at the practice in July 2020 and Petitioner is seeking reimbursement for mileage costs for urologist visits in August and September 2020. As indicated, Petitioner was aware that the Department would not reimburse her for mileage to see the urologist in Muskegon back in March 2020. As such, Petitioner should have taken steps sooner to locate a urologist closer to her home. The Department and this ALJ are bound by Department policy and have no authority to grant any exceptions. Based on the evidence presented, the Department's determination to deny Petitioner's request for medical transportation must be upheld because it was within policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly denied Petitioner's request for medical transportation to a medical provider outside the community.

IT IS, THEREFORE, ORDERED that:

The Department's decision is **AFFIRMED**.



RM/sb

Robert J. Meade
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS Department Rep.

M. Carrier
Appeals Section
PO Box 30807
Lansing, MI
48933
MDHHS-Appeals@michigan.gov

Agency Representative

Allison Pool
222 N Washington Square
Suite 100
Lansing , MI
48933
MDHHS-Appeals@michigan.gov

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI
[REDACTED]