



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.,  
Elkins, WV 26241

Earl Ray Tomblin  
Governor

Rocco S. Fucillo  
Cabinet Secretary

July 6, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 21, 2012. Your hearing request was based on the Department of Health and Human Resources' action to deny Non-Emergency Medical Transportation (NEMT) reimbursements.

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 for the NEMT Program is based on current policy and regulations. One of these regulations states that transportation providers must comply with Federal and State laws and regulations. In addition, it is the client's responsibility to provide accurate information concerning his/her circumstances so that the worker can make a correct decision on eligibility. (West Virginia Income Maintenance Manual Chapter 1.2.E and West Virginia Medicaid Provider Manual Section 524.1)

Information submitted during the hearing reveals that the Department correctly denied reimbursement of transportation costs.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your applications for NEMT benefits.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Mark Kennedy, FSS, WVDHHR

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

**IN RE:** -----,

**Claimant,**

v.

**ACTION NO.: 12-BOR-1269**

**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 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 via videoconference on June 21, 2012, on a timely appeal filed May 15, 2012.

**II. PROGRAM PURPOSE:**

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

Mark Kennedy, Family Support Supervisor, WVDHHR

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Department was correct in its action to deny the Claimant's application for NEMT benefits.

**V. APPLICABLE POLICY:**

West Virginia Medicaid Provider Manual Section 524  
West Virginia Income Maintenance Manual Chapter 1.2.E

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Copy of NEMT applications received by Department on April 11, 2012, and April 18, 2012
- D-2 Policy clarifications dated June 1, 2007, and May 23, 2012
- D-3 West Virginia Medicaid Provider Manual Section 524
- D-4 Notice of Decision dated May 11, 2012
- D-5 Notice of Decision dated May 9, 2012

**Claimant's Exhibits:**

- C-1 Written statement of -----
- C-2 Copy of NEMT applications for dates of travel May 8, 2012, May 9, 2012, and May 10, 2012
- C-3 Medical records for -----
- C-4 Copy of NEMT application for trips dated April 14, 2012, through April 18, 2012 (never submitted to Department)

**VII. FINDINGS OF FACT:**

- 1) The Claimant submitted applications (D-1) for Non-Emergency Medical Transportation, hereinafter NEMT, reimbursement on April 11, 2012, and April 18, 2012.
- 2) Family Support Supervisor (FSS) Mark Kennedy testified that the applications – submitted for the transportation of ----- on April 7, 2012, April 15, 2012, April 16, 2012, April 17, 2012, and April 18, 2012 – listed the Claimant as the driver. Because the Claimant is not a licensed driver, FSS Kennedy stated that the NEMT applications were denied, maintaining that policy prohibits transportation reimbursement to an unlicensed driver. FSS Kennedy provided Exhibit D-2, policy clarifications dated June 1, 2007, and May 23, 2012, which indicate that –

while there is no specific statement in the West Virginia Income Maintenance Manual addressing the status of the transportation provider's license – it is assumed that the paid provider must have the legal ability to operate a vehicle.

- 3) The Department sent the Claimant a Notice of Decision on May 9, 2012, informing her of the NEMT denials.
- 4) The Claimant testified that her sister, -----, was actually the transportation provider on the dates in question. The Claimant stated that the Department is aware that she is an unlicensed driver as she was a WV WORKS recipient.

----- testified that she is a licensed driver and provides transportation for the Claimant and her family. Both the Claimant and her sister contended that the Claimant has been permitted to sign her own name on NEMT applications in the past. The Claimant said the NEMT application for the April 14, 2012, trip indicates that ----- had made an emergency room visit, however, the trip should not have been listed as an emergency visit because his physician only met him at the emergency room. She provided medical records (C-3) to support her contention.

The Claimant testified that she came back into the WVDHHR office to resubmit the NEMT applications (C-4) with her sister's signature as the driver, however, she became involved in a verbal altercation with a Department employee at that time and law enforcement was called to the office. She stated that the forms were never resubmitted. The Claimant provided a written statement (C-1) from her sister dated May 7, 2012, which had been submitted to a Department worker for WV WORKS purposes (car repair). The statement indicates that ----- provides the Claimant's transportation.

- 5) West Virginia Medicaid Provider Manual Section 524.1 states, in pertinent part:

#### **Specific Medicaid Enrollment Requirements**

To enroll and participate in the WV Medicaid Program, a transportation provider must meet applicable general requirements in Chapter 300, as well as the specific requirements summarized here. The provider must also meet the certification requirements of Part B of the Medicare Program. Ambulance transportation providers must be licensed by and meet the personnel certification requirements of the WV Bureau for Public Health, Office of Emergency Medical Services (OEMS). Transportation providers must also comply with all applicable Federal and State laws, regulations, and certification requirements, including those established and regulated by the WV Public Service Commission (PSC).

Transportation providers shall have a valid and current WV business license, and remain current with Workers Compensation and Employment Security premiums and all State and local taxes. All participating patient transportation providers must have current coverage of errors and omissions liability and/or auto insurance liability of an amount not less than one million dollars as required under current WV law. Copies of documentation verifying compliance must be submitted with application.

- 6) West Virginia Income Maintenance Manual Section 1.2.E states that it is the client's responsibility to provide accurate information about his/her circumstances so the worker can make a correct decision concerning eligibility.

#### **VIII. CONCLUSIONS OF LAW:**

- 1) The West Virginia Medicaid Provider Manual states that transportation providers for Medicaid recipients must comply with all applicable State and Federal laws, regulations and certification requirements. The West Virginia Income Maintenance Manual states that it is the client's responsibility to provide accurate information about his/her circumstances so that the worker can make a correct decision on eligibility.
- 2) The Medicaid Provider Manual section – the only policy provided by the Department - appears to apply primarily to businesses providing medical transportation. While policy clarifications are not typically considered in rendering hearing decisions, it is reasonable to presume that unlicensed private drivers are unacceptable transportation providers on the basis of law, as well as health/safety issues. The Claimant admittedly provided inaccurate information on the NEMT applications, and then failed to resubmit the corrected forms for consideration by the Department. Therefore, the Department acted correctly in denying the Claimant's NEMT applications.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying the Claimant's applications for NEMT benefits.

#### **X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

IG-BR-29

**ENTERED this 6th of July, 2012.**

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**Pamela L. Hinzman  
State Hearing Officer**