[redacted]
[redacted] MI [redacted]

Date Mailed: February 6, 2023
MOAHR Docket No.: 22-006019
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 January 24, 2023. Petitioner appeared and testified on her own behalf. Theresa Root, Appeals Review Officer, represented the Respondent Michigan Department of Health and Human Services (MDHHS or Department). Kayla Campbell, Eligibility Specialist, testified as a witness for the Department.

During the hearing, Petitioner submitted a letter from a medical provider that was admitted into the record as Exhibit #1, page 1. The Department also submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-32. No other proposed exhibits were submitted.

ISSUE

Did the Department properly deny Petitioner's requests for mileage reimbursement 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. (Testimony of Petitioner; Testimony of Eligibility Specialist).

2. She is also eligible for NEMT through the Department, with her NEMT processed through the [redacted] County Department of Health and Human Services office. (Testimony of Petitioner; Testimony of Eligibility Specialist).

3. In 2022, Petitioner was receiving wound care from a doctor located in [redacted] County, but she became dissatisfied with both the quality of her care and its cost. (Testimony of Petitioner).

4. She then tried to locate another doctor locally, but she was unable to find one and she began looking farther away. (Testimony of Petitioner).

5. Eventually, she located a medical provider, the MI Health Dermatology Clinic, that she liked and found suitable. (Testimony of Petitioner).

6. The MI Health Dermatology Clinic is in Saginaw, Michigan, which is in Saginaw County and approximately 67.7 miles away from Petitioner's home. (Exhibit A, pages 19-30).

7. Petitioner was not referred to that new medical provider, she found it on her own, and she never sought prior authorization for NEMT with respect to that provider. (Testimony of Petitioner).

8. On October 13, 2022, Petitioner requested reimbursement for her mileage to a medical appointment at the MI Health Dermatology Clinic on [redacted] 2022. (Exhibit A, pages 19-22).

9. On November 28, 2022, Petitioner requested reimbursement for her mileage to medical appointments at the MI Health Dermatology Clinic on [redacted] 2022, and [redacted] 2022. (Exhibit A, pages 23-30).

10. In reviewing the request, a worker for the Department contacted the MI Health Dermatology Clinic and determined that Petitioner was self-referred. (Testimony of Eligibility Specialist).

11. Workers for the Department also spoke with Petitioner on at least two occasions, with Petitioner indicating at different times that she was switching medical providers for financial reasons and because she did not like the care she was receiving. (Testimony of Eligibility Specialist).

12. A worker further located another local doctor that Petitioner could have sought treatment with, though that doctor worked in the same office as Petitioner's previous provider. (Testimony of Eligibility Specialist).

13. On December 6, 2022, the Department sent Petitioner written notice that her requests for medical transportation had been denied. (Exhibit A, pages 16-18).

14. The reason for the denials was identified as follows: "You have chosen a provider who is located outside the community when comparable care is available locally." (Exhibit A, page 16).

15. On December 14, 2022, MOAHR received the request for hearing filed in this matter regarding the denials of Petitioner's requests for medical transportation reimbursement. (Exhibit A, pages 6-12).

16. After the request for hearing was made, Petitioner provided the Department with a letter from Jennifer Penning, MSN, FNP-BC, NP-C, in which Nurse Practitioner Penning described the history of her treatment of Petitioner and stated in part:

> [Petitioner] is a complex patient with multiple comorbidities that previous local providers were not able to complete. She saw them for 4 months before seeking care here at MI HEALTH Dermatology.

Exhibit #1, page 1

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) 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. The Medical Transportation Statement (MSA-4674) is also available on the Michigan Department of Health and Human Services (MDHHS) website. (Refer to the Directory Appendix for website information.)

* * *

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.)

* * *

Reimbursement for special transportation requires a completed Medical Verification for Transportation (DHS-5330) to serve as documentation of medical need and must be retained in the beneficiary's file. *Special transportation includes medically needing a wheelchair lift-equipped vehicle, Medi-Van vehicle, attendant, prior authorization, and other special circumstances supported by medical documentation. (For prior authorization requirements, refer to the Prior Authorization (PA) section of this chapter.)* Medicaid FFS authorizing parties may accept the submission of a complete DHS-5330 form via fax and secure email. Transportation providers and beneficiaries may submit original forms if they choose, but sending original forms is not required for authorization. Providers and beneficiaries are encouraged to keep an original or copy of forms submitted to MDHHS for reimbursement.

