



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801

Jolynn Marra
Interim Inspector General

October 30, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-2127

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Mary McQuain, Assistant Attorney General

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

██████████,

Appellant,

v.

Action Number: 18-BOR-2127

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on October 9, 2018.

The matter before the Hearing Officer arises from the decision by the Respondent to deny Non-Emergency Medical Transportation benefits for May 14, May 15, May 29 and June 19, 2018.

At the hearing, the Respondent appeared by Mary McQuain, Assistant Attorney General. Appearing as witnesses for the Respondent were Richard Ernest, Transportation Program Manager for the Bureau for Medical Services and ██████████. The Appellant appeared by counsel, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notices of Denial dated May 16, 2018, May 10, 2018, May 17, 2018 and June 12, 2018
- D-2 State Plan Amendment 13-007, Non-Emergency Medical Transportation, dated September 19, 2014
- D-3 Bureau for Medical Services Provider Manual Chapter 524
- D-4 West Virginia Income Maintenance Manual Chapter 27
- D-5 West Virginia Code §9-2-13
- D-6 Bureau for Medical Services Provider Manual §800.14
- D-7 West Virginia Medicaid Provider Billing for February 2018 through August 2018

- D-7a Diagnoses Codes for [REDACTED], Dates of Service March 2 through March 4, 2018
- D-8 Call Recording and Transcript of Call Recording to [REDACTED] dated February 5, 2018 and Call Recording and Transcript of Call Recording to [REDACTED] dated May 14, 2018
- D-9 West Virginia Family Health Plan Provider Directory retrieved from <http://wvfh.prismisp.com>
- D-10 Distance Verification Form (DVF) from Dr. [REDACTED] for Appointment Date May 15, 2018
- D-10a DVF from Dr. [REDACTED] for Appointment Date January 30, 2018
- D-10b Trip Detail for February 6, 2018 Appointment
- D-10c DVF from Dr. [REDACTED] for Appointment Date February 6, 2018
- D-10d DVF from Dr. [REDACTED] for Appointment Date January 4, 2018
- D-10e DVF from Dr. [REDACTED] for Appointment Date February 6, 2018
- D-11 Trip History from December 2016 through August 2018
- D-12 Trip Details for May 14, May 15, May 29 and June 19, 2018
- D-13 Bureau for Medical Services Provider Manual §519.17
- D-14 West Virginia State Code §9-5-23
- D-15 Transcript for Call Recording dated February 5, 2018
- D-16 Code of Federal Regulations – 42 CFR §431.220
- D-17 West Virginia Code §9-5-4

Appellant's Exhibits:

- C-1 West Virginia Income Maintenance Manual Chapter 27
- C-2 Bureau for Medical Services Provider Manual Chapter 524
- C-3 West Virginia Code §29A-1-3
- C-4 Agreed Orders in Legal Aid of West Virginia Legal vs. Respondent
- C-5 [REDACTED] Transportation Internal Protocols, Revised May 2018
- C-6 [REDACTED] Transportation Internal Protocols, Effective September 2014
- C-7 Department of Health and Human Resources' Common Chapters Manual Chapter 700
- C-8 Board of Review Decision, 16-BOR-3101
- C-9 Board of Review Decision, 16-BOR-3100
- C-10 Miller vs. Lipscomb Consent Order dated November 9, 1988
- C-11 Trip Details and Notes for November 2017 through June 2018
- C-12 DVF from Dr. [REDACTED] for Appointment Date May 15, 2018, DVF from Dr. [REDACTED] for Appointment Date February 6, 2018, DVF from Dr. [REDACTED] for Appointment Date February 6, 2018, DVF from Dr. [REDACTED] for Appointment Date January 4, 2018, DVF from Dr. [REDACTED] for Appointment Date January 17, 2018, DVF from Dr. [REDACTED] for Appointment Date January 30, 2018, DVF from Dr. [REDACTED] for Appointment Date January 30, 2018, DVF from Dr. [REDACTED] for Appointment Date December 19, 2017 and DVF from Dr. [REDACTED] for Appointment Date December 6, 2017
- C-13 Medical Records from [REDACTED] from December 2017 through February 6, 2018
- C-14 Correspondence from [REDACTED], M.D. dated September 13, 2018
- C-15 Pain Pump Information retrieved from www.mayfieldclinic.com
- C-16 Photographs of the Appellant's Surgical Site
- C-17 Notices of Denial dated May 10, May 16, and August 1, 2018
- C-18 Correspondence from [REDACTED], N.P. dated September 24, 2018

