



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 West Washington Street
Charleston, WV 25313

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

May 16, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-3101

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Natasha Jemerison
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Mary McQuain, Assistant Attorney General

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

██████████,
Appellant,

v.

Action Number: 16-BOR-3101

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on January 26, 2017, and reconvened on April 18, 2017 and May 2, 2017, on a timely appeal filed November 3, 2016.

The matter before the Hearing Officer arises from the decision of the Respondent to deny the Appellant's Non-Emergency Medical Transportation (NEMT) application for reimbursement.

At the hearing the Respondent appeared by Mary McQuain, Assistant Attorney General. Appearing as witnesses for the Respondent were ██████████, Bureau for Medical Services (BMS), ██████████, Medical Transportation Management (MTM), ██████████, MTM, ██████████, MTM, and ██████████, MTM. The Appellant was represented by counsel, ██████████. Appearing as a witness for the Appellant was her husband, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notices of Decisions, dated November 14, 2016 and December 9, 2016
- D-2 Correspondence from Legal Aid to MTM
- D-3 Notices of Decisions, dated October 8, 2016, October 20, 2016, and November 4, 2016
- D-4 NEMT reimbursements
- D-5 Explanation of codes in Trip Inquiry Report
- D-6 Reimbursement Trip Logs

- D-7 Distance Verification Forms (DVF)
- D-8 Telephone Logs, dated 2016 through 2016
- D-9 Compact Disk (CD) with recorded calls between the Appellant and MTM call center
- D-10 Code of Federal Regulations 42 C.F.R. §§ 430, 430.10, 431.10, 440.170, 447.45
- D-11 NEMT State Plan Amendment
- D-12 Bureau for Medical Services Policy Manual, Chapter 524
- D-13 Bureau for Medical Services Policy Manual, Chapter 100
- D-14 Blank MTM Reimbursement Trip Log
- D-15 Blank DVF
- D-16 Processing Prior Authorization and Distance Verification Forms, MTM instructions
- D-17 MTM's DVF Process
- D-18 [REDACTED] County Family Health Care information, computer screen prints
- D-19 [REDACTED] information, computer screen prints
- D-20 [REDACTED] County Clinics information, computer screen prints
- D-21 Medicaid NEMT Booklet for providers
- D-22 2016 mileage reimbursement rate for state employees
- D-23 Notice of Decision, dated November 4, 2016
- D-24 Notice of Decision, dated March 9, 2017
- D-25 Notice of Decision, dated March 8, 2017
- D-26 Notice of Decision, dated March 8, 2017
- D-27 Notice of Decision, dated March 8, 2017
- D-28 Trip Details, dated August 2016 through November 2016
- D-29 Medical Claims History, dated August 2016 through December 2016

Appellant's Exhibits:

- A-1 State Administration Procedures Act, Chapter 29 A
- A-2 WV Income Maintenance Manual §27.0
- A-3 Department's statement on NEMT policy
- A-4 Bureau for Medical Services Policy Manual, Chapter 524
- A-5 Internal NEMT Protocol
- A-6 Processing Prior Authorization and Distance Verification Forms, MTM instructions
- A-7 Notices of Decisions, dated September 2016 through November 2016
- A-8 Common Chapters Manual §710.13-710.15
- A-9 [REDACTED] Order on Adequate Notice
- A-10 Chart of Appellant's trips and mileage
- A-11 Reimbursement Trip Logs
- A-12 Reimbursement Trip Logs
- A-13 ArcGis, Mapquest, and Bing Mileage Results, computer screen prints
- A-14 Distance Verification Forms (DVF)

