



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: August 31, 2023
MOAHR Docket No.: 23-002925
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the Michigan Office of Administrative Hearings and Rules (MOAHR) and the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and upon the Petitioner's request for a hearing.

After due notice, a telephone prehearing conference was held on June 7, 2023. Petitioner [REDACTED] (Petitioner) appeared on her own behalf. Janice Balog, Paralegal, represented Respondent UnitedHealthcare Community Plan (Respondent), Petitioner's Medicaid Health Plan (MHP).

During the prehearing conference, the parties and undersigned ALJ discussed the issue in dispute and whether Petitioner had exhausted Respondent's internal appeal process as required prior to requesting a State fair hearing, with the undersigned ALJ declining to make a ruling on the record.

On June 12, 2023, the undersigned ALJ issued an order finding that, while many of Petitioner's claims were outside of his jurisdiction, he has jurisdiction over Petitioner's claim that Respondent improperly denied Petitioner's requests for NEMT by limiting Petitioner to gas mileage reimbursement only, and that the matter should proceed to hearing on that dispute. The order also notified the parties of a deadline for submitting proposed exhibits and of a telephone hearing scheduled for July 6, 2023.

On July 6, 2023, the parties and ALJ discussed preliminary issues prior to the hearing commencing, and it was determined that Petitioner had failed to comply with the portion of the June 12, 2023, order regarding the submission of proposed exhibits. Petitioner then requested an adjournment, which the undersigned ALJ granted given that Respondent did not object to an adjournment and Petitioner was representing herself.

The parties and ALJ also discussed some subpoena requests from Petitioner that had been denied twice by the ALJ, with Respondent agreeing to produce two of the proposed witnesses without a subpoena and the ALJ indicating that Petitioner could resubmit subpoena request for the remaining witnesses.

With due notice, the telephone hearing was rescheduled for August 10, 2023.

Prior to the hearing date, Petitioner submitted multiple subpoena requests, with the undersigned Administrative Law Judge granting some and denying others. One of the subpoenas that was issued was also subsequently quashed due to defective service.

On August 10, 2023, the telephone hearing was held as scheduled. Petitioner appeared on her own behalf. Chelsea Vincent, Paralegal, represented Respondent.

During the hearing, the following witnesses testified:

[REDACTED] Petitioner's son
[REDACTED] District Liaison for Senator [REDACTED]
[REDACTED] Human Resources Manager, Area Wide Transport
[REDACTED] Operations Manager, Area Wide Transport
[REDACTED] Accounting Manager, Area Wide Transport
[REDACTED] Owner, Area Wide Transport
[REDACTED] Senior Director of Transportation, Modivcare
[REDACTED] Service Account Manager, Respondent
[REDACTED] Petitioner
[REDACTED] Chief Operating Officer, Respondent

The following exhibits were also entered into the record without objection:

Exhibit #1: Petitioner's Evidence Packet, pages 1-227

Exhibit A: Respondent's Updated Evidence Packet, pages 1-48

ISSUE

Did Respondent properly limit Petitioner's non-emergency medical transportation (NEMT) to gas mileage reimbursement only?

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 enrolled with Respondent. (Exhibit A, page 2).
2. She is also enrolled in Respondent's Medicare Plan. (Exhibit #1, page 97).
3. Petitioner has significant medical needs, and she requires NEMT to see her medical providers and obtain prescriptions as she cannot drive herself, has no one to drive her, and cannot use public transportation. (Exhibit #1, pages 45-46; Testimony of Petitioner).
4. As part of her transportation needs, Petitioner must have a wheelchair-accessible vehicle. (Exhibit A, page 37).
5. She has also reported a need for a female driver. (Exhibit A, page 30; Testimony of Petitioner).
6. Respondent provides NEMT to its beneficiaries through Modivcare, a transit broker who in turns contracts with vendors who provide the actual services. (Exhibit A, page 2; Testimony of Senior Director of Transportation).
7. According to Modivcare's Senior Director of Transportation, it has eight (8) vendors in its network of providers that can meet Petitioner's transportation needs. (Testimony of Senior Director of Transportation).
8. Near the beginning of her enrollment with Respondent, Petitioner and four of those vendors (Stargazer, OCATS, Alcona County Commission on Aging, and Wilroy) had issues and Petitioner excluded them as providers due to their actions; the vendors excluded her as a client due to her behaviors; or both. (Exhibit A, pages 30-36, 40; Testimony of Petitioner; Testimony of Senior Director of Transportation).
9. Petitioner was able to receive NEMT through Area Wide Transport, a vendor who was not within Modivcare's contracted network of providers. (Testimony of Petitioner; Testimony of Owner of Area Wide Transport; Testimony of Senior Director of Transportation).

