



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: May 2, 2023
MOAHR Docket No.: 23-001548
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon Petitioner's request for a hearing.

After due notice, a hearing was held on April 25, 2023. [REDACTED] Petitioner's father, appeared and testified on Petitioner's behalf. Emily Piggott, Appeals Review Officer, represented Respondent, Michigan Department of Health and Human Services. (MDHHS or Department). Jennifer Dunton, Community Resource Coordinator, appeared as a witness for the Department.

As a preliminary matter, the Department requested that the instant matter be dismissed for lack of jurisdiction because Petitioner did not appeal the denial within 90 days. This issue was taken under advisement at the hearing. Having reviewed the evidence, it does appear that Petitioner did not appeal the October 11, 2022 denial in a timely manner, but did timely appeal another denial notice dated February 15, 2023 that was mistakenly printed off by the Department. It should also be noted that the February 15, 2023 notice indicates the reason for denial in a different portion of the form with different wording. So, while Petitioner's appeal may be untimely, this matter will be discussed on the merits because the Department did provide Petitioner with a denial notice dated February 15, 2023 with wording different from the original denial in October 2022.

ISSUE

Did the Department properly deny Petitioner's request for medical transportation reimbursement?

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 who resides in [REDACTED] Michigan. (Exhibit A, p 7; Testimony). Petitioner is diagnosed with cerebral palsy. (Testimony)
2. On September 13, 2022, Petitioner submitted a Medical Transportation Statement to the Department requesting mileage reimbursement to attend the Conductive Learning Center in Grand Rapids, Michigan to receive therapy, treatment, and training on scholarship. (Exhibit A, pp 11-12; Testimony)
3. Following the request, the Department verified that Conductive Learning Center was not a Medicaid provider, hence the services offered were not Medicaid covered services. (Exhibit A, pp 13-16; Testimony)
4. On October 11, 2022, the Department sent Petitioner a Medical Transportation Notice that denied Petitioner's request for medical transportation mileage reimbursement for the Conductive Learning Center in Grand Rapids, Michigan, because the provider was not enrolled in Medicaid and Medicaid was not paying for the services. (Exhibit A, pp 7-9; Testimony)
5. In April 2022, the Department mistakenly approved medical transportation to the Conductive Learning Center for Petitioner. (Exhibit A, pp 17-18; Testimony)
6. In February 2023, Petitioner's parents requested a copy of the October 11, 2022 Medical Transportation Notice so that they could appeal. (Testimony)
7. On February 15, 2023, the Department printed a new Medical Transportation Notice, but inadvertently placed the February date on the document instead of the October 2022 date. However, the February 15, 2023 notice indicates the reason for denial in a different portion of the form and uses different language. (Exhibit A, p 5; Testimony)
8. On March 23, 2023, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules (MOAHR). (Exhibit A, pp 4-6)

CONCLUSIONS OF LAW

The Medicaid program 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

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 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.

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 (refer to the Nursing Facility Coverages chapter of this manual for additional information regarding NEMT for long-term care beneficiaries); and
- 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).

*Medicaid Provider Manual
Non-Emergency Medical Transportation Chapter
January 1, 2023, pp 1, 9, 19
Emphasis added*

The Department's witness testified that on September 13, 2022, Petitioner submitted a request for mileage reimbursement to attend the Conductive Learning Center; to receive therapy, treatment, and training on scholarship. The Department's witness indicated that following the request, the Department verified that Conductive Learning Center was not a Medicaid provider, and the services offered were not Medicaid covered services. The Department's witness testified that on October 11, 2022, the Department sent

Petitioner a notice denying transportation because the services were not covered by Medicaid.

Petitioner's father testified that his son has cerebral palsy and is considered a quadriplegic. Petitioner's father indicated that they have tried numerous therapies near their home in [REDACTED] but the only facility designed to handle pediatric therapy for patients like Petitioner has not been open since COVID. Petitioner's father testified that after Petitioner's last round of surgeries, his doctors recommended intensive therapy, and he found the facility in Grand Rapids, Michigan. Petitioner's father indicated that Petitioner attends the facility four weeks at a time and has made tremendous gains during his four visits. Petitioner's father testified that Petitioner was potty trained and has built up his core strength so that he can sit up on his own. Petitioner's father indicated that Petitioner has also learned how to transfer out of his manual wheelchair to both the couch and his bed. Petitioner's father noted that Petitioner can also eat with a fork by himself, where he had to have all his food pureed before. Petitioner's father testified that there are no other options in their local area, and noted that the original request for transportation reimbursement had been approved. Petitioner's father argued that this therapy is incredibly beneficial to Petitioner and should be covered.

The above cited policy is clear that medical transportation costs are not covered by the Department for individuals receiving non-Medicaid covered services from non-Medicaid enrolled providers. Unfortunately, the Department mistakenly approved Petitioner's request for transportation reimbursement in April 2022, which makes this denial even more alarming to Petitioner's parents.

While the undersigned can sympathize with Petitioner and his family, the Department and this ALJ are bound by Department policy and have no authority to grant any exceptions. And, the fact that the Department approved the request in the past does not preclude the Department from enforcing the policy now. The Michigan Supreme Court has taken an extraordinarily narrow view of estoppel against the government, ruling that, "[a]lthough it is unfortunate that plaintiff received incorrect guidance, such guidance cannot alter the law of this state." *Martin v Secretary of State*, 482 Mich 956, 957; 755 NW2d 153 (2008) (MARKMAN, J., concurring). As Justice Markman put it: "There cannot be as many laws as there are public servants who dispense guidance or advice on the meaning of the law. Rather, such guidance or advice must always be understood as subordinate to the law actually enacted by the elected representatives of the people." *Id.*

Accordingly, the Department's determination to deny Petitioner's Medical transportation reimbursement request because the services are not covered by Medicaid must be upheld.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Petitioner's requests for medical transportation reimbursement based on the available information.

IT IS THEREFORE ORDERED that:

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



RM/sj

Robert J. Meade
Administrative Law Judge

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

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 2nd day of May 2023.

S. James

S. James
**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

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Authorized Hearing Representative

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