



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 17, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 9, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to deny Non-Emergency Medical Transportation (NEMT) based on a time limit.

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.

Some of the regulations for the NEMT program state: The Worker must process applications received for travel upon receipt, provided the date for which reimbursement is being requested occurred no earlier than 60 days prior to the date of application. (West Virginia Income Maintenance Manual, Chapter 19.3.B.2)

Information submitted at your hearing revealed that your NEMT application was not timely.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny NEMT.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Lisa Tanner, Economic Service Worker

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

_____,

Claimant,

v.

Action Number: 08-BOR-1561

**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 concluded on October 17, 2008 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 July 9, 2008 on a timely appeal, filed May 30, 2008.

II. PROGRAM PURPOSE:

The program entitled Non-Emergency Medical Transportation is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

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's wife
Vickie Taylor, Service Coordinator, West Virginia Birth to Three
Lisa Tanner, Economic Service Worker, DHHR

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

All persons offering testimony were placed under oath.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department is correct in denying NEMT.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 19.3.B

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 West Virginia Income Maintenance Manual, Chapter 19.3.B
- D-2 NEMT applications, date stamped as received May 1, 2008
- D-3 Calendar
- D-4 Notice of NEMT denial dated May 22, 2008

VII. FINDINGS OF FACT:

- 1) On May 1, 2008, the Department received five (5) applications for Non-Emergency Medical Transportation (NEMT) reimbursement (Exhibit D-2) from the Claimant. On or about May 22, 2008, these applications were denied in a notice (Exhibit D-4) to the Claimant. Each application is denied separately in the notice, and each provided the denial reason as follows, in pertinent part:

2. REASON: The date you traveled was more than sixty (60) days before the date you applied.

- 2) The latest date of travel that was submitted in the Claimant's NEMT applications (Exhibit D-2) was February 27, 2008. The Department presented a calendar (Exhibit D-3) to show that an application received on May 1, 2008 could have travel dates no earlier than March 2, 2008 to be considered for reimbursement.

- 3) The West Virginia Income Maintenance Manual, Chapter 19.3.B.2, states:

2. Agency Delays

The Worker must process applications received for travel upon receipt, provided the date for which reimbursement is being requested occurred **no earlier than 60 days prior to the date of application**. Delays caused by failure on the part of the agency to process an application in a timely manner is not a reason to deny payment. (emphasis added)

- 4) The West Virginia Income Maintenance Manual, Chapter 19.3.B.5, 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 coverage 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.** (emphasis added)

- 5) Testimony on behalf of the Claimant and a letter (Exhibit C-1) submitted by Vickie Taylor on the Claimant's behalf indicated that the Claimant understood the deadline, but was requesting an exception to policy.

VIII. CONCLUSION OF LAW:

- 1) Policy requires that NEMT applications be submitted within sixty (60) days of the earliest day of travel. Testimony and evidence from both the Department and on the Claimant's behalf clearly show that the denied applications for NEMT did not meet this deadline. There is no dispute of fact on the Claimant's behalf, only a dispute of policy.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's denial of NEMT.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

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

ENTERED this _____ Day of October, 2008.

**Todd Thornton
State Hearing Officer**