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) Effective October 1, 2014, BMS contracted Medical Transportation Management (MTM) for full administration of the NEMT program, including customer services, transportation provider enrollment, transportation provider payment, safety requirements, and monitoring fraud or abuse.
- 2) The Appellant went to doctors' appointments at [REDACTED] in [REDACTED] West Virginia on August 5, 2016, and August 22, 2016. The total round trip mileage for each trip was 263.92 miles. (D-6 and A-10)
- 3) The Appellant's request for reimbursement for her trips on August 5, 2016 and August 22, 2016, were denied, because the Distance Verification Form (DVF) stated the physician was not the Appellant's primary care physician, and MTM determined the DVF did not have the required information from the facility. (D-1 and D-23)
- 4) The Appellant went to doctors' appointments at [REDACTED] in [REDACTED] West Virginia on August 16, 2016, September 20, 2016, and October 18, 2016. The total round trip mileage for each trip was 262.38 miles. (D-6, A-10)
- 5) The Appellant's physician at [REDACTED] faxed a DVF to MTM for the Appellant's trips and wrote "continuation of care" and "ortho/internal medicine specialist" as the reasons the Appellant could not be treated by a healthcare provider close to her home. (A-14)
- 6) MTM approved the Appellant's request for reimbursement for her trip to [REDACTED] on August 16, 2016, but denied reimbursement for her trip on September 20, 2016, to the same provider without issuing a notice of decision. The Appellant's trip to the same provider on October 18, 2016, was denied on March 9, 2017, because she did not go to the closest provider. (D-24)
- 7) The Appellant went to doctors' appointments at [REDACTED] in [REDACTED] West Virginia on August 18, 2016 and October 17, 2016. The total round trip mileage for each trip was 264.04 miles. (D-6, A-10)
- 8) The Appellant's physician at [REDACTED] faxed a DVF to MTM for the Appellant's August 18, 2016, appointment and indicated there was no reason the Appellant could not be seen closer to home. There was no DVF provided for the Appellant's trip on October 17, 2016, to the same provider. (D-7)
- 9) The Appellant's trip to [REDACTED] on August 18, 2016, was denied because she did not go to the closest provider. The Appellant's trip to the same provider on October 17, 2016, was partially approved for 110 miles instead of the requested 264.04 miles, because she did not go to the closest provider. MTM determined the closest provider to the Appellant's home was 110 miles round trip (D-23 and D-26)
- 10) The Appellant went to a doctor's appointment at [REDACTED] in [REDACTED] West Virginia on October 11, 2016. The total round trip mileage was 262.38 miles. (D-6, A-10)

- 11) The Appellant's physician at [REDACTED] faxed a DVF to MTM for the Appellant's appointment on October 11, 2016 and listed "medically necessary" as the reason the Appellant could not be treated by a healthcare provider closer to her home. (D-7)
- 12) On March 8, 2017, the Appellant was notified that her trip on October 11, 2016, was reimbursed for 66 miles instead of the requested 262.38 miles, because she did not go to the closest provider. MTM determined the closest provider to the Appellant's home was 66 miles round trip. (D-27)

APPLICABLE POLICY

BMS Manual, Chapter 524, §524.1.2.4, Individual Transportation, instructs that after requesting and receiving prior approval from the Broker, members may use personal vehicles and subsequently receive reimbursement for use of this transportation as described in subsection 524.3.2.3 Member, Friends and Family Transportation. Individual transporters are required to verify current driver's license, vehicle registration and insurance to the Broker.

BMS Manual, Chapter 524, §524.3 Non-Emergency, Non-Ambulance Transportation, directs that all non-emergency, non-ambulance medical transportation services be accessed through the BMS' contracted Broker (MTM). MTM screens NEMT requests, assigns and dispatches providers and monitors NEMT services to ensure consistent application of guidelines.

BMS Manual, Chapter 524, §524.3.1.1, Trip Management, explains that these requests may be made by members, their families, guardians or representatives and by providers. The Broker is to consider member's permanent and temporary special needs, appropriate modes of transportation and special instructions regarding the nearest appropriate provider and additional information necessary to ensure that appropriate transportation is authorized and provided. The Broker determines:

- The member's eligibility for NEMT services.
- The member's medical need leading to the requirement for NEMT services and the most economical mode of transportation that meets the member's needs. The Broker will maximize use of fixed route transit and individual vehicles, which may be driven by the member, friend or family member whenever determined more economical and appropriate.
- The member's lack of access to available transportation. The Broker is to require the member to verbally certify this.
- Whether the service for the member is a covered service and whether prior authorization has been granted if required.
- The nearest appropriate enrolled provider. The Broker will seek to minimize distance traveled, although if a member has recently moved to a new area, the Broker is to allow long distance transportation for up to 90 calendar days if necessary to maintain continuity of care.
- Necessity of attendant or assistance request. The Broker shall determine if the member needs door-to-door, curb-to-curb or hand-to-hand level of assistance with transportation.

