

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. R-10/21-590
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Appeal of)
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INTRODUCTION

Petitioner appeals a denial of reimbursement for certain lodging costs related to out-of-state treatment for a medical condition, by decision of the Department of Vermont Health Access ("Department"). The following facts are based upon a telephone hearing held January 19, 2022, and documents submitted into the record by both parties.

FINDINGS OF FACT

1. Petitioner has Medicaid coverage and required specialized medical treatment, due to a non-cancerous brain tumor, in 2021. On or around June 25, 2021, petitioner was approved by Vermont Medicaid for "Out of Area Transportation" to a provider in Oklahoma City, OK, related to treatment for her condition (her treatment was also covered). The treatment was scheduled to occur on an ongoing basis from July 1, 2021, through September 3, 2021, and thus petitioner would need lodging in connection with the treatment.

2. The approval of petitioner's transportation costs was emailed to her on June 25, 2021. Among other things, the approval was for ("approximately") 64 nights of lodging. The lodging establishment identified in the approval was the "Extended Stay America" hotel in Oklahoma City. The approval also included lodging for three (3) nights for travel prior to July 1, 2021, and three (3) nights following petitioner's final appointment with the treatment provider in Oklahoma City, which was estimated to occur on September 3, 2021. Petitioner was going to drive to Oklahoma City (with her minor child and dog) and therefore needed lodging on her way there and back.¹

3. Vermont Medicaid relies on a transportation "broker" to administer coverage requests such as the one involved here - this function is performed by the Vermont Public Transportation Association ("VPTA"). Thus, petitioner's approval was issued by VPTA and contained the following relevant conditions: (1) "VPTA must arrange and pay for all lodging, no exceptions."; (2) "Once authorized to stay overnight, VPTA must arrange for the least expensive,

¹ Petitioner was approved to drive rather than fly to Oklahoma City because she needed to have access to a vehicle during her stay. Petitioner's daughter and her dog were not included in the transportation approval; this is not at issue in the appeal.

most-appropriate lodging available. If a member declines any VPTA-arranged housing, the member will be responsible for the entire cost.”; and (3) “By signing this document, I understand that I am agreeing to the terms and conditions of this document. I accept by violating the terms and conditions of this document, I will be responsible for any charges I have incurred.”

4. Of note, VPTA approved petitioner to arrange for her own lodging during the travel to and from Oklahoma City, and to be reimbursed for that lodging up to a pre-approved maximum cost. As credibly explained in the testimony presented at hearing by the Department, the reason for this exception was that there was no way to know how far petitioner would drive each day, so this arrangement gave petitioner flexibility to travel as far as she could on any given day and also prevented a scenario where petitioner may have failed to check into lodging that had been pre-arranged (in which case Vermont Medicaid would have incurred unnecessary costs). VPTA viewed the lodging arranged in Oklahoma City to be longer-term and in one geographic area and thus subject to the requirement of pre-approval.

5. The email to petitioner which contained the transportation approval was from a VPTA employee, who

specified in the email that petitioner could sign and return the document or, alternatively, she could also reply to the email stating "I agree," emphasizing that by doing so, petitioner was agreeing that "By signing this document, I understand that I am agreeing to the terms and conditions of this document. I accept by violating the terms and conditions of this document, I will be responsible for any charges I have incurred."

6. Petitioner responded to the email on the same date (June 25, 2021), stating "I agree."

7. Prior to the approval and petitioner's agreement to the terms of the approval, there was some dispute between the parties regarding where, exactly, petitioner would be authorized to stay in Oklahoma City. Petitioner initially requested to stay in lodging that was connected to the treatment provider in Oklahoma City (which provides a type of radiation treatment referred to as "proton" therapy). However, after exploring this option, Vermont Medicaid did not approve the lodging, because the lodging provider would not agree to VPTA's standard agreement with all lodging providers. It appears that a significant issue included that the housing provider required payment up front and would not accept credit cards.

8. Ultimately, and prior to her agreement to the terms of the approval of her transportation expenses, VPTA identified alternative lodging - the Extended Stay America hotel that was specifically identified in the June 25, 2022, notice of approval described above.

9. Petitioner traveled to Oklahoma City without incident and began her course of treatment on July 1, 2021. Shortly after checking into her Extended Stay America room, petitioner contacted VPTA to express several concerns about her room and the hotel, including: the cleanliness of the room; what she believed to be illicit drug activity on the premises; and "thin" walls which caused her to experience noise disturbances during normal sleeping hours.

10. VPTA began working with the hotel to see if petitioner could be moved to another room; petitioner declined this option and requested that she be placed in a different hotel. VPTA eventually identified another hotel for petitioner to check into on July 2, 2021 (a "Sonesta" brand hotel in another part of Oklahoma City). However, petitioner declined to check into this hotel, and instead decided to check into another hotel that had not been pre-approved by VPTA.

