



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1247
Martinsburg, WV 25402

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

February 7, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-3108

Dear [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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: Richard Ernest, Jr., BMS

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

[REDACTED],
Appellant,

v.

Action Number: 16-BOR-3108

**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 [REDACTED]. 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 31, 2017, on a timely appeal filed November 30, 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 Richard Ernest, Jr., Program Manager, Bureau for Medical Services (BMS). Appearing as witness for the Respondent was [REDACTED], Program Director, [REDACTED]. The Appellant appeared *pro se* and testified on his own behalf. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 *
- D-2a Screen Print from WV Bureau of Medical Services Website Publication section and copy of Your 2016 Guide to Medicaid
- D-2b Public Outreach and Notice Meetings List
- D-2c Copy of a blank 2014 WV Medicaid Medical Card
- D-2d Newspaper article from WV Metro News by [REDACTED] dated May 26, 2014;
Charleston-Gazette Mail newspaper article by [REDACTED] dated October 5, 2014;
MTM/DHHR poster and pamphlets entitled "How to Use West Virginia Non-Emergency Medical Transportation (NEMT) Services"
- D-3 MTM Reimbursement Trip Log

D-4 Appellant's Request for a Fair Hearing signed and dated November 17, 2016, and Denial of trip reimbursements dated November 9, 2016

*Judicial notice was taken on Exhibit D-1, Bureau for Medical Services Manual, Chapter 524

Appellant's Exhibits:

A-1 Hearing Summary

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) The Appellant was approved for WV Medicaid coverage beginning January 2014. He received a new Medicaid benefit card each month until 2015 when the Medicaid cards were issued once a year.
- 2) The monthly Medicaid card included an online website address and phone number for coverage information. It also included information regarding the possibility of eligibility for non-emergency medical transportation. (Exhibit D-2(b))
- 3) After receiving his January 2014 Medicaid card, the Appellant utilized the numbers contained on his Medicaid card to contact his Medicaid provider. (Exhibit A-1)
- 4) Beginning October 1, 2014, BMS contracted [REDACTED] for full administration of the NEMT program including customer services, transportation provider enrollment, transportation provider payment, safety requirements, and monitoring for fraud or abuse.
- 5) Prior to October 1, 2014, the NEMT program was administered by the local DHHR offices and guided by the Income Maintenance Manual (IMM) policy, Chapter 27.
- 6) General information regarding the NEMT program has been maintained in IMM Chapter 27 after October 1, 2014, which is publically accessible on the DHHR website.
- 7) The Respondent and [REDACTED] provided public outreach in several counties across the state of West Virginia before and after October 1, 2014. (Exhibit D-2(d))
- 8) Information regarding the NEMT program was available on the internet. (Exhibit D-2(d))
- 9) Information regarding the NEMT program was available in the county DHHR offices in 2014. (Exhibit D-2(d))
- 10) The Appellant is an articulate individual who presented himself as being able to easily maneuver the internet. (Exhibit A-1)

- 11) On September 2015, the Appellant contacted [REDACTED] and utilized NEMT services.
- 12) The Appellant did not contact [REDACTED] again until August 2016.
- 13) The Appellant requested BMS to compile a list of his doctor visits from January 2014 to August 2016 with their records so that he may be reimbursed for his mileage to those doctor visits.
- 14) Per BMS policy, individuals who use individual vehicles are reimbursed by [REDACTED] after requesting and receiving prior approval from [REDACTED]. (BMS Manual policy, Chapter 524, §524.1.2.4)
- 15) It is BMS and [REDACTED] policy to only reimburse NEMT mileage for eligible trips occurring within 60 days from the date of the application for reimbursement.
- 16) [REDACTED] agreed to make exceptions to the 60 day policy and reimbursed some requested NEMT mileage back to January 2016, but issued a denial letter for requested NEMT mileage reimbursements for November 10, 11, and 26, 2015; December 2, 3, 8, 9, 19, 23 and 30, 2015; January 5 and 11, 2016; February 2 and 26, 2016; March 1, 29 and 31, 2016; April 30, 2016; May 10 and 31, 2016; June 28, 2016; and July 6 and 26, 2016. (Exhibit D-4)
- 17) There was no documentation submitted for any other specific dates for which NEMT reimbursements were requested.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV IMM), Chapter 1, §1.2.I, explains that regardless of the program or coverage group for which the client applies, when an interview is conducted, the worker is responsible for explaining fully the benefits of the program(s) for which the client applies. This includes: when benefits are received, how received, description of the benefit, how to use the benefit, as well as any other pertinent information related to receipt and use of the benefit. (Emphasis added)

WV IMM, Chapter 27, §27.1 defines Non-Emergency Medical Transportation (NEMT) as a reimbursement program for recipients of Medicaid and Children with Special Health Care Needs (CSHCN) for the cost of transportation and other expenses associated with receiving medical services.

