



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 West Washington Street
Charleston, West Virginia 25313
(304) 558-4098 ext. 157

Bob Wise
Governor

Paul L. Nusbaum
Secretary

January 6, 2005

Dear Ms. _____;

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 9, 2003. Your hearing request was based on the Department of Health and Human Resources' action to deny your request for certain Non-Emergency Medical Transportation (NEMT) payments.

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 and benefit levels for Non-Emergency Medical Transportation (NEMT) are determined based on current regulations. One of these regulations specifies that:

"The submission deadline for the completed OFA-NEMT-1 is 60 days from the date of the trip(s). Compliance is determined by comparing the date of the earliest trip entered on the form with the date the application is received by DHHR for processing.


Altered forms which include questionable entries will result in denial of the application unless The Worker is able to resolve the discrepancies. Items which have been corrected must be initialed by the applicant or other person providing the information. (West Virginia Income Maintenance Manual Section 19.3 B (7) *APPLICATION/REDETERMINATION PROCESS - The Application Form*).

The information submitted at the hearing revealed: (1) Several months were not paid because the original applications, with signatures, could not be located in the file and; (2) The remaining trips were denied because they were past the 60 day limit on making the application.

It is the decision of the State Hearing Officer, to uphold the action of the Department to deny reimbursement for the Non Emergency Medical Transportation expenses.

Sincerely,

Ray B. Woods, Jr., M. L. S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Randall Scott Johnson, Income Maintenance Supervisor


WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

NAME: _____ on behalf of _____

ADDRESS: _____

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 6, 2005 for Ms. _____, on behalf of her daughter, _____.

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 originally scheduled on December 9, 2003 on a timely appeal filed October 28, 2003.

It should be noted here that, _____ was receiving Medicaid coverage at the time of the hearing.

All persons giving testimony were placed under oath. This issue could not be resolved in a pre-hearing conference.

II. PROGRAM PURPOSE

The program entitled Emergency and Special Assistance Programs, is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

Emergency and Special Assistance Programs is used to assist individuals and families in meeting a financial crisis when they are without available resources. The program is designed to provide short-term emergency financial assistance with which eligible individuals and families may obtain items or services needed to eliminate an emergency or crisis. Those who are in need of qualify for emergency financial assistance may already be participating in an Income Maintenance or Social Service Program.

III. PARTICIPANTS

_____, Claimant
[REDACTED]

Cheryl McKinney, Income Maintenance Supervisor - Kanawha District DHHR Office

Presiding at the hearing was, Ray B. Woods, Jr., M. L. S., State Hearing Officer and, a member of the State Board of Review.

IV. QUESTION(S) TO BE DECIDED

Did Ms. _____ meet the eligibility criteria on behalf of her daughter, _____, for payment of Non-Emergency Medical Transportation (NEMT) expenses?

V. APPLICABLE POLICY

West Virginia Income Maintenance Manual Section 19.3 B (7)
APPLICATION/REDETERMINATION PROCESS - The Application Form.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

DEPARTMENT'S EXHIBITS:

- D-1 Notice of Decision dated 10/23/03
- D-2 Notice of Decision dated 12/03/03
- D-3 NEMT Application dated 07/11/97 – 07/29/97
- D-4 Case Comments 07/09/03 – 11/25/03
- D-5 IG-BR-40 dated 10/28/03
- D-6 Request for Update from Case Worker dated 01/05/05
- D-7 Request for Update from Case Worker dated 03/24/04

CLAIMANT'S EXHIBITS:

- C-1 Denial Letter dated 09/25/03, for reimbursement of NEMT
- C-2 Fair Hearing Request dated 04/02/01 with attached NEMT Application
- C-3 Fair Hearing Request dated 03/01/01 with attached NEMT Application
- C-4 Fair Hearing Request dated 02/02/01 with attached NEMT Application
- C-5 Fair Hearing Request dated 01/04/01 with attached NEMT Application
- C-6 Fair Hearing Request dated 10/06/99 with attached NEMT Application
- C-7 Fair Hearing Request dated 08/10/99 with attached NEMT Application
- C-8 Fair Hearing Request dated 07/07/99 with attached NEMT Application
- C-9 Fair Hearing Request dated 06/09/99 with attached NEMT Application
- C-10 Fair Hearing Request dated 03/08/99 with attached NEMT Application
- C-11 Fair Hearing Request dated 02/10/99 with attached NEMT Application
- C-12 Fair Hearing Request dated 01/09/99 with attached NEMT Application
- C-13 NEMT Application dated 11/03/98 - 11/17/98
- C-14 Fair Hearing Request dated 11/05/98 with attached NEMT Application
- C-15 Fair Hearing Request dated 10/08/98 with attached NEMT Application
- C-16 NEMT Application dated 08/03/98
- C-17 NEMT Application dated 06/01/98
- C-18 NEMT Application dated 05/07/98
- C-19 NEMT Application dated 04/07/98
- C-20 NEMT Application dated 03/06/98
- C-21 NEMT Application dated 02/02/98
- C-22 WVIMM Chapter 19.3 NON-EMERGENCY MEDICAL TRANSPORTATION