11. When petitioner declined the lodging, VPTA sent her a letter dated July 2, 2021, stating the following:

VPTA identified the Sonesta Simply Suites Oklahoma City...as an acceptable lodging option. It has come to our attention that you have requested to waive your rights to have your lodging paid for by the Department of Vermont Health Access (Vermont Medicaid). If this is the case, we will require your signature to verify you are waiving your VT Medicaid benefit for your current Medicaid stay in Oklahoma City, OK from July 2, 2021-September 3, 2021. We have attached the form for your signature denying the provided lodging benefit.

12. This letter included: a notice of decision indicating that petitioner had "waived" her entitlement to payment for her lodging; a waiver form for petitioner to sign and send back; and a description of petitioner's appeal rights. Petitioner did not sign the waiver form and instead filed the instant appeal.

13. At hearing, petitioner explained her decision to decline the lodging identified by VPTA. She cited concerns about safety in the area of the hotel and distance from the treatment facility (compared to the hotel she chose for herself). Petitioner also submitted printouts of maps of the Oklahoma City area from an on-line tracker of crime reports in the area, with hand-written notes (by petitioner) showing the location of hotel she declined, the location of the hotel she chose on her own, and the location of her treatment

provider, with the stated goal of showing that (1) the area containing the hotel that VPTA had approved was unsafe; and (2) that the hotel petitioner chose on her own was in a safer area and closer to the treatment provider and thus less costly to Medicaid (petitioner was also being reimbursed for mileage to and from the treatment provider).

14. While petitioner's point in submitting this information is understood, the maps submitted were unclear as to the nature and extent of crime reports in the area; petitioner herself conceded that the maps were not complete and a section was cut off during the printing process. However, even if the maps had been clearer, the appropriateness of the lodging arranged by VPTA cannot reasonably be evaluated based solely on a general summary of crime reports in the area, particularly given that petitioner chose not to check into the alternative hotel identified by VPTA in the first place. Furthermore, the information submitted by petitioner does not establish there was any immediate health or safety concern or other exigent reason for declining the second hotel arrangement.

15. Petitioner indicated at hearing that she also brought her appeal to make the point that VPTA should consider data like the crime information she provided, to

better evaluate lodging options and to consider issues beyond cost and location in meeting the medical needs of Medicaid participants. For its part, the Department (through VPTA) - although disagreeing with petitioner's overarching characterization of the approval process - indicated at hearing that this type of feedback was constructive to the operation of the non-emergency Medicaid transportation program.

ORDER

The Department's decision is affirmed.

REASONS

Review of the Department's determination is de novo. The Department has the burden of proof at hearing if terminating or reducing existing benefits; otherwise the petitioner bears the burden. See Fair Hearing Rule 1000.3.0.4.

Non-emergency Medicaid transportation coverage falls under Health Care Administrative Rule ("HCAR") 4.225, with the following basic requirement of coverage:

- (a) Transportation to and from necessary, non-emergency medical services is covered and available to eligible Medicaid beneficiaries on a statewide basis. Transportation includes expenses for non-emergency medical transportation and other related travel expenses determined to be necessary by

Vermont Medicaid to secure medically necessary services.

HCAR Rules § 4.225.2.

In addition, "prior authorization" is required for coverage, see HCAR Rules § 4225.5, and "Payment is made for the least expensive mode of transportation available and appropriate to meet the medical needs of the beneficiary." HCAR Rules § 4225.4(d). The Department has also developed a "procedures manual" for the administration of transportation benefits, referred to as the "Medicaid Non-Emergency Medical Transportation Procedures Manual" (or "Manual"). The Manual has a specific section on "Lodging," which provides as follows (in pertinent part):

If it appears that overnight lodging would be less expensive than mileage costs for multiple trips, VPTA will arrange the lodging upon approval from DVHA. When members have been authorized to stay overnight, VPTA must arrange for the least expensive, most appropriate lodging available. If a member declines any VPTA-arranged lodging, the member will be responsible for the entire cost.

Manual, p. 23 (emphasis in original).²

While the Manual is not a "rule," the above-quoted provision is reasonably consistent with the HCAR Rules, in particular the HCAR requirements of "prior authorization" for

² The Manual may be found in its entirety at: <https://dvha.vermont.gov/sites/dvha/files/documents/providers/Forms/NEMT%20FY21%20Manual%20Final%201.12.21.pdf>.

non-emergency transportation and that the "least expensive mode of transportation" be utilized. See HCAR Rules, §§ 4225.4 and 4225.5. The above provision in the Manual is also consistent with the notices and other communications sent to petitioner during the events at issue.

Thus, overall, the Department's requirement that petitioner receive pre-approval for her lodging under these circumstances, for that lodging to be covered, is consistent with the rules. To the extent that the Board could order an exception to that requirement, see 3 V.S.A. § 3091(d), the evidence in the record does not establish circumstances which might compel such an exception. Despite petitioner's concerns, there is no persuasive evidence warranting petitioner's refusal of the lodging offered by VPTA or an exception to the general requirement of pre-approval.³

As such, the Department's decision is consistent with the rules and must be affirmed. See 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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³ VPTA did allow petitioner to arrange for her own lodging when she traveled to and from Oklahoma City, albeit at a pre-approved maximum cost. This exception was reasonably based - it gave petitioner flexibility while she traveled and also lessened the risk that Vermont Medicaid would incur unnecessary lodging costs.