

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-0000816 CAF**

**DEVANIE GOVEA,
Complainant**

v.

**GENERAL MOTORS LLC,
Respondent**

§
§
§
§
§
§
§
§

BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Devanie Govea (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in her 2018 Chevrolet Malibu Hybrid. Complainant asserts that the vehicle is defective because the vehicle accelerates on its own and because the HVAC system doesn't work properly at times. General Motors LLC (Respondent) argued that the vehicle has been repaired, does not have any defects, and that no relief is warranted. The hearings examiner concludes that the vehicle has an existing warrantable defect, and Complainant is eligible for repair relief.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing on the merits in this case initially convened telephonically on March 10, 2021, before Hearings Examiner Edward Sandoval. Devanie Govea, Complainant, appeared and represented herself at the hearing. General Motors LLC, Respondent, was represented by Clifton Green, Business Resource Manager. Also, present at the hearing and offering testimony for Respondent was Bobby Shreeve, Field Service Engineer. The hearing was continued to May 7, 2021, to allow the hearings examiner to inspect the subject vehicle and to take a test drive in it.

The hearing continuance was convened in Austin, Texas on May 7, 2021, by Hearings Examiner Edward Sandoval. Devanie Govea, Complainant, appeared and represented herself at the hearing. General Motors LLC, Respondent, was represented by Clifton Green, Business Resource Manager. Also, present at the hearing and offering testimony for Respondent was Bobby Shreeve, Field Service Engineer. The hearing record closed on May 7, 2021.

II. DISCUSSION

A. Applicable Law

Occupations Code § 2301.002(24) provides that a “[n]ew motor vehicle” means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.” Occupations Code § 2301.603(a) provides that “[a] manufacturer, converter, or distributor shall make repairs necessary to conform a **new motor vehicle** to an applicable manufacturer’s, converter’s, or distributor’s express warranty.” (Emphasis mine.) Therefore, repurchase or replacement relief for defects in a vehicle is available only for new vehicles as defined in the Code. However, relief is available for purchasers of used vehicles under Occupations Code § 2301.204(a) which provides that “[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.” The relief available under this section of the Code is repair of the vehicle in question.

B. Complainant’s Evidence and Arguments

Complainant purchased a used 2018 Chevrolet Malibu Hybrid from Capitol Chevrolet (Capitol) in Austin, Texas on May 17, 2019, with mileage of 3,827 at the time of delivery.¹ Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for three (3) years or 36,000 miles. In addition, Respondent provided a powertrain warranty for the vehicle’s powertrain providing coverage for five (5) years or 60,000 miles. On the date of the initial hearing the vehicle’s mileage was 30,701. At the time of hearing Respondent’s warranties were still in effect.

Complainant testified that she has experienced issues with the vehicle’s HVAC system and with the vehicle accelerating on its own when she drives it.

Complainant stated that when she test drove the vehicle prior to purchasing it, she did not notice any issues to complain of. However, in late August or early September of 2019, she noticed that the vehicle’s HVAC system was not working properly. Neither the heater nor the air conditioner were working. Complainant testified that she called the dealer’s customer service representative about the issue and she was told that she should wait, and it would repair itself. During this period of time, the HVAC system would work intermittently. However, as the weather got colder, the heater stopped working entirely. In addition, Complainant felt that the vehicle would

¹ Respondent Ex. 2, Buyer’s Order dated May 17, 2019.

intermittently accelerate on its own. In January of 2020, Complainant was able to schedule an appointment with the dealer to have the heater repaired.

