

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED] MI [REDACTED]

Date Mailed: July 9, 2021
MOAHR Docket No.: 21-002791
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

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 July 7, 2021. Petitioner appeared on his own behalf. Leigha Burghoff, Appeals Review Officer, represented the Respondent, the Michigan Department of Health and Human Services (Department). Eric Neilson, Section Manager Program Review Division, and Dr. David Wartinger, Medical Consultant, appeared as witnesses for the Department.

Exhibits:

Petitioner	<ol style="list-style-type: none">1. Miscellaneous Medical Records2. Medical Literature3. Medical Literature4. Medical Literature5. Medical Literature6. Medical Literature7. Empty Nose Syndrome Things to Know8. Medical Literature9. Medical Literature10. Research Consent Form11. Letter dated March 5, 2019
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12. Medicare.gov claim detail summary

Department A. Hearing Summary

ISSUE

Did the Department properly deny Petitioner's request for non-emergency medical transportation reimbursement for food and lodging?

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 eligible for Non-Emergency Medical Transportation (NEMT) through the Department. (Exhibit A, p 2; Testimony)
2. On June 3, 2021, Petitioner requested from Macomb County Department of Health of Human Services, reimbursement for non-emergency transportation costs for lodging and meals while receiving treatment for empty nose syndrome in Columbus, Ohio. Petitioner's treatment in Columbus, Ohio was for an experimental therapy involving the injection of platelet rich plasma and composite fat transplant. (Exhibit A, pp 10, 16; Testimony.)
3. The Food and Drug Administration (FDA) has approved platelet rich plasma injections for the treatment of poor wound healing after burns but not for the treatment of empty nose syndrome. (Exhibit A, p 16; Testimony.)
4. On June 4, 2021, the Department sent Petitioner a Notification of Denial. The notice stated in part:

Based on the information reviewed, your request for transportation, meals, and lodging for care and treatment in Columbus, Ohio has been denied by Medicaid. The proposed treatment in Columbus, Ohio is experimental and cannot be covered by Medicaid. Non-emergency medical transportation (NEMT) expenses can only be covered for trips to and from treatment Medicaid covers. (Exhibit A, p 10.)

5. On or around June 15, 2021, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Exhibit A, p 9.)

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 (MPM). 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.

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 3 - TRANSPORTATION AUTHORIZATION [CHANGES MADE 4/1/21]

* * *

The beneficiary's need for NEMT must be evaluated before services are authorized. This includes assessing all of the following:

- The beneficiary's eligibility;
- The transportation requested is for a service Medicaid covers; and
- The beneficiary has no other means of transportation available. Availability is not dependent on whether

the beneficiary previously provided their own transportation.

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.¹

8.3 NONCOVERED SERVICES

The items or services below are not covered by the Medicaid program:

- Acupuncture
- ...
- Experimental/investigational drugs, biological agents, procedures, devices or equipment²

1.8 PHYSICIAN RESPONSIBILITY

Determination of medical necessity and appropriateness of services is the responsibility of the physician **within the scope of currently accepted medical practice and Medicaid limitations.**³

Dr. Wartinger, testified Petitioner's request was denied on the basis that the treatment being sought in Columbus, Ohio was experimental and as a result a non-Medicaid covered service. Consequently, the Department had no choice but to deny the related non-emergency transportation reimbursement request.

Petitioner argued the procedure was the only procedure available to treat his condition and that the treating physician indicated the procedure was medically necessary. Petitioner provided several legal citations and argued that this denial amounted to a violation of 42 CFR 440.230(c). Specifically, Petitioner argues the Department is arbitrarily denying his request for services solely because of his diagnosis, type of illness, or condition.

Although Petitioner claims the injections he seeks are the last available treatment, it does not mean the treatment is a Medicaid covered service. The treatment still must be medically necessary and cannot be experimental or investigational. Although it is unclear whether the medical literature Petitioner provided are peer-reviewed studies related to the injections he is seeking, his own treating physician indicates the treatment is experimental.⁴

Based on the evidence presented, the Department's denial of Petitioner's request was in accordance with the above cited policy. The procedure to be performed was not only

¹ MPM, Non-Emergency Medical Transportation, July 1, 2021, p 1, 18-19.

² MPM, General Information for Providers, July 1, 2021, p 23.

³ MPM, Practitioner, July 1, 2021, p 4.

⁴ Exhibit A, p 16.

determined to be experimental by the Department but also by Petitioner's own treating physician. This ALJ can only base his decision on information available to the Department at the time the decision was made. Based on that information, the Department's decision was correct. Therefore, based on the evidence presented, the Department's determination to deny Petitioner's request for non-emergency medical transportation reimbursement for food and lodging 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 non-emergency medical transportation reimbursement for food and lodging

IT IS, THEREFORE, ORDERED that:

The Department's decision is AFFIRMED.

CA/dh

J. Arent
Corey Arent

Administrative Law Judge
for Elizabeth Hertel, 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 -Dept Contact

Gretchen Backer
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PO Box 30479
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Agency Representative

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