The Broker is to educate members on how and when to request NEMT services. Requests are to be made at least five business days before the NEMT service is needed. Trip requests are to be made

using a single toll free number unless otherwise approved by BMS. The Broker will also make accommodation for standing orders for repeat trips. The Broker will have a process in place to handle such last minute scheduling changes and/or urgent trips. After consultation with BMS, the Broker will also implement a system for post-transportation authorization requests. Members may request a particular provider but are not guaranteed the use of that provider

BMS Manual, Chapter 524, §524.3.2.3, Member, Friends and Family Transportation, provides that the transportation of individual Medicaid members by a private vehicle is also reimbursed through the Non-Emergency Medical Transportation Program. Mileage will be reimbursed by the broker for the shortest route as determined by the Broker at the current state rate. The amount of reimbursement for transportation expenses depends on the method of transportation, the round-trip mileage and/or whether lodging was required. Members, as well as their friends and family may request reimbursement for costs related to automobile travel, such as mileage, tolls, and parking fees when free parking is not available. The travel must be for scheduled appointments and treatment. Mileage is paid from the member's home to the facility and back to the home. When comparable treatment may be obtained at a facility closer to the member's home than the one chosen, mileage reimbursed is limited to the distance to the nearest facility. Mileage will be reimbursed at a rate determined by the Broker for the shortest route and approved by BMS. Reimbursement may be made for other travel-related expenses, such as tolls and parking fees, when free parking is not available within reasonable walking distance of the facility. A receipt is required for parking fees over two dollars and all tolls. When travel by private automobile is an option, but the member chooses more costly transportation, the rate of reimbursement is limited to the private auto mileage rate. Automobile rental, rental related fees and mileage may be allowed if car rental is determined to be the most economical mode of transport.

BMS Manual, Chapter 524, §524.4 states that individuals who use common carrier/fixed route transit and/or individual vehicles are reimbursed by the Broker in accordance with sections 524.3.2.2, Common Carrier/Fixed Route, and 524.3.2.3, Member, Friends and Family Transportation of this Chapter.

BMS Manual, Chapter 524, §524.5, Non-Covered Services, explains that the Broker must issue a denial for non-covered services. This information must be recorded and a denial letter sent to the member and/or provider the next business day.

Common Chapters Manual 700, §710.14, Requirements for Adequate and Timely Notice of Departmental Decisions, requires adequate notice a Departmental decision affecting benefits, or EBT adjustments, shall be mailed via first class mail, or provided in writing in a face-to-face contact, to the applicant or recipient and must include the following information:

- The action or proposed action to be taken;
- The reason(s) for the action provided in terms readily understandable by the applicant or recipient and specifying all applicable policy manual sections;
- The right to a fair hearing;
- The time period for requesting a hearing;
- The circumstances under which assistance may be continued pending a hearing decision;
- Notice that the Appellant may be required to refund any assistance rendered during the hearing process if the Hearing Official upholds the Department's decision;

- Notice that a pre-hearing conference will be held for the applicant or recipient if he or she requests one in order to discuss the adverse action taken;
- The right to be assisted by a person of the applicant's or recipient's choice, including legal counsel, at any pre-hearing conference and hearing;
- The fact that the applicant or recipient may bring witnesses to the hearing at the applicant's or recipient's own expense; and
- The names, addresses, and phone numbers of any legal service organizations serving the area in which the applicant or recipient resides.

DISCUSSION

Effective October 1, 2014, BMS contracted Medical Transportation Management (MTM) as its broker to administer all aspects of the NEMT program. The Appellant requested reimbursement through the NEMT program for trips to doctor appointments scheduled between August 2016 and October 2016. The Appellant did not receive reimbursement for the trips and requested a fair hearing.

