



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.,
Elkins, WV 26241

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

February 23, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 9, 2012. Your hearing request was based on the Department of Health and Human Resources' action to deny Non-Emergency Medical Transportation (NEMT) reimbursements.

In arriving at a decision, the State Hearing 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 NEMT Program is based on current policy and regulations. One of these regulations states that applicants may request reimbursement for costs related to automobile travel, such as mileage, toils, and parking fees when free parking is not available. The travel must be for scheduled appointments and treatment. (West Virginia Income Maintenance Manual Chapter 27.13.D)

Information submitted during the hearing reveals that the Department correctly denied reimbursement of transportation costs incurred during your medical visits on September 29, 2011, October 5, 2011, October 6, 2011, and October 19 (and/or November 19), 2011. The Department must approve NEMT reimbursement for your November 9, 2011 medical visit.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your application for NEMT benefits for medical visits on September 29, 2011, October 5, 2011, October 6, 2011, and October 19 (and/or November 19), 2011. However, it is the decision of the State Hearing Officer to **reverse** the action of the Department in denying NEMT reimbursement for your November 9, 2011 medical visit.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Tina Elza, ESW, WVDHHR

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-389 and 12-BOR-578

**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 via telephone on February 9, 2012 on a timely appeal filed January 9, 2012.

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:

-----, Claimant
Tina Elza, Economic Service Worker, WVDHHR

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its action to deny the Claimant's application for NEMT benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 27.13.D

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of NEMT applications received by Department on December 21, 2011 and October 26, 2011
- D-2 Notice of Decision dated January 4, 2012
- D-3 Notice of Decision dated November 30, 2011
- D-4 Case comments for the period of November 30, 2011- January 4, 2012
- D-5 WVDHHR Bureau for Medical Services Member History Profile Data
- D-6 West Virginia Income Maintenance Manual Chapter 27.13.D
- D-7 Patient appointment information for Claimant from [REDACTED] DPM, and [REDACTED]

VII. FINDINGS OF FACT:

- 1) The Claimant submitted applications (D-1) for Non-Emergency Medical Transportation, hereinafter NEMT, on October 26, 2011 and December 21, 2011.
- 2) Economic Service Worker Tina Elza testified that the Department was unable to reimburse the Claimant for medical visits on September 29, 2011 and October 5, 2011 to [REDACTED] Clinic ([REDACTED]) and on October 6, 2011 to [REDACTED] City Hospital (Dr. [REDACTED]) because the Claimant was seen as a "walk-in" patient. Ms. Elza indicated that the Department was unable to reimburse the Claimant for medical trips made on October 10, 2011, November 9, 2011 and November 19, 2011 because the worker contacted [REDACTED] and was informed that the Claimant was not in the office on those dates. It should be noted that one of the applications submitted on December 21, 2011 for travel reimbursement to [REDACTED] was signed by the Claimant on October 19, 2011, but the provider's date of appointment was interpreted to be November 19, 2011 (a Saturday) by the Department. On the first page of the NEMT application, however, the Claimant indicated she was seeking payment for a trip on October 19, 2011 and does not request payment for a trip on November 19, 2011.

- 3) The Department notified the Claimant of the denial of NEMT reimbursement in Notices of Decision dated November 30, 2011 (D-3) and January 4, 2012 (D-2).
- 4) The Claimant testified that she is anemic and has had her blood drawn every Wednesday at 1:30 p.m. for the past eight years. She stated that the TVTCC office knew she was not a “walk-in” patient because clinic staff members would often call her and inform her when the office was going to be closed on Wednesday. She stated that she had provided documentation to the Department to verify some of the medical appointments.

ESW Elza located patient appointment information submitted by the Claimant on February 2, 2012 (D-7) and the hearing record remained open until February 14, 2012 so that the worker could attempt to verify the Claimant’s appointment status for October 10, 2011 and November 9, 2011. The medical provider verified that the Claimant was seen for an appointment with Dr. [REDACTED] on October 10, 2011, but had no record of her being in the office on November 9, 2011. ESW Elza provided information indicating the Department was able to reimburse the Claimant for the October 10, 2011 trip.

