



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 22, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 3, 2008. Your hearing request was based on the assertion that the Department of Health and Human Resources' acted to deny your right to apply for the Non-Emergency Medical Transportation (NEMT) program within the established 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 relevant regulations for the program state: No person is denied the right to apply for any Program administered by the Division of Family Assistance. Every person must be afforded the opportunity to apply for all Programs on the date he expresses his interest. (West Virginia Income Maintenance Manual, Chapter 1.2.A.1) 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 you were not denied the right to apply for NEMT, but that at the time you expressed interest in the program reimbursement was not possible due to the established time limit for the program.

It is the decision of the State Hearing Officer to **uphold** the pending 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
Eric Dotson, Family Support Supervisor

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

_____ ,

Claimant,

v.

Action Number: 08-BOR-1577

**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 22, 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 3, 2008 on a timely appeal, filed June 13, 2008.

It should be noted that the action of the Department was pending at the time of the appeal request.

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

_____, Claimant's sister

_____, Claimant's mother

Anita Hayes, Family Support Specialist, 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 to not reimburse the Claimant under the NEMT program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 1.2.A
West Virginia Income Maintenance Manual, Chapter 19.3.B

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case Summary
- D-2 Orientation to WV Works forms (OFA-WVW-4) signed by and _____
- D-3 West Virginia Income Maintenance Manual, Chapter 1.25.U
- D-4 Family Assistance Programs Brochure
- D-5 Copies of Phone Messages/Records
- D-6 West Virginia Income Maintenance Manual, Chapter 19.3
- D-7 Reimbursement documentation submitted April 14, 2008

VII. FINDINGS OF FACT:

- 1) The Department worker testified that on March 7, 2008, the Claimant and her husband completed an eligibility review. At that time, because the Claimant expressed financial need that the Department worker felt could potentially be reimbursed under the Non-Emergency Medical Transportation (NEMT) program, she gave the Claimant several NEMT applications, explained the application process and the sixty (60) day deadline for the program.
- 2) Testimony from the Department also revealed that on April 14, 2008, written documentation of the Claimant's travel (Exhibit D-7) was submitted without an application for NEMT. The latest date of travel mentioned on this documentation was for February 22, 2008. The Department indicated that the first NEMT applications were received from the Claimant on June 13, 2008, which was the same date the Claimant requested an appeal through the fair hearing process. There is no denial letter because there was no Department action at the time of the hearing request.
- 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 by the Claimant, her sister, and her mother explained the extensive medical problems of the Claimant that preceded the NEMT applications. They explained the extreme financial hardship caused by the unexpected medical problems of the Claimant. The Claimant also contended that the Department worker should have advised her or her husband of the NEMT program.

- 6) The Department presented the orientation forms (Exhibit D-2) for the WV Works program. The Department worker testified that the Claimant and her husband attended the WV Works orientation, during which the NEMT program is discussed and explained. A brochure (Exhibit D-4) is also given to persons attending the WV Works orientation, and it mentions the NEMT program. The Department worker also noted several phone conversations or voice mail messages (Exhibit D-5) with the Claimant or her husband. At no time did these phone contacts indicate that there was an expressed interest in reimbursement under the NEMT program.

- 7) Policy from the West Virginia Income Maintenance Manual, Chapter 1.2.A.1, states, in pertinent part:

1. Right To Apply

No person is denied the right to apply for any Program administered by the Division of Family Assistance. Every person must be afforded the opportunity to apply for all Programs **on the date he expresses his interest**. (emphasis added)

- 8) Policy from the West Virginia Income Maintenance Manual, Chapter 1.2.A.3, states, in pertinent part:

3. Right To Consideration For All Programs

It is the Worker's responsibility to explain and make available all of the Department's programs for which the applicant could qualify. Unless the applicant specifically states he is not interested in being considered for WV WORKS, including DCA; SNAP benefits; Medicaid; or SCA, during the appropriate time period, the Worker must evaluate potential eligibility for each of these.

VIII. CONCLUSIONS OF LAW:

- 1) Policy requires that NEMT applications be submitted within sixty (60) days of the earliest day of travel. Undisputed testimony and evidence from the Department showed that the Claimant's NEMT applications were not submitted within this time frame, and cannot be considered for reimbursement. The Department did not act to deny the applications because they were submitted at the same time the Claimant's hearing request was submitted; however, the Department was correct to deny NEMT reimbursement based on the policy deadline for the program.
- 2) As part of the application process, policy clearly shows the responsibility of the Department to explain and make available all programs to the applicant. Testimony and evidence from the Department showed that this requirement was satisfied by the WV Works orientation attended by both the Claimant and her husband, at which time corollary programs were described, both in the presentation and in a brochure. Evaluating potential eligibility for NEMT at the time of the WV Works application only involved considering transportation expenses at that time; testimony in the hearing revealed no such expenses in 2006.
- 3) Outside of applications or reviews for other programs, it is the responsibility of the Department to afford the Claimant the right to apply once an interest was expressed. It is also clear, from testimony and evidence, that the Department met this requirement. Although extenuating circumstances may have prevented the Claimant or her family from recalling the availability of this program, and the Claimant may have preferred a reminder from the Department worker about NEMT, the weight of responsibility for expressing an interest in the program rests on the Claimant. Once interest in NEMT was expressed, the Department did not deny the right to apply and its pending action to deny NEMT based on a time deadline is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the pending denial by the Department of NEMT, and that the pending action of the Department did not constitute a denial of the right to apply for that program.

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**