



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: October 6, 2023
MOAHR Docket No.: 23-004976
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 begun on October 5, 2023. Petitioner appeared and testified on his own behalf. Allison Pool, Appeals Review Officer, represented the Respondent Michigan Department of Health and Human Services (MDHHS or Department). Colleen O'Boyle, Eligibility Specialist, testified as a witness for the Department.

During the hearing, the Department submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-35. No other proposed exhibits were submitted.

ISSUE

Did the Department improperly fail to act on Petitioner's claims for mileage reimbursement for non-emergency medical transportation (NEMT) with reasonable promptness?

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, page 5).
2. He is also eligible for NEMT through the Department, with his NEMT processed through the Saginaw County Department of Health and Human Services office. (Testimony of Petitioner; Testimony of Eligibility Specialist).

3. Since at least October of 2022, Petitioner has been submitting monthly requests for mileage reimbursement for NEMT to the Department. (Exhibit A, pages 8-24; Testimony of Petitioner).
4. In response, the local office has been signing off on those requests and sending them to its accounting department, who in turn sends it to a Department office in Lansing, for approval and payment. (Exhibit A, pages 8-24; Testimony of Eligibility Specialist).
5. Petitioner has received the requested reimbursement for one month. (Testimony of Petitioner; Testimony of Eligibility Specialist).
6. No approval or denial has been sent with respect to the other months and requests. (Testimony of Petitioner; Testimony of Eligibility Specialist).
7. Neither Petitioner nor the Eligibility Specialist have been able to obtain information about the status of the remaining request. (Testimony of Petitioner; Testimony of Eligibility Specialist).
8. On August 29, 2023, MOAHR received the request for hearing filed in this matter regarding the failure to respond to his requests for reimbursement. (Exhibit A, pages 5-7).

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 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.

* * *

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.

The DHS-5330 must be completed annually. A local MDHHS office can authorize NEMT without a DHS-5330 for beneficiaries who do not require special transportation. Additionally, verification of medical need is not required

when the transportation is to obtain medical evidence (i.e., employability, incapacity, or disability) or to meet the needs of children for protective services.

An initial verification of medical need for special transportation is required by the beneficiary's primary care physician (PCP). A completed DHS-5330 signed by the beneficiary's PCP, or a physician's assistant or nurse practitioner working under the supervision of the PCP, serves as documentation of medical need and must be retained in the beneficiary's file. In situations when a beneficiary's PCP, or a physician's assistant or nurse practitioner working under the supervision of the PCP, is unavailable and unable to complete a DHS-5330 in a timely manner, another licensed provider may complete the form. Example providers include, but are not limited to, a physician specialist, clinical nurse specialist, certified nurse midwife, registered nurse, social worker, dentist, and other licensed providers. The licensed provider must be knowledgeable about the beneficiary's medical needs, capable of accurately completing the form, and providing direct medical, behavioral or dental services to the beneficiary.

In situations when a completed DHS-5330 cannot be secured prior to a beneficiary's scheduled Medicaid-covered appointment, authorizing parties may approve and reimburse all necessary NEMT services if the DHS-5330 is completed and returned to the authorizing party within 10 business days of the appointment. Allowable circumstances include, but are not limited to, the beneficiary's first trip to their PCP or medical appointment, or an inability by the beneficiary's physician's office to complete the form and secure the necessary signatures in a timely manner.

Authorizing parties must retain the completed DHS-5330 in the beneficiary's file and make it available upon request. Authorizing parties are responsible for verifying Medicaid eligibility, maintaining a network of transportation subcontractors, and scheduling the least-costly mode of appropriate transportation to medical appointments/services.

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.

*MPM, October 1, 2023 version
NEMT Chapter, pages 1, 4-5*

Here, the facts in this case are undisputed and they demonstrate that Petitioner has been submitting monthly requests for NEMT mileage reimbursement since at least October of 2022, and, with one exception, has not received a response to those requests.

The record is not clear as to the reason for any delay in approving or denying Petitioner's requests, with the Department's witness testifying that the local office has been signing off on Petitioner's requests and sending them on to its accounting department, who in turn should send them to a Department office in Lansing for approval and payment.

Given those circumstances, the Department moved for dismissal at the onset of the hearing. Specifically, it argues that the undersigned Administrative Law Judge lacks jurisdiction because there were not any denials issued within the ninety (90) days preceding the filing of Petitioner's request for hearing.

The undersigned Administrative Law Judge declined to make a ruling on the record during the hearing and, upon review, finds that the Department's motion should be denied.

The Department did not cite the legal grounds for its motion, but it was presumably based on 42 CFR 431.221(d), which provides that the Department must allow a beneficiary a reasonable time, not to exceed 90 days from the date a notice of action is mailed, to request a hearing.

However, in this case, there has been no notice of action at all and, consequently, the 90-day deadline never began.

Moreover, while the lack of any notice suggests that there has been no action at all for Petitioner to appeal, 42 CFR 431.220(a)(1) provides that the Department, as the State agency for Medicaid, must grant an opportunity for hearing when an individual requests one on the basis that the Department has not acted upon his claim for benefits or services with reasonable promptness.

Here, Petitioner expressly alleged that the Department has not acted on his claims for mileage reimbursement with reasonable promptness, and given the language of 42 CFR 431.220, those claims allow for a hearing. The undersigned Administrative Law Judge therefore finds that he has jurisdiction.

In requesting a hearing with respect to a failure to act with reasonable promptness, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred.

Given the record and applicable policies in this matter, Petitioner has met that burden of proof and the Department's actions must therefore be reversed.

The facts in this case are undisputed and they demonstrate that, while Petitioner has been submitting monthly requests for NEMT mileage reimbursement since at least October of 2022, he has only received a response, an approval, to one such request.

Moreover, the Department does not assert that it has acted on Petitioner's requests, including ones that are almost a year old, with reasonable promptness and all its sole witness could do is testify how she has done all that she is supposed to do on her end, with the responsibility of approving Petitioner's requests lying elsewhere. She also could not explain any reason for the delay, despite attempting to find one when investigating Petitioner's case.

Whether it approves or denies Petitioner's requests¹, the Department needs to decide, and the undersigned Administrative Law Judge finds that it has failed to act on Petitioner's claims for mileage reimbursement for NEMT with reasonable promptness.

¹ If the Department denied Petitioner's requests, he could request another administrative hearing if and when appropriate with respect to any denials.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that he has jurisdiction in this matter and that the Department has improperly failed to act on Petitioner's claims for mileage reimbursement for NEMT with reasonable promptness.

IT IS, THEREFORE, ORDERED that:

- The Department's Motion to Dismiss is **DENIED**.
- The Department's actions are **REVERSED**, and it must initiate an assessment of Petitioner's requests for reimbursement.



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, to their last known addresses in the manner specified below, this 6th day of October 2023.

S. James

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

Via Electronic Mail:

Petitioner

[REDACTED]
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