Complainant took the vehicle to Capitol for repair on March 3, 2020. Complainant informed Capitol's service advisor that she was experiencing issues with turning off the vehicle, as well as the HVAC and acceleration issues. The vehicle would show an error message: "shift to park" when she attempted to turn the vehicle off. On occasion the vehicle's transmission would not allow her to shift into park and the error message would appear. It would sometimes take Complainant ten (10) to fifteen (15) minutes to turn off the vehicle. Capitol's service technician was able to recreate the problem, and determined that the shifter assembly was failing internally.² The technician replaced the shifter assembly and installed a shifter connector pigtail to resolve the issue.³ The service technician also addressed the issue regarding the vehicle's HVAC system not working properly. The technician replaced the vehicle's HVAC interface and right side actuator which deals with air delivery for the vehicle in order to resolve the issue of the heater not working.⁴ Capitol's service technician also found two (2) stored diagnostic trouble codes (DTC's) on the vehicle's computers regarding the acceleration issue and reprogrammed the vehicle's steering control module in order to resolve the issue.⁵ The vehicle's mileage on this occasion was 20,016.⁶ The vehicle was in Capitol's possession until March 20, 2020, during this repair visit. Complainant was provided a loaner vehicle while her vehicle was being repaired.

Complainant stated that after she received the vehicle back from Capitol, the shift to park warning message did not appear again and she did not have any further problems turning the vehicle off or shifting the transmission to Park. However, she continued to experience the vehicle accelerating on its own and the heater not working. Complainant contacted Capitol's representative about the issues and was scheduled an appointment for April 7, 2020.

Complainant returned the vehicle to Capitol for repair on April 7, 2020. Capitol's service technician replaced the vehicle's right temperature door actuator; reprogrammed the vehicle's human/machine interface (HMI) module, radio module, and instrument panel cluster (IPC) module; and replaced the vehicle's HVAC door assembly to address the issue of the vehicle's heater not working.⁷ The mileage on the vehicle at the time was 21,662.⁸ The vehicle was in

² Respondent Ex. 3, Repair Order dated March 3, 2020.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Respondent Ex. 4, Repair Order dated April 7, 2020.

⁸ *Id.*

Capitol's possession until July 20, 2020, during this repair visit.⁹ Complainant was provided a loaner vehicle while her vehicle was being repaired.

Complainant testified that she brought up the acceleration issue to Capitol's service advisor on April 7, but the advisor did not put it on the repair order. Complainant did not ask the service advisor why it was not on the repair order. Capitol's service technician also looked at the vehicle on June 5, 2020 (see footnote 9).

On June 5, 2020, Capitol's service technician inspected the vehicle again for the air conditioning issue. The technician determined that the passenger side upper air duct temperature was stuck at 150 degrees.¹⁰ The technician determined that the passenger side upper air duct temperature sensor was damaged internally.¹¹ The technician replaced the sensor in order to address the issue of the air conditioner not working properly.¹² The vehicle's mileage at the time was 21,750.¹³ The vehicle was in Capitol's possession until July 20, 2020. Complainant was provided a loaner vehicle while her vehicle was being repaired.

Complainant testified that the HVAC system worked fine after the June 5 repair. However, she felt that the passenger and driver's side temperatures would not sync and keep the same temperature. In addition, the acceleration issue seemed to be okay for a while, but the issue started occurring again in August of 2020. Complainant stated that the acceleration issue occurred three (3) to four (4) times a day. Complainant took the vehicle to Capitol for repair for the acceleration and HVAC issues on August 28, 2020. Capitol's service technician test drove the vehicle and was unable to duplicate the concern regarding the vehicle accelerating on its own.¹⁴ The technician determined that the vehicle's start stop system was operating as designed at the time.¹⁵ Complainant also informed the service technician that the vehicle's air conditioner would turn off when she received a call on her cell phone.¹⁶ The technician determined that the vehicle's communication system was designed to reduce the air conditioner's blower speed when the driver is on the phone so that the caller can have a clear conversation.¹⁷ The technician determined that the HVAC system was working as designed.¹⁸ The vehicle was in Capitol's

⁹ The repair order indicated that the repair was invoiced on June 5, 2020. However, there is another repair order dated June 5, 2020 (Respondent Ex. 5) which was invoiced on July 10, 2020.