BMS policy instructs that after requesting and receiving prior approval from the Broker, members may use personal vehicles and subsequently receive reimbursement for use of transportation. The Broker is to educate members on how and when to request NEMT services. Mileage will be reimbursed by the broker for the shortest route as determined by the Broker at the current state rate. The amount of reimbursement for transportation expenses depends on the method of transportation, the round-trip mileage and/or whether lodging was required. The travel must be for scheduled appointments and treatment. Mileage is paid from the member's home to the facility and back to the home. When comparable treatment may be obtained at a facility closer to the member's home than the one chosen, mileage reimbursed is limited to the distance to the nearest facility.

The Appellant went to doctors' appointments at [REDACTED] in [REDACTED] West Virginia on August 5, 2016 and August 22, 2016. The total round trip mileage for each trip was 263.92 miles. The Appellant's request for reimbursement for her trips on August 5, 2016 and August 22, 2016, was denied because the Distance Verification Form (DVF) stated the physician was not the Appellant's primary care physician (PCP), and MTM determined the DVF did not have the required information from the facility. The Department's representative stated the Appellant did not go to the closest provider to her home, and the DVF provided by the physician did not have justification that the Appellant could not be treated closer to home. The Appellant's representative argued that it should not matter if the physician was the Appellant's PCP. She added that the physician was a specialist and the trips should be reimbursed in full.

BMS policy does not indicate that a DVF must be completed by a PCP. It also does not detail what information or specific conditions must be included on a DVF to be approved. Additionally, the notice of decision indicated the DFV did not have the required information, but it did not specify what information was required or allow the Appellant to obtain that information. Due to inadequate notification, the Department was incorrect in its decision to deny reimbursement for the Appellant's trips to [REDACTED] on August 5, 2016 and August 22, 2016.

The Appellant went to doctors' appointments at [REDACTED] in [REDACTED] West Virginia on August 16, 2016, September 20, 2016, and October 18, 2016. The total round trip mileage for each trip was 262.38 miles. The Appellant's physician at [REDACTED] faxed a DVF to MTM for the Appellant's trips and wrote "continuation of care" and "ortho/internal medicine specialist" as the reasons the Appellant could not be treated by a healthcare provider close to her home. MTM approved the Appellant's request for reimbursement for her trip to [REDACTED] on August 16, 2016, but denied reimbursement for her trip on September 20, 2016, to the same provider without issuing a notice of decision. The Appellant's trip to the same provider on October 18, 2016, was denied on March 9, 2017, because she did not go to the closest provider. The Department's representative stated that the Appellant was denied reimbursement for trips to [REDACTED] on September 20, 2016 and October 18, 2016, because she did not go to the closest provider. She stated that the reasons the physician provided on the DVF were not sufficient, because the Appellant could receive the same services closer to her home. The Department's representative added that MTM only approved the Appellant's trip on August 16, 2016, because MTM's internal protocol had changed the month prior, so MTM made an exception for one trip. The Appellant's representative argued that because MTM approved the first trip, the other two (2) trips to the same location should also be approved. She noted MTM's lack of consistency and failure to notify the Appellant of their exceptions and protocol changes.

The Appellant's physician at [REDACTED] provided the required DVF for each of the Appellant's appointments. As previously stated, policy does not stipulate what conditions or reasons are acceptable to travel to a provider that may not be closer to the Appellant's home. Additionally, MTM approved one of the trips. The Appellant was not given notice that she would not be able to continue to receive reimbursement for trips to this provider. The Department was incorrect in its decision to deny reimbursement for trips to [REDACTED] on September 20, 2016 and October 18, 2016.