- C-19 United States Code – 42 USCS §1396a
- C-20 Bills vs. Respondent Supreme Court of Appeals of West Virginia Decision dated September 7, 2011
- C-21 G.H. Call Recording to [REDACTED] (date unknown)
- C-22 Call Recording to [REDACTED] dated February 5, 2018
- C-23 Call Recording to [REDACTED] dated February 5, 2018
- C-24 West Virginia Secretary of State Registers Search for 2014

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant routinely received Non-Emergency Medical Transportation (NEMT) services as a Medicaid recipient.
- 2) The Appellant received NEMT services for a consultation appointment on December 19, 2017, with Dr. [REDACTED] of the [REDACTED] in [REDACTED] West Virginia.
- 3) The Appellant received NEMT services for the surgical removal of an intrathecal pain pump on January 17, 2018, performed by Dr. [REDACTED] at [REDACTED] in [REDACTED] West Virginia.
- 4) The Appellant received NEMT services for a post-surgical appointment and suture removal on February 6, 2018, with Dr. [REDACTED] at the [REDACTED].
- 5) On March 26, 2018, the Appellant contacted [REDACTED] the transportation broker contracted by the Bureau for Medical Services to administer the NEMT program, and requested transportation to an appointment with Dr. [REDACTED] on May 14, 2018, to discuss results of an MRI and to discuss the possibility of another surgery (Exhibits D-12 and C-11).
- 6) A DVF was not provided by the referring or treating physician for the May 14, 2018 trip.
- 7) NEMT was denied for the May 14, 2018 appointment with Dr. [REDACTED] as one-way mileage to [REDACTED] West Virginia exceeded the 125-mile limit allowed by policy.
- 8) A written notice of the denial for the May 14, 2018 date of travel was not issued.
- 9) On April 14, 2018, the Appellant contacted [REDACTED] to request transportation to an appointment with Dr. [REDACTED] on May 15, 2018 (Exhibits D-12 and C-11).
- 10) A Distance Verification Form (DVF) was submitted to [REDACTED] on May 8, 2018, by referring physician Dr. [REDACTED] stating that the Appellant's diagnoses of peripheral vertigo and

muscle weakness could not be treated by a closer provider because “no one takes care of it and takes her insurance” (Exhibits D-10 and C-12).

- 11) The Respondent issued a notice of denial on May 10, 2018, advising the Appellant that the May 15, 2018, trip had been denied as Dr. [REDACTED] was not the closest provider (Exhibits D-1 and C-17).
- 12) On May 15, 2018, the Appellant contacted [REDACTED] to request transportation to an appointment with Dr. [REDACTED] on May 29, 2018 (Exhibits D-12 and C-11).
- 13) A DVF was not provided by the referring or treating physician for the May 29, 2018 trip.
- 14) The Respondent issued a notice of denial on May 16, 2018, advising the Appellant that the May 29, 2018, trip had been denied as Dr. [REDACTED] was not the closest provider (Exhibit D-1 and C-17).
- 15) On June 6, 2018, the Appellant contacted [REDACTED] to request transportation for an appointment with Dr. [REDACTED] on June 19, 2018 (Exhibit D-12 and C-11).
- 16) A DVF was not provided by the referring or treating physician for the June 19, 2018 trip.
- 17) The Respondent issued a notice of denial on June 12, 2018, advising the Appellant that the June 19, 2018, trip had been denied as Dr. [REDACTED] was not the closest provider (Exhibit D-1 and C-17).
- 18) The Appellant did not attend the May 14, May 15, May 29 and June 19, 2018 appointments with Dr. [REDACTED] when transportation to these appointments had been denied (Exhibit D-7).
- 19) The Appellant did not incur out-of-pocket expenses for the denied trips.
- 20) The Appellant is requesting a determination that the May 14, May 15, May 29 and June 19, 2018 trips were denied in error.