* * *

SECTION 7 – PRIOR AUTHORIZATION (PA)

Transportation may require PA in certain situations. The PA request must be submitted in writing before the service is provided unless an urgent situation exists and the circumstances are documented. Payment authorization will not be given for PA requests submitted more than 30 days after the service is provided. The PA request, along with the DHS-5330, must be submitted to the PRD for review. (Refer to the Directory Appendix for contact information.) Prior authorization may be requested for up to six months for prolonged treatment requiring multiple transports.

Reimbursement for travel expenses related to the following situations requires PA:

- All travel to and from out-of-state/beyond borderland medical providers. (Refer to the Out of State/Beyond Borderland Providers subsection of the General Information for Providers chapter of this manual for additional information.);
- *Transportation reimbursement requests for medical care outside a beneficiary's community when comparable care is available locally;*
- Meals and lodging for overnight stays if the medical facility is within 50 miles of the beneficiary's residence;
- Necessary meals and lodging for overnight stays beyond 14 consecutive nights;
- Requests for advance payment of travel costs; and
- Travel expenses for two or more individuals with a vested interest or medically necessary attendants.

The PA request must include:

- Beneficiary name and Medicaid identification number
- Case number
- Beneficiary address
- Explanation of medical necessity of the services requiring PA
- Travel origin and destination
- Effective travel date(s)
- Diagnosis

- Name and telephone number of the individual requesting PA
- Documentation supporting the request

Based on the documentation submitted, the PA request is either approved, denied, or returned for more information. Authorizing parties are informed of the decision in writing, and a copy of the decision must be retained in the beneficiary's file. The authorizing party must then immediately inform the transportation provider and beneficiary of the approval or denial of the PA request. Approval of a PA does not guarantee beneficiary eligibility or payment. It is the authorizing party's responsibility to verify beneficiary eligibility for the date of service prior to NEMT services being rendered.

* * *

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.

MPM, October 1, 2022 version
NEMT Chapter, pages 1, 4, 14-15, 19
(Italics added for emphasis)

Here, the Department denied Petitioner's requests for mileage reimbursement for NEMT pursuant to the above policies and on the basis that reimbursement is not covered for transportation for routine medical care outside of a beneficiary's community when comparable care is available locally, unless prior authorized; the medical care Petitioner received was routine and available locally; and there was no prior authorization for going outside her community.

In appealing the denials, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in denying her requests. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information it had at the time it made the decision.

Given the record and applicable policies in this matter, Petitioner has failed to meet that burden of proof and the Department's decisions must therefore be affirmed.

It is undisputed in this case that Petitioner is seek mileage reimbursement for NEMT for medical appointments outside of her community and, as such, the transportation would only be covered if it was for non-routine care not available locally or it was authorized prior to the trip. It is also undisputed that Petitioner did not seek prior authorization for the transportation at issue.

Moreover, with respect to whether the transportation was for non-routine care not available locally, the record reflects that the Department's decision was proper based on the information it had at the time. It reviewed the requests; found that Petitioner was self-referred to her new medical provider; spoke to Petitioner and determined that the change was based on dissatisfaction with the quality or cost of the care she was

receiving; and located another local doctor in the applicable field. Petitioner generally described her reasons for why she travelled outside her community to the Department and, while those reasons are understandable, they did not establish that Petitioner met the criteria for mileage reimbursement or that the Department erred.

Additionally, while Petitioner subsequently provided a letter from her medical provider that appeared to broadly state that previous local providers had been unable to treat Petitioner's complex needs, that letter and information was not available at the time the decision was made and, even if it was, it failed to specifically describe why the necessary care could only be provided outside of Petitioner's community.

Accordingly, for the reasons discussed above, the undersigned Administrative Law Judge finds that the Department's decisions should be affirmed.

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 requests for mileage reimbursement.

IT IS, THEREFORE, ORDERED that:

- The Department's decision is **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

Via Electronic Mail:

DHHS Department Representative
M. Carrier
Department Community Health
MDHHS
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

DHHS Department Representative
Theresa Root
222 N Washington Sq
Suite 100
Lansing, MI 48933
Roott3@michigan.gov

Via First Class Mail:

Petitioner
[redacted]
[redacted] MI [redacted]