¹⁰ Respondent Ex. 5, Repair Order dated June 5, 2020.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Respondent Ex. 6, Repair Order dated August 28, 2020.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

possession until September 19, 2020, on this occasion.¹⁹ Complainant was provided with a loaner vehicle during this repair visit. The mileage on the vehicle at the time Complainant took it for repair on this occasion was 23,795.²⁰

Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles on September 21, 2020.²¹

Complainant continued to feel that the vehicle's air conditioner was not syncing up the driver's and passenger's side temperatures correctly and that the vehicle was accelerating on its own. After filing the Warranty Performance complaint, Complainant was contacted by Respondent's representative who asked that they be allowed to send a field service engineer (FSE) to inspect the vehicle. Complainant agreed to the inspection which occurred on October 26, 2020, at Henna Chevrolet (Henna) located in Austin, Texas. Respondent's FSE was unable to duplicate any issue regarding the vehicle accelerating on its own.²² In addition, the FSE verified that the vehicle's air conditioner's blower was designed to reduce speed whenever the driver was on their cell phone.²³ The vehicle's mileage on this occasion was 25,348.²⁴ The vehicle was in Henna's possession until November 6, 2020, on this occasion. Complainant was provided a loaner vehicle while her vehicle was being inspected.

Complainant testified that after the first hearing on the merits on March 10, 2021, she agreed to allow Respondent's FSE to inspect the vehicle again. This inspection occurred on March 26, 2021, at Henna. The FSE was unable to duplicate an issue of the vehicle accelerating on its own.²⁵ In addition, the FSE determined that the vehicle's HVAC system was working as designed.²⁶ The vehicle's mileage on this occasion was 31,407.²⁷ The vehicle was in Henna's possession until April 2, 2021.²⁸ Complainant was provided a loaner vehicle while her vehicle was being repaired.

Complainant testified that she feels that the vehicle is still accelerating on its own. In addition, she testified that the air conditioner is still not working properly. A few days prior to the May 7, 2021, continuance the air conditioner did not work at all (the system was not blowing any air out of the vents) and she had to turn off the vehicle twice and turn it back on in order to get the air

¹⁹ *Id.*

²⁰ *Id.*

²¹ Complainant Ex. 1, Warranty Performance Complaint dated September 21, 2020.

²² Respondent Ex. 7, Repair Order dated October 26, 2020.

²³ *Id.*

²⁴ *Id.*

²⁵ Respondent Ex. 11, Repair Order dated March 26, 2021.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

conditioner to start working. She also testified that the heater did not work during the winter, prior to the original hearing on the merits.

C. Respondent's Evidence and Arguments

1. Clifton Green's Testimony

Clifton Green, Business Resource Manager, testified for Respondent. He stated that Respondent has provided Complainant's vehicle with a three (3) year or 36,000 mile warranty and five (5) year or 60,000 mile powertrain warranty. Mr. Green stated that he has never seen the vehicle. However, Respondent's representative has inspected the vehicle on 2 different occasions: October 26, 2020 and March 26, 2021.

2. Bobby Shreeve's Testimony

Bobby Shreeve, Field Service Engineer, testified for Respondent. He has worked in the automotive industry for 25 years. Over that time, Mr. Shreeve has worked for various dealers as a service technician and a lead technician. Mr. Shreeve was hired by Respondent in 2014 in his present position. Mr. Shreeve is an Automotive Service Excellence (ASE) Certified Master Technician and a GM World Class Certified Technician.

Mr. Shreeve testified that he inspected the vehicle at Henna on two (2) occasions: October 26, 2020 and March 26, 2021. On the first inspection on October 26, Mr. Shreeve indicated in his report that he was unable to duplicate any of Complainant's concerns and that:

The operation of t[he] vehicle is unique then [*sic*] most vehicles on the road. The engine in this vehicle is more of an onboard generator used to charge the battery pack and when need be to help propel the vehicle. When the high voltage battery SOC (State of Charge) has reached its minimum the engine will start and charge it back up. Depending on the SOC, ambient air temperature and electrical load, can determine how fast the engine RPM's will be. When the vehicle is accelerating, feedback based on throttle input and vehicle speed will determine if the engine will be needed and if needed how fast the engine RPM's will need to be to assist in propulsion.²⁹

Mr. Shreeve inspected the vehicle again on March 26, 2021 and was unable to recreate any problem with the vehicle accelerating or the HVAC malfunctioning. Mr. Shreeve indicated in his report of the inspection that he was unable to duplicate any concerns with the vehicle.³⁰ He did

²⁹ Respondent Ex. 9, Govea Vehicle Legal Inspection dated October 28, 2020.