APPLICABLE POLICY

The State Plan Amendment 13-007 approved by the Centers for Medicare and Medicaid Services (CMS) amended the methods in which the Bureau for Medical Services provided transportation under the Non-Emergency Medical Transportation program, effective October 1, 2013. Transportation services under the NEMT program are provided under a contracted broker who has oversight of the program by screening, scheduling, dispatching and notification of single or standing travel orders. The broker will screen requests for transportation made through the call center to determine if the trip request is for a Medicaid covered service and that the individual is a Medicaid member. Transportation will be provided to the nearest medically appropriate and

qualified provider not to exceed 125 miles from the Medicaid member's home in state or within 30 miles of the West Virginia border.

Bureau for Medical Services Provider Manual §§524.3, 524.3.1 and 524.3.1.1 states all non-emergency, non-ambulance medical transportation (NEMT) services must be accessed through the BMS' contracted Broker. These requests may be made by members, their families, guardians or representatives and by providers. The Broker is to consider member's permanent and temporary special needs, appropriate modes of transportation and special instructions regarding the nearest appropriate provider and additional information necessary to ensure that appropriate transportation is authorized and provided. The Broker determines:

- The member's eligibility for NEMT services.
- The member's medical need leading to the requirement for NEMT services and the most economical mode of transportation that meets the member's needs. The Broker will maximize use of fixed route transit and individual vehicles, which may be driven by the member, friend or family member whenever determined more economical and appropriate.
- The member's lack of access to available transportation. The Broker is to require the member to verbally certify this.
- Whether the service for the member is a covered service and whether prior authorization has been granted if required.
- The nearest appropriate enrolled provider. The Broker will seek to minimize distance traveled, although if a member has recently moved to a new area, the Broker is to allow long distance transportation for up to 90 calendar days if necessary to maintain continuity of care.
- Necessity of attendant or assistance request. The Broker shall determine if the member needs door-to-door, curb-to-curb or hand-to-hand level of assistance with transportation.

The Broker is to educate members on how and when to request NEMT services. Requests are to be made at least five business days before the NEMT service is needed. Trip requests are to be made using a single toll free number unless otherwise approved by BMS. The Broker will also make accommodation for standing orders for repeat trips. The Broker will have a process in place to handle such last-minute scheduling changes and/or urgent trips.

DISCUSSION

Pursuant to policy, NEMT benefits are provided to enrolled Medicaid members to the nearest appropriate enrolled Medicaid provider. The State Plan Amendment limits transportation to the nearest medically appropriate and qualified Medicaid provider to a maximum of 125 miles one-way from the Medicaid member's residence.

For Medicaid members requesting transportation in excess of the 125-mile limit, [REDACTED] will request a Distance Verification Form be provided from the referring or treating physician to document the reason for the distance exception. [REDACTED] will approve or deny distance exceptions based upon the information provided on the Distance Verification Forms.

The Appellant requested transportation to appointments with Dr. [REDACTED] for May 14, May 15, May 29 and June 19, 2018, which exceeded the 125-mile limit established by policy. Of these four (4) appointments scheduled with Dr. [REDACTED] only one (1) Distance Verification Form was provided to [REDACTED] to justify the travel in excess of 125 miles. The Distance Verification Form that was completed by referring physician Dr. [REDACTED] for the May 15 appointment indicated that the Appellant was being treated for peripheral vertigo and muscle weakness and no closer providers could treat the Appellant for these conditions. Transportation to all four scheduled appointments with Dr. [REDACTED] were denied as [REDACTED] determined that the Appellant could be treated by a neurologist closer to her home.

