



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 3, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-3100

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-3100**

**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, 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), and ██████████, MTM. The Appellant was represented by counsel, ██████████. Appearing as a witness for the Appellant was his wife, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Trip Inquiry Report and Explanation of Codes
- D-2 Reimbursement Trip Logs
- D-3 Distance Verification Form (DVF), dated August 12, 2016
- D-4 Telephone Logs, dated 2015 through 2016
- D-5 Compact Disk (CD) with recorded calls between Appellant's wife and MTM call center
- D-6 Code of Federal Regulations 42 C.F.R. §§ 430, 430.10, 440.170, 447.45
- D-7 NEMT State Plan Amendment

- D-8 Bureau for Medical Services Policy Manual, Chapter 524
- D-9 Bureau for Medical Services Policy Manual, Chapter 100
- D-10 Medicaid NEMT Booklet for providers
- D-11 Blank MTM Reimbursement Trip Log
- D-12 Blank DVF
- D-13 Processing Prior Authorization and Distance Verification Forms, MTM instructions
- D-14 MTM's DVF Process
- D-15 [REDACTED] County Family Health Care information, computer screen prints
- D-16 [REDACTED] information, computer screen prints
- D-17 [REDACTED] County Clinics information, computer screen prints
- D-18 E-mail regarding the 2016 Mileage reimbursement rate for state employees
- D-19 Trip Details, computer screen prints
- D-20 Notice of Decision, dated December 29, 2016
- D-21 Medical Claims History, computer screen prints
- D-22 Distance Verification Form for the Appellant's wife
- D-23 2015 Notice of Decision and Distance Verification Forms

**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 Chart of Appellant's trips and mileage
- 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 Trip Details, computer screen prints
- A-12 Reimbursement Trip Logs
- A-13 ArcGis, Mapquest, and Bing Mileage Results, computer screen prints

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) On July 28, 2016, the Appellant's wife called MTM to notify them of the Appellant's doctor appointment scheduled on August 8, 2016. (D-4 and D-19)
- 3) On August 8, 2016, the Appellant went to a doctor appointment at [REDACTED] in [REDACTED] West Virginia. The total round trip mileage was 262.38 miles. (D-19 and A-7)
- 4) MTM faxed a Distance Verification Form (DVF) to the Appellant's physician at [REDACTED] to determine if the Appellant was able to be treated by a healthcare provider closer to the Appellant's home. (D-4 and D-19)
- 5) The Appellant provided a trip log to MTM for his appointment on August 8, 2016, verifying his trip. (D-2)
- 6) The Appellant was not reimbursed for his trip on August 8, 2016, and a notice of decision was not issued to the Appellant.
- 7) On July 28, 2016, the Appellant's wife called MTM to notify them of the Appellant's doctor appointment scheduled on August 12, 2016. (D-4 and D-19)
- 8) On August 12, 2016, the Appellant went to a doctor appointment at [REDACTED] in [REDACTED] West Virginia. The total round trip mileage was 264.02 miles. (D-19 and A-7)
- 9) The Appellant provided a trip log to MTM for his appointment on August 12, 2016, verifying his trip. (D-2)
- 10) On August 12, 2016, the Appellant's physician at [REDACTED] faxed a DVF to MTM for the Appellant's scheduled appointments on August 12, 2016 and October 27, 2016. The physician indicated "continuity of care" as the reason the Appellant could not be treated by a healthcare provider closer to his home. (D-3)
- 11) On October 25, 2016, the Appellant's wife called MTM to notify them of the Appellant's appointment scheduled on October 27, 2016. (D-4 and D-19)
- 12) On October 27, 2016, the Appellant went to a doctor appointment at [REDACTED] in [REDACTED] West Virginia. The total round trip mileage was 264.02 miles. (D-19 and A-7)
- 13) On December 29, 2016, the Appellant was notified that his application for NEMT reimbursement for his appointment that he attended on August 12, 2016, was denied because the appointment was not verified with the provider. (D-20)
- 14) The Appellant was not reimbursed for his trip on October 27, 2016, and a notice of decision was not issued to the Appellant.
- 15) When the Appellant's wife called MTM to notify them of the Appellant's appointments, MTM did not indicate that the Appellant could not travel to the appointment locations. (D-4 and D-19)

## **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 on August 8, 2016, August 12, 2016, and October 27, 2016. The Appellant did not receive payment 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.