³⁰ Respondent Ex. 12, Govea Vehicle Legal Inspection 2nd Dealer Visit dated March 26, 2021.

indicate, however, that the vehicle's hybrid propulsion system could be changing modes when she felt the "acceleration" issue.³¹ Mr. Shreeve also indicated that Henna's shop foreman also test drove the vehicle and indicated that the vehicle did maintain speed during a transition phase.³² Mr. Shreeve stated that Complainant might be feeling the vehicle's propulsion system shifting from the electric motor to the gas engine when she feels the vehicle "accelerating."

Mr. Shreeve testified that he feels the vehicle is operating as designed.

D. Analysis

Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainant is entitled to have the vehicle repurchased or replaced.

1. HVAC Issue

Complainant testified and the record reflects that there have been several issues with the vehicle's HVAC system. There have been numerous repairs to the system as indicated by the evidence. In addition, the testimony established that the system was not working properly as late as May of 2021. As such, the hearings examiner must find that Respondent has failed to conform the vehicle to its applicable warranty. Therefore, Respondent will be ordered to repair the HVAC system so that it conforms to their warranty.

2. Acceleration Issue

Complainant testified that she intermittently feels the vehicle accelerate on its own. However, none of the service technicians who inspected the vehicle were able to recreate any such issue with the vehicle. The vehicle is a hybrid vehicle and Complainant could have been experiencing the vehicle's propulsion system shifting from the electric motor to the gas engine which would be the normal operation of the vehicle. Since the evidence indicates that the vehicle is operating as

³¹ *Id.*

³² *Id.*

designed, the hearings examiner must hold that there is no issue with the vehicle accelerating on its own. Therefore, the hearings examiner will not order repair relief for this issue.

On the date of the initial hearing, the vehicle's mileage was 30,701 and it remains covered under Respondent's warranties. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the vehicle's warranty.

Complainant's request for repurchase or replacement relief is denied. However, repair relief will be ordered for the HVAC issue as described below.

III. FINDINGS OF FACT

1. Devanie Govea (Complainant) purchased a used 2018 Chevrolet Malibu Hybrid on May 17, 2019, from Capitol Chevrolet (Capitol) in Austin, Texas with mileage of 3,827 at the time of delivery.
2. The manufacturer or distributor of the vehicle, General Motors LLC (Respondent), issued a new vehicle limited warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever occurs first. Respondent also provided a powertrain warranty for the vehicle providing coverage for five (5) years or 60,000 miles, whichever comes first.
3. The vehicle's mileage on the date of the initial hearing was 30,701.
4. Respondent's warranties were still in effect at the time of hearing.
5. Complainant has experienced issues with the vehicle's HVAC system not working properly and an acceleration issue in which she feels that the vehicle accelerates on its own without her stepping on the acceleration pedal.
6. Prior to filing the Warranty Performance complaint, Complainant took the vehicle to Respondent's authorized dealer, Capitol, on the following dates to address her concerns regarding the HVAC and acceleration issues:
 - a. March 3, 2020, at 20,016 miles;
 - b. April 7, 2020, at 21,662 miles;
 - c. June 5, 2020, at 21,750 miles; and
 - d. August 28, 2020, at 23,975 miles.