The Appellant went to doctors' appointments at [REDACTED] in [REDACTED] West Virginia on August 18, 2016 and October 17, 2016. The total round trip mileage for each trip was 264.04 miles. The Appellant's physician at [REDACTED] faxed a DVF to MTM for the Appellant's August 18, 2016, appointment and indicated there was no reason the Appellant could not be seen closer to home. There was no DVF provided for the Appellant's trip on October 17, 2016, to the same provider. The Appellant's trip to [REDACTED] on August 18, 2016, was denied because she did not go to the closest provider. The Appellant's trip to the same provider on October 17, 2016, was partially approved for 110 miles instead of the requested 264.04 miles, because she did not go to the closest provider. The Department's representative stated that the Appellant's request for reimbursement for trips on August 18, 2016 and October 17, 2016, were denied because the Appellant did not go to the closest provider. She added that the DVF completed by the physician clearly stated there was no reason the Appellant could not be treated close to home. She stated MTM partially reimbursed the Appellant for the trip made on October 17, 2016, based on MTM's determination of distance to the closest provider. The Appellant's representative argued that MTM reimbursed the Appellant for other trips to the same provider, so the Appellant should be reimbursed in full for both of her other trips to [REDACTED].

Because the DVF completed by the physician at [REDACTED] indicated there was no reason the Appellant could not be treated closer to home, the Department was correct in its decision to

deny full reimbursement for trips made on August 18, 2016 and October 17, 2016. However, the Department failed to reimburse the Appellant for the mileage that was to the closest provider for August 18, 2016, and is required to do so.

The Appellant went to a doctor's appointment at [REDACTED] in [REDACTED] West Virginia on October 11, 2016. The total round trip mileage was 262.38 miles. The Appellant's physician at [REDACTED] faxed a DVF to MTM for the Appellant's appointment on October 11, 2016 and listed "medically necessary" as the reason the Appellant could not be treated by a healthcare provider closer to her home. On March 8, 2017, the Appellant was notified that her trip on October 11, 2016, was reimbursed for 66 miles instead of the requested 262.38 miles, because she did not go to the closest provider. MTM determined the closest provider to the Appellant's home was 66 miles round trip. The Department's representative stated that the Appellant was not reimbursed for the full round trip to [REDACTED] for two (2) reasons. She stated because the Appellant drove herself to her appointment, MTM considers her a provider and not a member. She also stated the Appellant did not go to the closest facility. The Appellant's representative argued that the Appellant is not a provider, and that should not be a factor in the determining the Appellant's eligibility for reimbursement. She added that the DVF indicated that it was medically necessary for the Appellant to go to [REDACTED], so the physician's expert medical opinion should be considered sufficient for MTM to reimbursement the Appellant's trip.

Department incorrectly labeled the Appellant as a provider at the hearing. The notice of decision to the Appellant did not state that she was partially denied because she was a provider. Also, BMS policy does not specify the DVF requirements and MTM's own internal protocols have proven to be inconsistent. Evidence provided at the hearing indicates the Appellant had reason to go to [REDACTED] on October 11, 2016. The Department was incorrect in its decision to deny full reimbursement.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, the Department is required to provide adequate and timely notice of its decision to the Appellant which it failed to do.
- 2) The Appellant's physicians followed the Department's protocol and submitted a DVF to indicate why the Appellant could not be treated closer to home for trips on August 5, 2016, August 16, 2016, August 22, 2016, September 20, 2016, October 11, 2016 and October 18, 2016.
- 3) The Department failed to follow their own policy by not reimbursing the Appellant a partial amount based on what the Department considered the nearest facility.

DECISIONS

It is the decision of the State Hearing Officer to:

- 1) **Reverse** the Department's decision to deny the full reimbursement of 263.92 miles for August 5, 2016 and August 22, 2016 and 262.38 miles for September 20, 2016 and October 18, 2016.
- 2) **Reverse** the Department's decision to deny a partial reimbursement of 110 miles for August 18, 2016.
- 3) **Reverse** the Department's decision to approve a partial reimbursement of 66 miles and deny the full reimbursement of 262.38 for October 11, 2016. The Appellant requires an additional reimbursement of 196.38 miles.
- 4) **Uphold** the Department's decision to approve a partial reimbursement of 110 miles for October 17, 2016.

ENTERED this 16th day of May 2017.

Natasha Jemerison, State Hearing Officer