10. On February 23, 2022, Respondent sent Petitioner written notice that, whenever possible, she would be assigned to Area Wide Transport as her transportation vendor. (Exhibit A, page 24).
11. The vast majority of her NEMT in 2022 were then scheduled with Area Wide Transport. (Exhibit A, page 22; Testimony of Petitioner).
12. In April of 2022, Respondent assigned a Case Manager/Navigator to Petitioner to assist her with her NEMT, while also indicating at that time that Petitioner could continue to choose her preferred vendor, *i.e.*, Area Wide Transport, when it was available, though she must continue to work through Modivcare. (Exhibit A, page 48).
13. In November of 2022, Petitioner received a new Care Navigator. (Exhibit A, page 46).
14. On January 18, 2023, ModivCare discontinued its arrangement with Area Wide Transport via a telephone call and, effective that day, Area Wide Transport could no longer provide Petitioner with NEMT. (Testimony of Owner of Area Wide Transport; Testimony of Senior Director of Transportation).
15. According to the testimony of Respondent's Chief Operating Officer and Modivcare's Senior Director of Transportation, while there were no outstanding issues or problems with Area Wide Transport's provision of services, Modivcare had to discontinue its transportation of Petitioner due to Medicaid provider requirements. (Testimony of Senior Director of Transportation; Testimony of Respondent's Chief Operating Officer).
16. However, according to Respondent's documentation, Area Wide Transport was terminated from transporting Petitioner because it was improperly taking reservations directly from her; being untruthful about trips to pharmacies; aiding Petitioner with non-covered grocery trips; and asking to be removed from required audit checks. (Exhibit A, page 42).
17. Following that termination, Petitioner was again scheduled for NEMT with OCATS, a vendor Petitioner had already excluded; there was subsequent issues with services; and OCATS reported that it would not transport Petitioner going forward. (Exhibit A, pages 32-33).
18. On February 14, 2023, Respondent sent Petitioner written notice that, going forward, she would be responsible for finding someone to transport her for NEMT and limited to mileage reimbursement. (Exhibit #1, page 23; Exhibit A, page 47).

19. Specifically, the letter stated in part:

As you are aware, all of ModivCare's vendors are unwilling to transport you based on their previous experiences with you. Because there are no available ModivCare vendors in your area, you may find someone to transport you and submit a request for mileage reimbursement.

Exhibit #1 page 23
Exhibit A, page 47

20. Respondent did not provide Petitioner with written notice of her right to appeal that decision. (Exhibit A, page 47).
21. Petitioner has not utilized NEMT since that time due to her inability to drive herself or locate a driver that can meet her needs on her own. (Testimony of Petitioner; Testimony of Service Account Manager).
22. She did send in written letters disputing the decision to limit her to gas mileage reimbursement only and identifying medical appointments she has missed due to a lack of transportation. (Exhibit A, pages 22, 63, 66-67, 70-72, 75)
23. Respondent treated Petitioner's responses as grievances (Exhibit A, pages 36-37, 59, 62, 66-67, 70-72, 75).
24. In one of its grievance responses, Respondent also stated:

We forwarded your concerns to ModivCare for internal review. ModivCare has reviewed your account. They have confirmed that you have an extensive list of requirements for your transportation services. They are able to validate that there are three ModivCare vendors in your service area. These vendors meet all your requirements. Regrettably, they have refused to transport you, based on your previous behaviors during past rides. Due to this issue, ModivCare have contacted the state of Michigan, as they unable to provide you with the appropriate transport service. The state indicate, you still have your transportation benefit as gas reimbursement available to you. They advised ModivCare to notify you, and they did in writing. ModivCare extend their most sincere apology for your member

experience.

In regard to Area Wide, in February of 2022, Modivcare confirmed they would assign them if they were available to transport you. Even though they are not on your provider's network. However, through the course of the plan year, ModivCare learned that Area Wide was not adhering to your transportation requirements. It was confirmed they were not working through ModivCare and were just taking calls directly from you for transportation services not covered by your plan. It was confirmed that the transportation vendor allowed you to shop and wait several time [sic] for you. Unfortunately this service is not covered by your transportation benefits. After multiple warnings, ModivCare informed Area Wide they would no longer reimburse them for transporting you since they refuse to work with them and follow the appropriate protocols.

