



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

October 15, 2010

-----for

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 12, 2010. Your hearing request was based on the Department of Health and Human Resources' action to deny your son's Non-Emergency Medical Transportation (NEMT) application for trip taken February 12, 2010.

In arriving at a decision, the State Hearings Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the Non-Emergency Medical Transportation (NEMT) Program is based on current policy and regulations. Some of the regulations state that when applicants pending approval have not been instructed by the worker to submit applications for NEMT within the 60-day time limit, the applicant must be given a reasonable amount of time to submit the application for the time prior to Medicaid approval. Regarding out-of-state prior approval issues, the worker must contact the Bureau for Medical Services' Case Planning Unit to determine the status of any facility not listed on the border status list to determine if it is considered a border status facility. (WV Income Maintenance Manual Chapter 27)

The information submitted at your hearing reveals that the Department did not instruct you of the NEMT policy regarding sixty (60) day time limits for submitting NEMT applications while your case was in pending application status, and did not contact BMS to determine the border status of the facility to which you traveled on February 12, 2010.

It is the decision of the State Hearing Officer to **reverse** the action of the Department in denying your NEMT application for travel reimbursement for trip taken February 12, 2010. Your application was found to be submitted timely according to policy. The Department must re-evaluate your eligibility after contacting the Bureau for Medical Services, Case Planning Unit, and determining whether the facility your son visited on February 12, 2010 is considered to have border status. A new decision will be issued by the Department at that time based on the information provided by the Case Planning Unit.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review / Drema Berry, [REDACTED] DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

-----,

Claimant,

v.

Action Number: 10-BOR-1797

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing for ----- . This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on October 12, 2010 on a timely appeal, filed July 16, 2010.

II. PROGRAM PURPOSE:

The Non-Emergency Medical Transportation (**NEMT**) program provides payment to or on behalf of eligible persons for transportation and other related expenses necessary to secure medical and other services covered by the Medicaid Program.

III. PARTICIPANTS:

-----, Attorney at Law, Claimant's mother

Drema Berry, Department representative

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department was correct in its action to deny Claimant's NEMT application for payment reimbursement for trip taken February 12, 2010.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 27

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notification letter dated April 26, 2010
- D-2 Fair Hearing Request form signed July 15, 2010
- D-3 Non-Emergency Medical Transportation application date stamped April 15, 2010 with supporting documentation
- D-4 WV Income Maintenance Manual Section 27.2
- D-5 Copy of email dated September 3, 2010 and case comments from computer system

Claimant's Exhibits:

- C-1 WV Income Maintenance Manual, Chapter 27
- C-2 Memorandum dated February 18, 2010
- C-3 WV Income Maintenance Manual, Appendix A
- C-4 Notification letter dated March 4, 2010
- C-5 Copy of Claimant's written notes
- C-6 The [REDACTED] Hospital [REDACTED] instructions for home management and supporting forms

VII. FINDINGS OF FACT:

- 1) The Claimant submitted to the Department a Non-Emergency Medical Transportation (NEMT) application (D-3) on April 15, 2010. The application included a request for travel reimbursement for a trip to the [REDACTED] Hospital [REDACTED] in [REDACTED] on February 12, 2010.
- 2) At the time of the trip, the Claimant had an active application that was pending approval for Medicaid on file with the Department. The Medicaid was subsequently approved by the Department on March 4, 2010 and backdated coverage was provided retroactively beginning February 1, 2010.
- 3) The Claimant had applied for Children with Disabilities Community Services Program (CDCSP), one of the Department's Medicaid programs, during the month of July 2009. He received medical approval of the application on February 18, 2010. The Department sent him a notification letter also (C-2) dated February 18, 2010 which included the following:

To: ----- & -----
RE: CDCSP Application Packet-Eligibility/Initial Determination
Applicant: -----

This memorandum is your notification that the applicant listed above meets the medical eligibility criteria for Nursing Facility Level of Care for the Children with Disabilities Community Services Program (CDCSP). The medical eligibility is for one year and the effective date is February 18, 2010.

There are two steps (medical and financial) for meeting eligibility criteria for this service.

Please contact your local (county) DHHR office for information about financial eligibility for CDCSP. The local office will follow the Office of Income Maintenance's policies for Children with Disabilities Community Services Program in determining financial eligibility.

There was no information provided to the Claimant in this letter regarding NEMT reimbursement program requirements.

- 4) The Claimant subsequently contacted the [REDACTED] County, West Virginia, Department of Health and Human Resources (DHHR) office and obtained financial eligibility (D-5) on March 4, 2010. Case comments from the Department's computer system (D-5) show that the worker documented that she provided the Claimant with NEMT forms on that date and that the forms were explained to her.
- 5) The Department representative, Drema Berry, is an Economic Service Worker in the [REDACTED] County, West Virginia DHHR office. She testified that she is the case worker who interviewed the Claimant's mother, -----, on March 4, 2010 to complete her child's financial eligibility for the CDCSP program. She stated that she recalls explaining the NEMT program to the Claimant on that date, and providing her with the necessary forms. She added that she also explained the NEMT process of prior approval for out-of-state visits because -----informed her of some upcoming out-of-state hospital visits. There was no discussion on that date about the prior trip on February 12, 2010.
- 6) The Department determined that the Claimant was not eligible for reimbursement of the February 12, 2010 trip because the application was submitted more than sixty (60) days after the appointment date, and because the Claimant did not request and receive prior approval for the out-of state trip. The Department did not contact the Bureau for Medical Services' Case Planning Unit in order to determine if the trip destination was considered by them to meet border status guidelines.
- 7) The Claimant contends that the Department failed to explain the NEMT reimbursement program to her when she first applied for the Medicaid assistance; specifically, failing to inform her that she would need to submit the applications for reimbursement within sixty (60) days of the trip, and that it would be necessary for her to obtain prior approval for any out-of-state trips to medical facilities when those facilities did not meet the states border status requirements. She contends that the Department was responsible for notifying her of these policy requirements prior to approval, and that had she been notified, she would have provided

the necessary information to secure the prior approval, and would have submitted the forms within the sixty (60) day timeframe required.