- 5) The following includes information submitted into evidence regarding the remaining medical visits in question:

September 29- NEMT requested for trip to [REDACTED] Boxes on the application were checked for both “routine” and “walk-in” visits. A Department worker contacted the clinic on November 30, 2011 and was told that the Claimant was seen as a “walk-in.”

October 5- NEMT for trip to [REDACTED]. The box for “routine” visit was checked. Worker was informed the visit was a “walk-in” visit as per telephone call to clinic on November 30, 2011.

October 6- NEMT for trip to [REDACTED] City Hospital: No boxes were checked on NEMT application to indicate the type of visit made by the Claimant. Worker was told the visit was considered a “walk-in” visit as per call to clinic on November 30, 2011.

November 9- NEMT for trip to [REDACTED] for “routine” visit, signed by “-----” (last name illegible): Case comments dated November 30, 2011 (D-4) indicate that the worker spoke with a clinic representative who confirmed that the November 9, 2011 visit should be considered a scheduled appointment. However, the worker spoke with “-----” on January 4, 2012 and she denied that the Claimant was at the clinic on November 9, 2011, despite what appears to be her signature on the form.

November 19- NEMT submitted for trip to [REDACTED] for “routine” visit: Form was signed by provider on what appears to read November 19, 2011. However, the

Claimant signed the form as having made the visit on October 19, 2011. Worker was told that the Claimant was not at the clinic on November 19, 2011 (a Saturday), as per case comments of January 4, 2012 (D-4). Worker had been informed on November 30, 2011 that the Claimant's October 19, 2011 visit was considered a "walk-in" visit.

- 6) West Virginia Income Maintenance Manual Section 27.13.D (D-6) states, in pertinent part:

**ROUTINE AUTOMOBILE TRANSPORTATION
REQUESTS**

Applicants may request reimbursement for costs related to automobile travel, such as mileage, toils, and parking fees when free parking is not available. The travel must be for scheduled appointments and treatment...

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that NEMT reimbursement may be paid for travel associated with scheduled appointments and treatment.
- 2) The Department was informed by the medical provider that the Claimant was seen as a "walk-in" on September 29, 2011, October 5, 2011 and October 6, 2011. The date of the medical visit the Department had interpreted to be November 19, 2011 is questionable because the Claimant indicated she was seeking NEMT for a medical visit made on October 19, 2011 on the front of the application. However, the Department was told the Claimant was seen as a "walk-in" on October 19, 2011 and was not present in the office on November 19, 2011 (a Saturday). As all of these visits were considered "walk-in" visits by the clinic, the Department cannot approve NEMT reimbursement.
- 3) The Department was provided with contradictory information from the clinic concerning the Claimant's November 9, 2011 visit. The form was signed by "-----
-----" on that date and the Department had recorded in case comments that the November 9, 2011 visit was a scheduled appointment, as per information the clinic provided on November 30, 2011. The Department was later told by "-----" that the Claimant was not at the clinic on November 9, 2011. This conflicting information brings the credibility of the clinic's verification into question. As the preponderance of evidence indicates that the Claimant was, in fact, at the clinic on November 9, 2011 for a scheduled appointment, the Department must provide NEMT reimbursement for the November 9, 2011 trip.

- 4) Based on information provided during the hearing, the Department acted correctly in denying the Claimant's NEMT applications, with the exception of the November 9, 2011 medical visit. The Claimant must be reimbursed for her November 9, 2011 medical transportation costs.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying the Claimant's applications for NEMT benefits for all contested medical visits except the November 9, 2011 appointment. The Department's action in denying reimbursement for the November 9, 2011 medical visit is **reversed** and NEMT benefits should be paid for that date.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 23rd Day of February, 2012.

**Pamela L. Hinzman
State Hearing Officer**