Please allow us to express our sincerest regrets. We apologize for any inconvenience this issue may have caused you. We urge you to take an active role in managing your health care.

Exhibit #1, pages 36-37

25. On June 1, 2023, the MOAHR received the request for hearing filed by Petitioner in this matter.

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.

In 1997, the Department received approval from the Health Care Financing Administration, U.S. Department of Health and Human Services, allowing Michigan to restrict Medicaid beneficiaries' choice to obtain medical services only from specified Medicaid Health Plans.

The Respondent is one of those MHPs and, as provided in the Medicaid Provider

Manual (MPM) in effect at the time of the services at issue in this case, is responsible for providing covered services pursuant to its contract with the Department:

The Michigan Department of Health and Human Services (MDHHS) contracts with Medicaid Health Plans (MHPs), selected through a competitive bid process, to provide services to Medicaid beneficiaries. The selection process is described in a Request for Proposal (RFP) released by the Office of Purchasing, Michigan Department of Technology, Management & Budget. The MHP contract, referred to in this chapter as the Contract, specifies the beneficiaries to be served, scope of the benefits, and contract provisions with which the MHP must comply. Nothing in this chapter should be construed as requiring MHPs to cover services that are not included in the Contract. A copy of the MHP contract is available on the MDHHS website. (Refer to the Directory Appendix for website information.)

MHPs must operate consistently with all applicable published Medicaid coverage and limitation policies. (Refer to the General Information for Providers and the Beneficiary Eligibility chapters of this manual for additional information.) Although MHPs must provide the full range of covered services listed below, MHPs may also choose to provide services over and above those specified. MHPs are allowed to develop prior authorization requirements and utilization management and review criteria that differ from Medicaid requirements. The following subsections describe covered services, excluded services, and prohibited services as set forth in the Contract.

1.1 SERVICES COVERED BY MEDICAID HEALTH PLANS (MHPS)

The following services must be covered by MHPs:

* * *

- Medically necessary transportation for enrollees without other transportation options

* * *

- Transportation for medically necessary covered services

MPM, January 1, 2023 version

Medicaid Health Plan Chapter, page 1

Moreover, with respect to the covered transportation, the MPM further states in part:

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.

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.

Forms referenced in this chapter are accessed via the beneficiary’s case worker and are maintained on MI Bridges.

* * *

SECTION 2 – COMMON TERMS

Authorizing Party	An affiliated entity of the Medicaid program (e.g., local MDHHS office or Medicaid-contracted transportation broker) responsible for verifying Medicaid eligibility, maintaining a network of transportation subcontractors, and scheduling the least-costly mode of appropriate transportation to medical appointments/services.
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* * *

SECTION 3 – TRANSPORTATION AUTHORIZATION

Medicaid authorizes fee-for-service (FFS) NEMT services via local MDHHS offices, except in Wayne, Oakland, and Macomb counties. FFS transportation services in Wayne, Oakland, and Macomb counties are administered through a contracted transportation broker. (Refer to the Directory Appendix for transportation broker information.)

The Medicaid program contracts with Medicaid Health Plans (MHPs) and Integrated Care Organizations (ICOs), selected through a competitive bid process, to provide services to Medicaid beneficiaries. MHPs and ICOs are responsible for providing NEMT services to their enrollees for all services covered under the managed care contract. (For additional information, refer to the Medicaid Health Plans and MI Health Link chapters of this manual.)

* * *

SECTION 5 – COVERED SERVICES

NEMT expenses, regardless of whether there is a corresponding medical claim on the date of service, may be covered for trips to and from:

- Treatment Medicaid covers (one-time or ongoing);
- Ancillary service providers (e.g., pharmacies, durable medical equipment, prosthetics, orthotics, and supplies [DMEPOS] providers) to obtain a service or item Medicaid covers;
- Medical care, treatment or services that have been prior authorized;
- Appointments to obtain medical evidence (for eligibility verification purposes only); and
- Facilities providing services Medicaid covers that do not charge for care.