- 8) -----testified that it was necessary for the Claimant to be treated at the Children's Hospital of [REDACTED] because he needed to receive certain Botox and phenol injections while under sedation in order to allow his muscles to move more freely and that this type of sedated treatment was not available in the State of West Virginia at that time to her knowledge. She stated her son has cerebral palsy.
- 9) The Department contends it is aware of no policy which requires it to inform Medicaid applicants of the prior approval and timeframe requirements for the NEMT program prior to their becoming eligible for the Medicaid program. Ms. Berry acknowledged that the Claimant was not informed of the policy prior to March 4, 2010.
- 10) The Department presented as evidence policy from the West Virginia Income Maintenance Manual §27.2. E which states in pertinent part:

Reimbursement for transportation and related expenses is available to Medicaid recipients who:

- Require transportation to keep an appointment for medical services covered under the Medicaid group for which he was approved;
- Receive scheduled Medicaid-covered services at a clinic, hospital or doctor's office;
- Receive pre-authorization as necessary; and
- Comply with the 60-day application submittal deadline.

- 11) The West Virginia Income Maintenance Manual §27.2.C provides the following pertinent information:

BEGINNING DATE OF ELIGIBILITY

Medicaid recipients are eligible for NEMT beginning the first day of the month for which Medicaid is approved, including months for which backdating occurred. Applicants awaiting approval must be instructed to apply for NEMT within the 60-day time limit, but applications must be held by the Worker until Medicaid is approved except for transportation expenses related to an appointment(s) scheduled by the Worker and/or requested by MRT.

When a client is pending Medicaid approval and has not been instructed by the Worker to apply for NEMT within the 60-day time limit, that client must be given a reasonable amount of time to submit NEMT applications for the time prior to Medicaid approval.

- 12) The West Virginia Income Maintenance Manual §27.13.B states in pertinent part:

TRANSPORTATION REQUIRING PRIOR APPROVAL FROM BMS

All requests for out-of-state transportation and certain related expenses must have prior approval from the Bureau for Medical Services, Case Planning Unit, except for travel to those facilities which have been granted border status. Facilities granted border status are considered in-state providers. The current list of providers with border status is located in Chapter 27, Appendix A. The Worker must contact BMS at (304) 558-1700 for the status of any facility not listed.

Requests to the Case Planning Unit are made in writing when time permits, or by telephone, and must include the following information:

- The Medicaid recipient's name, address and case number;
- The physician's order for the service, including any necessary documentation, as well as the following related items:
 - The specific medical service requested
 - Where the service will be obtained, who will provide it, and the reason why an out-of-state provider is being used
 - The diagnosis, prognosis and expected duration of the medical services; and
 - A description of the total round-trip cost of transportation and any related expenses (lodging, meals, tolls, parking, etc).

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in that Medicaid applicants awaiting approval must be instructed to apply for NEMT within the 60-day time limit, and when an applicant who is pending Medicaid approval has not been instructed by the worker to apply for NEMT within the 60-day time limit, that applicant must be given a reasonable amount of time to submit NEMT applications for the time prior to Medicaid approval.
- 2) Policy also provides that all requests for out-of-state transportation and certain related expenses must have prior approval from the Bureau for Medical Services, Case Planning Unit, except for travel to those facilities which have been granted border status. Policy also provides that it is the worker's responsibility to contact BMS to determine the status of any facility not listed on the border status list. Facilities that are considered to have border status are considered in-state facilities, and do not require prior authorization.
- 3) The evidence shows that the Claimant submitted his NEMT application for the February 12, 2010 trip sixty-four (64) days after the date of the trip. Because the Department failed to inform him of the sixty (60) day time limit requirement while his application was in pending status, policy requires that he is to be granted a reasonable amount of time in which to submit the application.
- 4) The application was submitted four (4) days past the 60-day time limit, and is found to have been submitted within a reasonable amount of time considering that he was not informed of this requirement while awaiting approval for Medicaid.

- 5) The evidence shows the Children's Hospital of [REDACTED] is not listed on the Department's border status list and the worker did not contact the Bureau for Medical Services' Case Planning Unit to determine the facility's status prior to denying the application. If the Case Planning Unit determined the facility to be a border facility it would be considered an in-state facility and not require prior authorization.
- 6) Therefore, because the application is found to be timely, and policy requires the worker to contact the Case Planning Unit to determine border status prior to arriving at a decision of eligibility, the Department was not correct in its decision to deny NEMT transportation reimbursement for the Claimant's February 12, 2010 trip.

IX. DECISION:

I am ruling to **reverse** the action of the Department in denying the Claimant's application for NEMT travel reimbursement for the trip completed on February 12, 2010. The Department must re-evaluate the Claimant's eligibility by contacting the Bureau for Medical Services' Case Planning Unit to determine the facility's status as it relates to being considered a border status facility. The Department will render a new decision based on the information provided.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
Form IG-BR-29

ENTERED this 15th Day of October, 2010.

**Cheryl Henson
State Hearing Officer**