



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

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

June 17, 2011

-----for -----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 3, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny Non-Emergency Medical Transportation payments for -----.

In arriving at a decision, the State Hearings 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 Non-Emergency Medical Transportation (NEMT) program is based on current policy and regulations. These regulations provide that services provided under the NEMT program include reimbursement for transportation and certain related expenses necessary to secure medical services normally covered by Medicaid. Applications submitted for trips or other expenses which have already received reimbursement from any other source are denied (WV Income Maintenance Manual § 27.2 and 27.8).

The information submitted at your hearing revealed that transportation is not provided by -----'s Long Term Care facility nor is the cost included in the per diem rate. ----- is eligible for NEMT payments as the cost of her travel is not reimbursed by any other source.

It is the decision of the State Hearings Officer to **Reverse** the action of the Department to deny ----- payments under the Non-Emergency Medical Transportation program.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Chairman, Board of Review
Susan Pomp, Economic Services

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-981

**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 June 3, 2011 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 a timely appeal, filed March 31, 2011.

II. PROGRAM PURPOSE:

The program entitled Non-Emergency Medical Transportation is 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:

-----, Representative for Claimant
Shelly Hollen, Economic Service Worker

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

All participants testified by phone.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department's decision to deny Claimant NEMT payments was correct.

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 27.2, 27.8 and 27.13

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notification Letter dated January 13, 2011
- D-2 Correspondence from -----dated March 1, 2011
- D-3 Policy Memorandum dated April 4, 2011

Claimants' Exhibits:

- C-1 Correspondence from -----of Mansfield Place
- C-2 Resident Policy for [REDACTED] Place
- C-3 Statement of Local Transportation's Schedule and Policy
- C-4 Statement of Approved and Denied NEMTs for Claimant
- C-5 Schedule of Claimant's Medical Visits
- C-6 Notification Letter dated May 10, 2011

VII. FINDINGS OF FACT:

- 1) Claimant is a resident of [REDACTED] Place nursing facility and receives Long Term Care Medicaid. An application requesting reimbursement under the NEMT program for travel to a doctor's appointment for Claimant was submitted to the Department on Claimant's behalf. A denial notification letter dated January 13, 2011 was issued by the Department which reads in pertinent part (D-1):

----- application for NEMT for 12/8/10 has been denied.

No one for whom benefits were requested meets all the program requirements for this category of assistance.

- 2) Shelly Hollen, Economic Service Worker, testified that Claimant is not eligible to receive NEMT payments as a resident of a Long Term Care facility. Ms. Hollen stated transportation is part of the facility's package of care, which is already being paid for by Medicaid. Ms. Hollen referred to a memorandum from the Department's policy unit as justification of the denial (D-3).

Ms. Hollen stated there were four (4) trips approved in error for Claimant through NEMT, dates of service November 12, 2010, November 19, 2010, December 2, 2010 and December 3, 2010. Ms. Hollen stated NEMT was also approved for Claimant for dates of service March 11, 2011, March 17, 2011, April 8, 2011 and April 22, 2011 in error by a new worker who was not familiar with NEMT policy for Long Term Care residents.

- 3) -----, Claimant's brother and representative, testified that his sister was admitted to [REDACTED] Place after losing her mobility due to a brain tumor. -----stated Claimant has

since developed another brain tumor while residing at the facility, requiring her to have several doctor's visits for chemotherapy and treatment outside of the facility.

-----stated Place will not transport their residents to medical appointments. He presented Place's resident policy which reads in pertinent parts (C-2):

Responsibilities of the Resident

Transportation to appointments is the responsibility of the resident and/or representative.

Non-Covered Services

The following services are NOT included in our basic per diem rate. Charges for these services will be billed directly to the resident or representative (sponsor) by the service providing or performing the requested service:

- Transportation

- 4) -----submitted a letter from social worker with Place which reads in pertinent part (C-1):

This letter is in regards to [Claimant's] transportation for appointments in She has been receiving transportation from her family to her appointments in for chemotherapy and other related appointments. She is gone for an extended amount of time when she has an appointment. [Claimant] leaves and returns for these appointments prior to the local transportation service opening and closings. She is able to ride in a vehicle and has no issues with being able to sit up for an extended amount of time. This makes her ineligible for ambulance transportation.

- 5) -----stated a typical day for Claimant to attend treatment begins at 6:30 am and she returns to Place around 5:00 pm. -----stated his sister is confined to a wheelchair and she would have difficulty riding a public bus even if the schedule coincided with her doctor's appointments.

-----stated Claimant has been denied transportation reimbursement for dates of service of December 8, 2010; December 13, 2010; December 17, 2010; January 3, 2010; January 14, 2010; January 28, 2010; February 11, 2011 and February 25, 2011.

- 6) WV Income Maintenance Manual § 27.2 states:

Services provided under this program include reimbursement for transportation and certain related expenses necessary to secure medical services normally covered by Medicaid.

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 group 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.

Reimbursement is also available for applicants for Medicaid who must travel to obtain necessary medical examinations and tests required to determine eligibility.

7) WV Income Maintenance Manual § 27.8 E states:

Applications submitted for trips or other expenses which have already received reimbursement from any other source are denied.

8) WV Income Maintenance Manual § 27.13 A states:

The following individuals are not eligible for NEMT:

- Individuals designated only as Qualified Medicare Beneficiaries (QMB), Specified Low Income Medicare Beneficiaries (SLIMB), or Qualified Disabled Working Individuals (QDWI) and who are not dually eligible for any full-coverage Medicaid group.
- Medicaid public school patients being transported to schools for the primary purpose of obtaining an education, even though Medicaid-reimbursable school-based health services are received during normal school hours, except for children receiving services under the Individuals with Disabilities Education Act (IDEA) when the child receives transportation for a Medicaid-covered service and both the transportation and service are included in the child's Individualized Education Plan (IEP).
- WV CHIP recipients.

Reimbursement is not approved for trips to pick up medicine, eye glasses, dentures or medical supplies or for repairs or adjustments to medical equipment. When services are paid for by any other program, or otherwise not charged to Medicaid, NEMT is not approved. When other reimbursement is available, Medicaid is always the last payer.

Reimbursement is not approved for services normally provided free to other individuals.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that reimbursement for travel related expenses for doctors' visits is paid through NEMT if the medical service is covered by Medicaid and the travel will not be reimbursed through any other program. The individual must be in a full coverage Medicaid group to qualify for travel reimbursement through NEMT.
- 2) Claimant was a recipient of a full coverage Medicaid group in December 2010, January 2011 and February 2011 when her NEMT applications were denied. Claimant's medical appointments are paid for by Medicaid.
- 3) The facility where Claimant is a resident does not provide transportation to the residents nor is transportation included in the facility's per diem rate (C-2). Claimant's transportation is being provided by family members, and will not be reimbursed through any other program.
- 4) The Department's contention that Long Term Care residents' transportation is included in their package of care with the facility does not apply to Claimant as transportation **is not** [emphasis added] included in the facility's per diem rate and **is not** already being paid for by Medicaid.
- 5) Claimant is eligible to receive NEMT payments for transportation to her medical appointments outside of her nursing facility.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to deny Claimant NEMT payments as a Long Term Care resident. Retroactive payments will be made to Claimant's transportation provider for trips denied in error.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th day of June 2011.

**Kristi Logan
State Hearing Officer**