On July 28, 2016, the Appellant's wife called MTM to notify them of the Appellant's scheduled doctor appointment on August 8, 2016, at [REDACTED] in [REDACTED] West Virginia. The Appellant's wife provided the physician's name and location. The round trip mileage for this appointment was 262.38 miles. MTM faxed a Distance Verification Form (DVF) to the Appellant's physician. The DVF required the physician to indicate whether the Appellant could be treated by a healthcare provider closer to the Appellant's home. The Appellant was not reimbursed for his August 8, 2016 appointment, and the Department did not issue a notice of decision to the Appellant explaining why the trip was not approved. The Department's representative testified that because the Appellant did not go to the facility closest to the Appellant's home, payment could not be approved.

On July 28, 2016, the Appellant's wife called MTM to notify them of the Appellant's scheduled doctor appointment on August 12, 2016, at [REDACTED] in [REDACTED] West Virginia. The Appellant's wife provided the physician's name and location. The round trip mileage for this appointment was 264.02. MTM faxed a DVF to the Appellant's physician. On August 12, 2016, the Appellant's physician at [REDACTED] faxed a DVF to MTM for the Appellant's appointment on August 12, 2016 and also for the Appellant's upcoming appointment scheduled on October 27, 2016. The physician indicated "continuity of care" as the reason the Appellant could not be treated by a healthcare provider closer to his home. The Appellant was not reimbursed for his August 12, 2016 appointment. On December 29, 2016, the Appellant was notified that his application for NEMT reimbursement for the appointment that he attended on August 12, 2016, was denied because the appointment was not verified with the provider. The Department's representative testified that the Appellant did not go to the facility closest to the Appellant's home. She added that the physician's statement of "continuity of care" was not an acceptable reason for the Appellant to be approved for payment.

On October 25, 2016, the Appellant's wife called MTM to notify them of the Appellant's scheduled doctor appointment on October 27, 2016, at [REDACTED] in [REDACTED] West Virginia. The Appellant's wife provided the physician's name and location. The round trip mileage for this appointment was 264.02. Both the Appellant's representative and the Department's representative

agreed that the DVF from August 12, 2016, also included the Appellant's October 27, 2016 appointment. The Appellant was not reimbursed for his October 27, 2016 appointment, and the Department did not issue a notice of decision to the Appellant explaining why payment was not approved. The Department's representative again stated that the explanation of "continuity of care" is not an acceptable reason in policy of why the Appellant cannot be seen closer to home.

The Appellant's representative argued that the Department failed to properly notify the Appellant of the status of his requests for reimbursement. To date, a notice of decision has not been issued for two (2) of the three (3) trips. The Department took four (4) months to issue a notice of decision for the Appellant's August 12, 2016 trip. Additionally, the denial reason on the notice is not the same as the denial reason provided by the Department during the hearing. The Appellant's representative argued that if she was just learning the reason for the reimbursement denials after several months of litigation, it is impossible to expect the Appellant to understand the Department's requirements. The Appellant's representative added that if the Department had notified the Appellant that "continuity of care" was not a valid reason to approve the Appellant's request for reimbursement, the Appellant would have asked his physician to better specify why he could not be treated by a healthcare provider closer to his home.

For the purpose of determining applicable NEMT policies and procedures, friends and family are to be categorized as members, not providers. Throughout the hearing process, the Department often incorrectly labeled the Appellant and his wife as providers which led to confusion over approvable trip mileage. BMS policy indicates that members should receive treatment closest to their home, and 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. However, MTM not only failed to demonstrate that comparable treatment could have been obtained at a facility closer to the member's home but also failed to reimburse the Appellant for the mileage the Department deemed appropriate. Instead, the Department denied payment for the Appellant's trips without proper notification. Additionally, BMS policy does not provide a list of acceptable reasons that can be used on a DVF to allow members to be treated by healthcare providers that are not closest to the member's home. It is clear that the Department did not provide adequate notice for two of the trips. The notice provided for the August 12, 2016 trip failed to detail the reason in terms readily understandable and was not issued timely.

### **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 physician followed the Department's protocol and submitted a DVF to indicate why the Appellant could not be treated closer to home.
- 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.



### **DECISION**

It is the decision of the State Hearing Officer to **reverse** the Department's decision to deny the full reimbursement of 262.38 miles for August 8, 2016, 264.02 miles for August 12, 2016, and 264.02 miles for October 27, 2016.

**ENTERED this 3<sup>rd</sup> day of May 2017.**

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**Natasha Jemerison, State Hearing Officer**