Prior to October 1, 2014, WV IMM §27.2.G outlined application guidelines for NEMT applications. Requests for payments for any trips which occurred more than sixty (60) days prior to the date the application were denied. Compliance was determined by comparing the date of the trip entered on the form with the date the application was received by the Department for processing (up to four trips per form).

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 non-covered services include, but are not limited to, services provided when the request was for post transportation authorization and was not received timely or did not meet established criteria. (Emphasis added) Additionally, it establishes that non-covered services are not eligible for a DHHR Fair Hearing or a Desk/Document review.

DISCUSSION

On October 1, 2014, BMS contracted [REDACTED] as its broker to administer all aspects of the NEMT program. Prior to that date, each local DHHR office was responsible for the administration of the program.

The Appellant became a WV Medicaid recipient in January 2014. For those individuals who applied for Medicaid at the local offices, the DHHR workers by policy were to inform applicants of all benefits, including NEMT. Additionally, NEMT posters were provided to each local during the time that DHHR workers were responsible NEMT administration. However, the Appellant did not make an in-person application for Medicaid at the DHHR. It is noted that there were several websites and links to websites upon which more information regarding Medicaid benefits, specifically NEMT, that was available, along with NEMT policy in the Income Maintenance Manual (IMM) Chapter 27.

In addition to NEMT information being made available at the county offices of the DHHR in 2014 and on the internet, the Respondent conducted several public outreach programs and meetings around the state of West Virginia prior to and after October 1, 2014 regarding Medicaid and the change in the NEMT process. It is noted that although a public outreach program was not held in the Appellant's hometown of [REDACTED] the closest one was held in [REDACTED]

In 2014, the Medicaid cards that were issued monthly specifically advised members to contact the local DHHR regarding NEMT eligibility, which the Appellant initially denied that he was aware of the information on back of his Medicaid card. However, the evidence submitted by the Appellant showed that he did utilize the listed phone numbers on the back of his Medicaid card upon receipt in January 2014. The Appellant also proffered that he did not understand the meaning of the statement on the Medicaid card which read, "Contact your local Health and Human Resources Office to determine if you are eligible for non-emergency medical transportation". His arguments were unconvincing.

Although the Appellant contends that the Respondent should have notified him specifically about the NEMT program, the preponderance of evidence showed that the Respondent had several methods by which information about the NEMT program were available to Medicaid members and to the Appellant. There were local DHHR office NEMT posters, DHHR workers who provided information for in-person applications, public outreach and meetings throughout the state, and several points of access through the DHHR and BMS websites upon which NEMT program information could be obtained. However, most notably, the Appellant had notice of this program and was specifically instructed to inquire about it at the DHHR office on his Medicaid card itself, in addition to phone numbers and website addresses to obtain further information. It is noted that the Appellant demonstrated by his testimony and evidence that he is an articulate individual who can maneuver through the internet easily.

Nevertheless, the Appellant maintains that he was unaware of the NEMT program until he received a pamphlet in the mail in August of 2016. Yet, the Appellant did contact [REDACTED] to utilize NEMT benefits in September 2015. The Appellant did not contact [REDACTED] again regarding NEMT services until August 2016. Thus, the Appellant's contention that he was unaware of the NEMT program prior to August 2016 is contradictory.

The Appellant contested denial for travel reimbursements for doctor visits from the date of his Medicaid coverage in January 2014 to August 2016, the date he proffers that he first became aware of the NEMT program. The Appellant maintains that he was not informed of the program; therefore, he could not file for mileage reimbursement in a timely manner.

The only denial letter produced at the hearing is Exhibit D-4 which contains post-travel reimbursement denials for trips dating from November 10, 11, and 26, 2015; December 2, 3, 8, 9, 19, 23 and 30, 2015; January 5 and 11, 2016; February 2 and 26, 2016; March 1, 29 and 31, 2016; April 30, 2016; May 10 and 31, 2016; June 28, 2016; and July 6 and 26, 2016, which cites as the reasons "DENIED DAYS NOTICE Section 524.3.1.1 Trip Management". No other requests for mileage reimbursements were submitted for hearing. The Appellant, who accessed NEMT program benefits in September 2015 and therefore was aware of the existence of this program, should have properly requested prior approval for those mileage reimbursements requested in Exhibit D-4.

The Respondent did have a duty to provide information about the NEMT program, which it did by providing access through various avenues to receive information regarding NEMT benefits. The Appellant chose not to follow up and inquire about the available benefit.

CONCLUSION OF LAW

- 1) The evidence and testimony showed by a preponderance of evidence that the Respondent provided information regarding the NEMT program.
- 2) The Appellant chose not to contact the local office as instructed on his January 2014 Medicaid card for possible consideration for non-emergency medical transportation benefits.

- 3) The Appellant was aware of the NEMT program at least by September 2015 when he utilized the program benefit.
- 4) The Respondent correctly denied the mileage reimbursement requests that did not follow established guidelines.

DECISION

It is the decision of the State Hearing Officer to uphold the Respondent's denial of the Appellant's post-travel reimbursement requests.

ENTERED this 7th day of February 2017.

Lori Woodward, State Hearing Officer