Counsel for the Appellant purported that the May 14, May 15, May 29 and June 19, 2018 appointments were to attend a second post-operative visit with Dr. [REDACTED] who performed the surgical removal of an intrathecal pain pump in January 2018. The Appellant was approved for transportation for the surgery with Dr. [REDACTED] and a subsequent post-operative visit on February 6, 2018, therefore it the Appellant's contention that there were no closer, appropriate providers who could treat the Appellant. Medical records from Dr. [REDACTED] confirmed that the Appellant was to attend a second post-surgical visit approximately ten (10) weeks after the February 6 appointment (Exhibit C-13).

The Respondent argued that [REDACTED] had no knowledge that the May 14, May 15, May 29 and June 19 requests for transportation were for a second post-operative visit, by a lack Distance Verification Forms and failure of the Appellant to communicate the purpose of the trips to [REDACTED] at the time of the transportation requests. Testimony from the Bureau for Medical Services' witness indicated that had the information been provided to [REDACTED] when transportation was requested, the trips may have been approved and the distance justified. However, based on the limited information provided at the time of the request, the Respondent averred that the trips to Dr. [REDACTED] were properly denied.

Policy stipulates that a Medicaid member's temporary or permanent special needs and special instructions must be taken into consideration when determining the nearest appropriate provider. A review of Dr. [REDACTED] notes from the February 6, 2018, visit indicated that the Appellant needed to attend another appointment for a final check of her surgical incision. Although this information was not relayed to [REDACTED] at the time the Appellant attempted to receive transportation to attend the final post-operative visit, which had been rescheduled repeatedly when transportation was denied, clearly Dr. [REDACTED] was the closest appropriate provider who could perform an examination of an incision from a surgery which he performed.

The Appellant has the right to have the facts of her case regarding the denial of transportation be considered anew during the hearing. Although documentation of the Appellant's need to attend a second post-operative visit with Dr. [REDACTED] was not provided to the Respondent until September 2018, months after the denials of the May 14, May 15, May 29 and June 19, 2018 requests for transportation, the special circumstance of a second post-operative visit must be taken into consideration and transportation to attend such an appointment should have been approved.

CONCLUSIONS OF LAW

- 1) Policy stipulates that a Medicaid member's temporary or permanent special needs and special instructions must be taken into consideration when determining the nearest appropriate provider when approving Non-Emergency Medical Transportation.
- 2) The Appellant was approved for transportation in excess of 125 miles for the surgical removal of an intrathecal pain pump with Dr. [REDACTED] in [REDACTED] West Virginia, in January 2018.
- 3) The Appellant was approved for transportation to attend a post-operative visit with Dr. [REDACTED] on February 6, 2018.
- 4) Dr. [REDACTED] instructed the Appellant to attend a final post-operative visit approximately ten weeks after the February 6, 2018, visit.
- 5) The Appellant requested transportation for May 14, May 15, May 29 and June 19, 2018 appointments with Dr. [REDACTED] to attend a final post-operative visit.
- 6) The special instruction by Dr. [REDACTED] the neurosurgeon who performed the removal of the intrathecal pain pump, for the need for the Appellant to receive a second post-operative visit, met the exception in policy as a temporary special need.
- 7) The Appellant's request for transportation to attend a second post-operative visit with Dr. [REDACTED] should have been approved.

DECISION

It is the decision of the State Hearing Officer to **reverse** the denial of the Appellant's request for Non-Emergency Medical Transportation to attend a second post-operative visit with Dr. [REDACTED] in [REDACTED] West Virginia.

ENTERED this 30th day of October 2018

**Kristi Logan
State Hearing Officer**