Transportation from a service Medicaid covers is only covered when it is from the provider's location to the beneficiary's residence or to another service Medicaid covers. The least costly mode of transportation appropriate for the beneficiary's medical needs must be used. Medicaid authorizes and reimburses transportation providers directly for the following NEMT services:

- Long-term lodging for approved transplant hospitals.
- Transportation to and from pregnancy-related services for Medicaid beneficiaries enrolled in the Maternity Outpatient Medical Services (MOMS) program.
- Transportation to and from day treatment provided by a Community Mental Health Services Program (CMHSP) (as part of its treatment package) for children enrolled in the Children's Waiver Program (CWP).

Transportation providers and beneficiaries may be reimbursed for mileage, tolls, parking fees, approved meals and lodging expenses, Medi-Van and wheelchair lift equipped transportation, and medically necessary attendants. The transportation provider or beneficiary must submit a complete MSA-4674 (Medical Transportation Statement) for all trip-associated costs to the authorizing party to receive reimbursement. Medicaid FFS authorizing parties may accept the submission of a complete MSA-4674 form and receipts via fax and secure email. Transportation providers and beneficiaries may submit original forms and receipts if they choose, but sending original forms and receipts is not required for reimbursement. Providers and beneficiaries are encouraged to keep an original or copy of forms and receipts submitted to MDHHS for reimbursement.

NEMT reimbursement must reflect the total incurred cost to the transportation provider(s) and to the beneficiary, and must be verified with itemized, unaltered receipts. All receipts must be legible and included with the MSA-4674. Transportation providers must be enrolled in CHAMPS on the date of service to receive Medicaid NEMT reimbursement unless the provider is exempt from enrollment.

In order to assure appropriate reimbursement for NEMT, MDHHS maintains a database of provider rates which is available on the MDHHS website. The database is reviewed and updated as applicable. (Refer to the Directory Appendix for website information.) NEMT providers must bill MDHHS the usual and customary fee charged to the public. Customary charge means the amount the provider charges another third party payer or the general public (except in cases where the general public receives free or reduced charges) for the same or a similar service. This definition does not include negotiated or contracted payment rates. If the provider renders a covered service to a beneficiary that the provider offers for free or for a reduced fee to the general public, the provider may only bill Medicaid up to that customary charge as long as all other Medicaid requirements are met.

5.1 MILEAGE

The Medicaid program covers the least-costly available mode of transportation suitable to the beneficiary's medical condition. The following modes of transportation are commonly utilized:

- Commercial and nonprofit transportation
- Fixed route, demand response and deviated route public transportation
- Volunteer drivers
- Individuals with a vested interest
- Beneficiaries providing their own NEMT in their personal vehicle

Volunteer drivers will not be reimbursed for driving a vehicle owned by the beneficiary or a member of the beneficiary's family.

When available, medical providers or entities that offer transportation or medical delivery services at no charge (e.g., prescription delivery services offered by the beneficiary's pharmacy) should be utilized.

Mileage is reimbursed according to transportation provider type at the appropriate rate as indicated on the MDHHS NEMT Database. Total round-trip mileage must be rounded up to the nearest mile and must be verifiable using an online mapping service or a Global Positioning System device.

* * *

5.5 SPECIAL ALLOWANCES

Special allowances (i.e., wheelchair lift-equipped or Medi-Van vehicles, or medically necessary attendants) are reimbursed at the rate listed on the MDHHS NEMT Database. The beneficiary's physician must document the medical necessity of all special allowances on the DHS-5330.

* * *

SECTION 6 – MANAGED CARE PROGRAMS

The Medicaid program contracts with Medicaid Health Plans (MHPs) and Integrated Care Organizations (ICOs), selected through a competitive bid process, to provide services to beneficiaries. These entities are responsible for providing NEMT services to their enrollees for all services covered under their contract. (For additional information, refer to the Medicaid Health Plans and the MI Health Link chapters of this manual.)

For services provided to managed care enrollees in an FQHC, the MHP covers NEMT when:

- the service is covered under the MHP contract and the FQHC is in the MHP's provider network; or
- the MHP has prior authorized the FQHC for the service.

MHPs and ICOs may have different prior authorization and documentation requirements from those described in this chapter. Providers, beneficiaries or authorizing parties should contact the specific MHP or ICO for further information regarding NEMT for their beneficiary. Transportation services for these enrollees may vary depending on the beneficiary's benefit plan. For additional

information regarding benefit plans, refer to the Beneficiary Eligibility chapter of this manual.