7. On March 3, 2020, Capitol's service technician found two (2) stored diagnostic trouble codes (DTC's) on the vehicle's computers regarding the acceleration issue and reprogrammed the vehicle's steering control module in order to resolve the issue.
8. Also, on March 3, 2020, Capitol's replaced the vehicle's HVAC interface and right side actuator in order to resolve the issue of the vehicle's heater not working.
9. On April 7, 2020, Capitol's service technician replaced the vehicle's right temperature door actuator; reprogrammed the vehicle's human/machine interface (HMI) module, radio module, and instrument panel cluster (IPC) module; and replaced the vehicle's HVAC door assembly to address the issue of the vehicle's heater not working.
10. On June 5, 2020, Capitol's service technician determined that the vehicle's passenger side upper air duct temperature sensor had internal damage and replaced it in order to address the issue of the HVAC system blowing hot air when it was supposed to be cold air.
11. On August 28, 2020, Capitol's service technician was unable to duplicate the issue of the vehicle trying to accelerate on its own or the issue where the air conditioner turned off when Complainant received a phone call. The technician noted that the vehicle's air conditioner fan would turn to a lower speed as designed by Respondent when Complainant received a phone call.
12. On September 21, 2020, Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department).
13. On October 26, 2020, Complainant took the vehicle to Henna Chevrolet (Henna) located in Austin, Texas for repair and inspection by Respondent's field service engineer (FSE). The vehicle's mileage at the time was 25,348.
14. During the repair visit described in Findings of Fact #13, neither Respondent's FSE nor Henna's technician were able to duplicate the issue of the vehicle accelerating on its own. In addition, they did observe the air conditioner fan speed slow down as designed when Complainant received a phone call in the vehicle.
15. On March 26, 2021, Complainant took the vehicle to Henna for repair for the acceleration issue and because the passenger side heater was not working properly. The vehicle's mileage at the time was 31,407.

16. During the repair visit described in Findings of Fact #15, Henna's service technician was unable to duplicate the issue of the vehicle accelerating on its own. In addition, he could not duplicate any issue with the HVAC system and determined that it was working properly.
17. A few days prior to May 7, 2021 (the date of the continued hearing), the vehicle's air conditioner failed to work properly, *i.e.*, the system was not blowing any air out of the vents.
18. On December 7, 2020, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
19. The hearing on the merits in this case initially convened telephonically on March 10, 2021, before Hearings Examiner Edward Sandoval. Devanie Govea, Complainant, appeared and represented herself at the hearing. General Motors LLC, Respondent, was represented by Clifton Green, Business Resource Manager. Also, present at the hearing and offering testimony for Respondent was Bobby Shreeve, Field Service Engineer. The hearing was continued to May 7, 2021, to allow the hearings examiner to inspect the subject vehicle and to test drive it.
20. The hearing continuance was convened in Austin, Texas on May 7, 2021, by Hearings Examiner Edward Sandoval. Devanie Govea, Complainant, appeared and represented herself at the hearing. General Motors LLC, Respondent, was represented by Clifton Green, Business Resource Manager. Also, present at the hearing and offering testimony for Respondent was Bobby Shreeve, Field Service Engineer. The hearing record closed on May 7, 2021.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204(a) (Warranty Performance).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including


the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.

3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant proved by a preponderance of the evidence that the vehicle has a verifiable defect or condition (the HVAC system not working properly) that is covered by Respondent's warranty. Tex. Occ. Code § 2301.204.
7. Complainant is entitled to repair relief under the terms of Respondent's warranty. Tex. Occ. Code § 2301.204.
8. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **GRANTED**. It is **FURTHER ORDERED** that Respondent shall make any repairs needed to conform the vehicle (*i.e.*, inspect the vehicle to address the issue of the HVAC system not working properly) to the applicable warranty. Complainant shall deliver the subject vehicle to Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.³³ Within 40 days after receiving the vehicle from Complainant, Respondent shall complete repair of the subject vehicle. However, if the Department determines Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED July 6, 2021.



EDWARD SANDOVAL
CHIEF HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES

³³ (1) This Order becomes final if a party does not file a motion for rehearing within 20 days after receiving a copy of this Order, or (2) if a party files a motion for rehearing within 20 days after receiving a copy of this Order, this Order becomes final when: (A) the Department renders an order overruling the motion for rehearing, or (B) the Department has not acted on the motion within 45 days after the party receives a copy of this Order.