VII. FINDINGS OF FACT

- The issue at hand involves the denial of NEMT payments, as a result of reviewing

NEMT applications from May, 1995 through May, 2002. Ms. _____ requested the review because, she was not being paid for all trips submitted for reimbursement.

– Ms. Cheryl McKinney came to the Agency in January, 2002. The research on the NEMT payments were completed in July, 2002. The Department approved backdated payments. The only remaining payments were outlined in the first denial letter dated October 23, 2003. The only period in question is 1998 through 2001. There were two separate reasons for the denials: (1) Several months were not paid because the original applications, with signatures, could not be located in the file. Secondly, the remaining trips were denied because they were past the 60 day limit on making the application.

– Ms. _____ submitted copies of the NEMT Applications for reimbursement.

– Original applications were not located for the following months: January, 1998 through February, 1999; May, 1999 through July, 1999; September, 1999; December, 2000 through March, 2001.

– The following trips were denied because they were received after the 60 day time limit: July 1, 1997 through July 12, 1997.

– The Department reviewed copies of NEMT payments provided by Ms. _____ with the originals in the case record. The record was also reviewed to determine all NEMT payments issued for the time in question. All original NEMT applications which could not be determined if a payment had been issued, were paid to Ms. _____ at this time.

– Ms. McKinney discussed the matter with the Community Service Manager, Ms. Anita Adkins. Ms. McKinney was instructed not to make the payments unless she had the original documents.

– Ms. McKinney assigned the review of Ms. _____'s record to a Case Worker.

– Mr. _____ expressed concerns about subsequent requests for payments that were not included in Ms. McKinney's review.

– Upon questioning from Mr. _____ Ms. McKinney explained the process of receiving and reviewing requests for payments.

– According to Ms. McKinney, there are a number of receipts in Ms. _____'s file and, there is always a possibility of lost applications.

– Ms. McKinney was not aware of any fair hearing requests prior to her employment with the Agency in early 2002.

– Ms. _____ testified that she was advised by a Case Worker to submit the applications for payment, by the 10th day of the month after the trips. The forms have changed over the years. She would submit the application with verification from the physician, for each trip. Informal requests were made for a hearing after she did not receive payments. Notes were generally written on the applications for someone at the Department to contact her, to discuss the non-payments. She finally contacted a Case Worker in August, 2001 who tried to assist in resolving the matter. Because of the large case file, Ms. _____ was advised to bring copies of all of her documents. They were hand delivered on September 7, 2001. Ms. _____ began receiving payments for a while before they finally stopped. In March, 2002, Ms. _____ spoke

with Ms. McKinney who suggested she withdraw her fair hearing requests, to allow her time to research the matter. A few payments were received but, there were numerous payments not received. In March, 2003 Ms. _____ lost her income and threatened to go to the Governor's Office or an Attorney to get the matter resolved. The request for fair hearings was not being addressed and, she was not being paid. It was then that she received a denial for these periods.

– Ms. _____ said she mailed all of the applications in a timely manner. She is a permanent part-time State Employee and single parent, who took a day off each week to take of the business.

– Ms. _____ never had a fair hearing before and, was never told why she did not have one. The Department did not respond until March, 2002.

– Ms. _____ was informed by an employee that she should not expect the State to take care of her responsibilities. Ms. _____ believes the Department lost the applications.

– Mr. _____ submitted exhibits showing copies of fair hearing requests and requests for travel reimbursement:

– Mr. _____ asked if attorney's fees are allowed if Ms. _____ prevails. The State Hearing Officer stated they were not.

– It should be noted that, any delay in the State Hearing Officer rendering a decision in a timely manner, was due to an overwhelming case load.

