



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

Date Mailed: October 24, 2024
MOAHR Docket No.: 24-009789
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on October 16, 2024. Petitioner appeared and testified on his own behalf. John Lambert, Appeals Review Officer, represented the Respondent Michigan Department of Health and Human Services (MDHHS or Department). Tyler Larson, Community Resources Director, testified as a witness for the Department.

During the hearing, Petitioner submitted a copy of Medical Services Administration (MSA) Bulletin 03-02 that was admitted into the record as Exhibit #1, pages 1-19. The Department also submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-27.

ISSUE

Did the Department properly deny Petitioner's request for non-emergency medical transportation (NEMT)?

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 a Medicaid beneficiary and lives in [REDACTED] Michigan, which is in [REDACTED] County. (Exhibit A, pages 9, 13).
2. He is also eligible for NEMT through the Department, with his NEMT processed through the [REDACTED] County Department of Health and Human Services office. (Exhibit A, pages 9, 13; Testimony of Community Resources Director).

3. In July of 2024, Petitioner requested, via telephone, NEMT for a medical appointment at Upper Great Lakes Family Health Center on [REDACTED] 2024. (Testimony of Petitioner; Testimony of Community Resources Director).
4. Upper Great Lakes Family Health Center is a Federally Qualified Health Center (FQHC). (Exhibit A, pages 16-17; Testimony of Community Resources Director).
5. The Department's Community Resources Director then advised Petitioner that his request for NEMT was denied because a FQHC is responsible for non-emergency transportation to and from the FQHC. (Exhibit A, page 13; Testimony of Petitioner; Testimony of Community Resources Director).
6. The Community Resources Director did agree to drive Petitioner himself and did so for the subsequent appointment. (Exhibit A, page 13; Testimony of Petitioner; Testimony of Community Resources Director).
7. On or about August 12, 2024, Petitioner requested, via telephone, NEMT through the Department for a scheduled medical appointment on [REDACTED] [REDACTED] 2024 at Upper Great Lakes Family Health Center. (Exhibit A, page 13; Testimony of Petitioner; Testimony of Community Resources Director).
8. The Department's Community Resources Director then advised Petitioner that his request for NEMT was denied because a FQHC is responsible for non-emergency transportation to and from the FQHC. (Exhibit A, page 11; Testimony of Petitioner; Testimony of Community Resources Director).
9. The Community Resources Director also indicated that he was unavailable to drive Petitioner himself for this appointment. (Exhibit A, page 11; Testimony of Petitioner; Testimony of Community Resources Director).
10. On September 3, 2024, MOAHR received the request for hearing filed in this matter by Petitioner regarding the denial of his request for NEMT for August 16, 2024. (Exhibit A, pages 8-12).

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.

With respect to NEMT through Medicaid, the applicable version of the Medicaid Provider Manual (MPM), *i.e.*, the one in place at the time of the request and denial at issue in this case, provides 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 12 – NON-COVERED SERVICES [RE-NUMBERED 4/1/24]

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);
- *Transportation for services provided in FQHCs;*
- Transportation for Emergency Services Only beneficiaries;
- Transportation for Plan First beneficiaries;
- Transportation for Emergency Services Only beneficiaries.

*MPM, July 1, 2024 version
NEMT Chapter, pages 1, 21
(italics added for emphasis)*

Moreover, with the respect to FQHCs and transportation, the MPM similarly provides:

SECTION 1 – GENERAL INFORMATION

This chapter applies to Federally Qualified Health Centers (FQHCs), designated FQHC look-alikes, and Tribal Health Centers (THCs) electing to be reimbursed as an FQHC. Subsequent references to FQHCs in this chapter are applicable to all three entities. This chapter provides policy and reimbursement information specific to FQHCs and is to be used in combination with other chapters in this manual.

Section 330 of the Public Health Service Act establishes guidelines for health centers applying for grant funding under the Health Centers Consolidation Act of 1996 (Public Law 104-299). This act combined four federal health center grant programs under one authority (community, migrant, homeless and public housing). Health centers applying for, and meeting the criteria for, grant funding under Section 330 are eligible to be recognized as FQHCs by Centers for Medicare & Medicaid Services (CMS) for reimbursement purposes. Once FQHC status is designated by CMS and notification of that status is provided to the Michigan Department of Health and Human Services (MDHHS), an FQHC is eligible to enroll with Medicaid as an FQHC provider in the State of Michigan.

Section 702 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 makes provision for the reimbursement of FQHCs under a prospective payment system (PPS). Section 702 of BIPA created a new section 1902(bb) in the Social Security Act. This PPS applies to the ambulatory/outpatient medical services that FQHCs are required, under federal regulation, to provide to Medicaid beneficiaries.