*MPM, January 1, 2023 version
NEMT Chapter, pages 1-2, 4, 9-11, 13*

Here, as discussed above, the undersigned ALJ issued an order on June 12, 2023, finding that, while many of Petitioner's claims were outside of his jurisdiction, he has jurisdiction over Petitioner's claim that Respondent improperly denied Petitioner's requests for NEMT by limiting Petitioner to gas mileage reimbursement only, and that the matter should proceed to hearing on that dispute.

Regarding that issue, the undersigned ALJ also now finds that the limitation of NEMT to gas mileage reimbursement would not meet Petitioner's medical needs as it is undisputed in this case that Petitioner cannot drive herself and has no one to drive her. The Medicaid program only covers the least-costly available mode of transportation suitable to a beneficiary's medical condition, but Respondent never determined that gas mileage reimbursement is suitable for Petitioner prior to making its decision and it clearly is not, with Petitioner unable to utilize any NEMT since Respondent's action.

While the limited authorization at issue does not meet Petitioner's medical needs, Respondent's decision could still be proper if, as asserted by Respondent, Petitioner's own behaviors have prevented the medically necessary services from being provided through Respondent's transportation broker's adequate network of providers.

In appealing that decision, Petitioner has the burden of proving by a preponderance of the evidence that Respondent erred. Moreover, the undersigned ALJ is limited to reviewing Respondent's decision in light of the information that was available at the time the decision was made.

Given the record in this case, Petitioner has met that burden of proof and Respondent's decision must therefore be reversed.

Respondent asserts that the limitation on, and effective denial of, medically necessary NEMT was proper based on the fact that none of Modivcare's vendors were willing to transport Petitioner based on their previous experiences with her, while the previous arrangement in place with Area Wide Transport, an out-of-network noncontracted vendor, was appropriately terminated.

However, the record fails to support such a conclusion. For example, while Respondent's notice stated that "all" of Modivcare's vendors were unwilling to transport Petitioner, Modivcare's Senior Director of Transportation testified that Modivcare has eight (8) vendors able to provide services within its contracted network while even assuming their reasons were valid, Respondent's documentation only identified four (4) vendors unwilling to transport Petitioner. Moreover, while the Senior Director went on to testify that the remaining vendors verbally excluded Petitioner, despite never dealing

with her, based on conversations they had with Petitioner, that testimony is completely unsupported; Respondent's documentation was expressly limited to the identified four vendors; and Petitioner credibly testified both that she has never been excluded by other vendors as far as she knows and that she is willing to work with other vendors, so long as they can meet her needs.

Similarly, the testimony presented at the hearing likewise expressly contradicts Respondent's documentation regarding the termination of the arrangement with Area Wide Transport, the out-of-network vendor that had been successfully providing Petitioner's NEMT. Specifically, Respondent's Chief Operating Officer and Modivcare's Senior Director both testified that Medicaid provider requirements necessitated ending Area Wide Transport's services to Petitioner, with the Senior Director also expressly testifying that there were no issues with Area Wide Transport's performance, while Respondent's documentation, including its response to Petitioner's appeal in this case, asserted that Area Wide Transport was terminated from transporting Petitioner because it was improperly taking reservations directly from her; being untruthful about trips to pharmacies; aiding Petitioner with non-covered grocery trips; and asking to be removed from required audit checks.

Accordingly, given the undisputed medically necessary services and the complete disconnect between Respondent's witnesses' testimony and Respondent's documentation, a conflict which establishes that Respondent erred, the undersigned ALJ finds that Respondent erred in limiting Petitioner's NEMT to gas mileage reimbursement only and its decision to do so must be reversed.

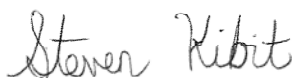
To be clear, the undersigned ALJ is not ordering that Respondent and ModivCare to re-enter the previous arrangement with Area Wide Transport as that is beyond the scope of this case and there do appear to be concerns regarding whether the past arrangement complied with Medicaid guidelines. He is, however, ordering that Respondent reassess Petitioner's NEMT services given its past error.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent improperly limited Petitioner's NEMT to gas mileage reimbursement only.

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **REVERSED**, and it must initiate a reassessment of Petitioner's NEMT services.



Steven Kibit
Administrative Law Judge

SK/sj

NOTICE OF APPEAL: Petitioner 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

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, to their last-known addresses in the manner specified below, this 31st day of August 2023.

S. James

S. James

**Michigan Office of Administrative
Hearings and Rules**

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