VIII. CONCLUSIONS OF LAW

West Virginia Income Maintenance Manual Section 19.3 B (7) APPLICATION/REDETERMINATION PROCESS - The Application Form states,

The required form for all Medicaid recipients, including ART clients, is the OFA-NEMT-1. It must be completed by the recipient or by a parent, guardian or other responsible person when the recipient is a child or an incapacitated adult. The form is mailed or brought to the recipient's local DHHR office.

The ART client completes the OFA-NEMT-1 and submits it to the Designated Care Coordinator (DCC) for verification and approval. In addition, the DCC may sign the application in lieu of the doctor or his designee when the DCC has verified the appointment was kept. The approved OFA-NEMT-1 is then forwarded to DHHR by the DCC for processing. The same 60-day deadline for submission applies to ART clients and other Medicaid recipients as well.

The form may be used for verification of up to 4 trips. Each trip date must be entered in the space titled "Date of Appointment." Regardless of the number of trips included on the form, all trips must have occurred within the 60-day period prior to the date the form is submitted to DHHR for payment.

The medical service provider, his designee or the DCC is required to sign the section verifying that the individual had an appointment and was seen for Medicaid-covered treatment or services. Medical service providers include doctors, nurses, nurse

practitioners, physicians' assistants, lab technicians, and others who perform a Medicaid-covered service. The DCC may sign in place of the physician or his designee routinely; there is no requirement that the client failed to obtain the signature of the physician or designee in order for the DCC to sign the form. Only when the form is signed by the DCC is it used to verify the reimbursement amount and that the appointment for a Medicaid-covered service was kept.

When prior approval is required, the applicant may apply in person at the local DHHR office so that the required documentation can be made and/or obtained. Coordination of the process may be facilitated by telephone and/or fax with BMS and the physician, as necessary.

As noted above, the submission deadline for the completed OFA-NEMT-1 is 60 days from the date of the trip(s). Compliance is determined by comparing the date of the earliest trip entered on the form with the date the application is received by DHHR for processing.

Altered forms which include questionable entries will result in denial of the application unless the Worker is able to resolve the discrepancies. Items which have been corrected must be initialed by the applicant or other person providing the information.

IX. DECISION

The main issue at hand, is the denial of certain payments for Non-Emergency Medical Transportation, (NEMT), for the period of 1998 through 2001. According to Ms. McKinney, the applications were denied for two reasons: Several months were not paid because the original applications, with signatures, could not be located in the file and; Secondly, the remaining trips were denied because they were past the 60 day limit on submitting the applications.

Ms. McKinney also provided testimony that she had consulted with the ██████████ County DHHR Community Services Manager, Ms. Anita Adkins. Ms. Adkins apparently instructed Ms. McKinney not to make any payments, unless she had the original documents.

Another area of concern, is the lack of response to the many fair hearing requests submitted by Ms. _____ to the Department. According to the Claimant's Exhibits, Ms. _____ requested a Fair Hearing on thirteen (13) different occasions, between February, 1998 through April, 2001. Ms. McKinney could not explain why the hearing requests were ignored, prior to her employment with the Agency in early 2002. Ms. McKinney had suggested that Ms. _____ withdraw a previous fair hearing request, to allow her the opportunity to research the issues of non-payment of NEMT expenses.

Although the period in question covers 1998 through 2001, the policy submitted for this matter was last updated in April, 2003. The earliest change listed on-line is Change #228 effective November 1, 2001. There does not appear to be any *major* changes in West Virginia Income Maintenance Manual Section 19.3 *APPLICATION/REDETERMINATION PROCESS* that would affect the outcome in this particular matter.

In reviewing the policy found at West Virginia Income Maintenance Manual Section 19.3 B (7) *APPLICATION/REDETERMINATION PROCESS - The Application Form*, it states in part,

“The required form for all Medicaid recipients, including ART clients, is the OFA-NEMT-1. It must be completed by the recipient or by a parent, guardian or other responsible person when the recipient is a child or an incapacitated adult. The form is mailed or brought to the recipient’s local DHHR office.

The submission deadline for the completed OFA-NEMT-1 is 60 days from the date of the trip(s). Compliance is determined by comparing the date of the earliest trip entered on the form with the date the application is received by DHHR for processing.”

Ms. _____ provided testimony that she submitted the necessary applications for reimbursement, in a timely manner. There does not appear to be any reason not to believe Ms. _____’s testimony, based upon her personal records. Unfortunately, there is the possibility that her applications for the period of 1998 through 2001 were either lost by the Department or, never submitted for payment.

It is the decision of this State Hearing Officer, to uphold the Department’s action to deny NEMT payments that cannot be verified by an original application and signature and; applications beyond the 60 day deadline.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.b