States may elect to reimburse FQHCs under the PPS methodology outlined in the Act or they may choose to implement an alternative payment methodology, referred to as the Memorandum of Understanding (MOU). The MOU must be agreed to by both the state and the FQHC. If an alternative payment methodology is implemented, it must result in payment at least equal to that which an FQHC would receive under the PPS. Refer to the Alternative Payment Methodology subsection of this chapter for additional information.

* * *

SECTION 2 – BENEFITS

FQHC services subject to PPS reimbursement are FQHC services defined at Section 1861 (aa)(3)(A)-(B) of the Social Security Act.

2.1 PRIMARY CARE SERVICES

Primary care services are defined as:

- Those required under Section 330 of the Public Health Service Act.
- Medicaid-covered services provided in a place of service that is the FQHC's office or clinic, patient's home, Domiciliary Facility Nursing Home, Nursing Facility (NF), or Skilled Nursing Facility(SNF) by a provider type physician, medical clinic, podiatrist, dentist, CNP or CNM.
- Visits by a clinical psychologist or clinical social worker at the FQHC's office or clinic, patient's home, Domiciliary Facility Nursing Home, Nursing Facility, or Skilled Nursing Facility.
- Other ambulatory services, i.e., Medicaid transportation, Medicaid outreach, and Maternal Infant Health Program (MIHP) services.

2.2 TRANSPORTATION/OUTREACH

The cost of outreach and non-emergency transportation is part of an FQHC's encounter rate. These services are not cost settled.

The FQHC provides non-emergency transportation to and from the FQHC for Medicaid covered services provided to Medicaid Fee-for-Service beneficiaries. For Medicaid managed care enrollees, the FQHC may provide transportation in certain circumstances. Refer to the Managed Care Programs section of the Non-Emergency Medical Transportation chapter for additional information.

*MPM, July 1, 2024 version
FQHC and Tribal Health Centers Chapter, pages 1, 4
(italics added for emphasis)*

Here, the Department denied Petitioner's request for NEMT pursuant to the above policies and on the basis that non-emergency medical transportation to a FQHC is to be provided through the FQHC, and not the Department directly.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred.

Given the record in this case, Petitioner has failed to meet his burden of proof and Respondent's decision must therefore be affirmed.

As clearly provided in the above policies, non-emergency medical transportation to a FQHC is to be provided by the FQHC; and it is undisputed in this case that Petitioner improperly seeks NEMT to and from a FQHC directly through the Department. Accordingly, his request must be denied.

In response to that clear policy, Petitioner points to language in MSA Bulletin 03-20 providing that transportation to and from a FQHC is covered by the Department (Exhibit #1, page 7). However, while MSA Bulletin 03-20 was effective as of January 1, 2004 (Exhibit #1, page 1), it is no longer the applicable policy twenty years later, and as discussed above, the current, applicable policies expressly provide that non-emergency medical transportation to and from a FQHC is the responsibility of the FQHC. Moreover, while Petitioner testified that he was provided with MSA Bulletin 03-20 by Disability Rights of Michigan and was advised by that organization that the bulletin is still the applicable policy, any such advice is simply wrong.¹

Petitioner also testified, and the Department's witness agreed, that the Department's witness previously transported Petitioner to an appointment at the FQHC. However, whatever the Department's witness chose to do on his own previously is irrelevant and the record reflects that the Department has, pursuant to the applicable policies, denied Petitioner request in this case. That would even be the finding if, as suggested by Petitioner, the Department's witness lied to Petitioner about his availability to drive Petitioner a second time as any falsehood would not change the applicable policy or require that the Department approved NEMT to a FQHC.

Accordingly, whatever transportation or relief may be available to Petitioner elsewhere, such as non-emergency medical transportation through the FQHC as it is required to provide, the decision at issue in this case was correct given the applicable policies.

¹ Given the clear policy, the undersigned Administrative Law Judge denied Petitioner's request to continue the hearing so that he could provide what he had received from Disability Rights of Michigan and/or have someone from that organization subpoenaed to testify.

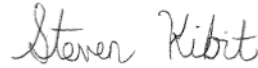
DECISION AND ORDER

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 NEMT.

IT IS, THEREFORE, ORDERED that:

- The Department's actions are **AFFIRMED**.

SK/sj



Steven Kibit
Administrative Law Judge

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, to their last known addresses in the manner specified below, this 24th day of October 2024.

S. James

S. James

**Michigan Office of Administrative
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Via Electronic Mail:

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Petitioner

[REDACTED]
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