

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-01/11-21
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Vermont Health Access (DVHA) regarding Medicaid transportation policy. Petitioner receives daily medically necessary treatment. Medicaid will pay for petitioner's transportation costs to treatment. Petitioner seeks Medicaid coverage for her three-year old child to accompany petitioner when she goes for treatment. The policy issue is whether a child's transportation should be covered by Medicaid transportation when the parent cannot access treatment unless the parent brings his/her child.

Procedural History

The petitioner filed for a fair hearing on or about January 7, 2011 and a fair hearing convened on February 10, 2011. The record was kept open for petitioner to access legal advice or representation because of the legal issues her case raises. DVHA submitted additional written argument on February 24, 2011. Petitioner contacted an attorney. Petitioner's attorney requested additional time to respond

because of the difficulties both the attorney and the petitioner had in contacting each other.

Petitioner submitted legal argument on April 1, 2011. A hearing was held on April 20, 2011. The record remained open for additional materials that were not forthcoming. The decision is based upon evidence adduced at hearing and the legal arguments of the parties.

Attorney's Motion to Withdraw

The Hearing Officer's recommendation was scheduled for the Human Services Board meeting of July 6, 2011. Several days prior to the Board meeting, the petitioner's attorney informed the Board that she sought permission to withdraw as the petitioner's attorney. The Hearing Officer set the recommendation for the next Board meeting.

The Human Service Board Rules do not address Motions to Withdraw as Attorney. When the Board rules are silent, the Board looks to the Vermont Rules of Civil Procedure (V.R.C.P.) for guidance. V.R.C.P. 79.1(f) addresses an attorney's Motion to the Court for permission to withdraw as attorney. When there is not a final judgment or order, the rule provides advance notice to the attorney's client and a time for hearing on the attorney's Motion. The rule builds

in time so that a client can seek other representation or act pro se if the Motion is granted.

Petitioner was given written notice of the hearing set on the attorney's motion. The matter was heard on July 20, 2011. Petitioner did not appear. The Motion to Withdraw as attorney was granted and appropriate notice (Entry Order) was sent to the petitioner and respective attorneys on July 21, 2011.

FINDINGS OF FACT

1. The petitioner is a single parent of a three-year old child. Petitioner does not have a driver's license. She lives in a small town that is not on a bus line.

2. The petitioner receives methadone treatment through a clinic in Burlington. Petitioner receives daily treatment in the morning. As part of her treatment, petitioner also receives individual and group counseling at the clinic. Daily treatment is medically necessary for petitioner. Petitioner needs transportation to access her treatment. DVHA provided and will provide Medicaid transportation coverage for petitioner.

3. The petitioner was informed by Medicaid providers that Medicaid transportation would not pay for her son's transportation. Petitioner then requested a fair hearing.

4. R.L. is a Provider Relations Specialist with DVHA who testified on behalf of DVHA. DVHA works with a transportation broker in each county who in turn contracts with providers to transport riders who qualify for Medicaid transportation. He testified that on a case-by-case basis a secondary rider may be approved for Medicaid transportation if doing so is medically necessary. An example was a parent accompanying a sick child to treatment.

5. When the case started in February, petitioner did not have childcare for her son. Despite the lack of childcare, petitioner managed to find alternate transportation or help with her son so as not to miss any of her treatments.

6. Petitioner had child care in the past and was advised to apply for a childcare subsidy through the Department for Children and Families. When the case reconvened on April 20, 2011, petitioner was not present. Petitioner's attorney proffered that petitioner was granted a child care subsidy of \$98.00 per week but the amount was insufficient to pay for childcare in her local area. The

petitioner's attorney proffered that the lowest childcare fee was \$125.00 per week and that petitioner could not afford the difference between her subsidy and the childcare fee due to her low income.

7. Petitioner's attorney proffered that petitioner had managed to cobble together transportation from family and others to attend treatment but that petitioner would not be able to do so in the future.

8. The record was held open because of the question whether Medicaid had paid for transportation in the past for petitioner's son and whether Medicaid covered payment for other children. The petitioner was to supply DVHA with information so DVHA could check records. No information has been forthcoming.

ORDER

DVHA's decision is affirmed.

REASONS

Transportation is a mandatory service under the federal Medicaid Act and the State plan must address how to provide necessary transportation for Medicaid recipients to their medical providers. 42 C.F.R. §§ 440 and 431.53(a).

Federal regulations define the scope of transportation in 42 C.F.R. § 440.170(a); the pertinent section states:

(a) *Transportation*. (1) "Transportation" includes expenses for transportation and **other related travel expenses** determined to be necessary by the agency to secure medical examinations and treatment for a recipient.

(3) "Travel expenses" include-

(i) The cost of transportation for the recipient by ambulance, taxicab, common carrier, or other appropriate means;

(ii) The cost of meals and lodging en route to and from medical care, and while receiving medical care; and

(iii) The costs of an attendant to accompany the recipient, if necessary, and the cost of the attendant's transportation, meals, lodging, and, if the attendant is not a member of the recipient's family, salary. (emphasis added.)

As part of the State plan, DVHA promulgated W.A.M. § 7408 which states, in part:

Transportation to and from necessary medical services is covered and available to eligible Medicaid recipients on a statewide basis.

The following limitations on coverage shall apply:

A. Prior Authorization is required.

B. Transportation is not otherwise available to the Medicaid recipient.

C. Transportation is to and from necessary medical services.

DVHA developed the Medicaid Non-Emergency Medical Transportation (NEMT) Procedure Manual that spells out in more detail to the Medicaid Transportation providers and to the recipients how DVHA interprets applicable federal and state regulations. Section 4.18 addresses "providing transportation to others" and states:

When requests for transportation include other riders in addition to the Medicaid beneficiary, it must be established that it is medically necessary for those other riders to be included. Such situations **may** include:

- An adult accompanying a minor child
- A companion accompanying a disabled person
- A parent visiting a sick minor child in a hospital

Beneficiaries requesting others to assist them or accompany them on a ride must receive prior approval from the DVHA. A letter from the referring physician proving medical necessity must be forwarded to DVHA for review. The broker may request further information from the beneficiary as well. The result of the any determination will then be passed on to the broker. (emphasis added).¹

The parties agree that petitioner is receiving medically necessary treatment at the methadone clinic. DVHA agrees that Medicaid transportation will cover the cost of petitioner's transportation if petitioner does not have the

¹ Situations may include an adult Medicaid beneficiary who will be unable to go to treatment because there is no one available to care for his/her child. These cases are part of the intent to provide transportation to other riders when necessary for the Medicaid beneficiary to access treatment.

means to get to the clinic. The issue is whether Medicaid transportation should cover transportation for petitioner's son.

The petitioner argues that the petitioner's request to include her son's transportation is included under the federal regulation that allows "other related travel expenses" to include coverage for her son and that the federal regulation is controlling. Petitioner argues that she will be unable to access necessary medical treatment if she cannot bring her son with her to the clinic because she does not have access to affordable child care.

Petitioner is correct that the federal regulation is controlling and that the Department's policy is narrower than the federal regulation. The Department's policy can lead to the unfortunate result that a Medicaid recipient is unable to access treatment because there is no one to care for his/her child.

But, petitioner needs to show that she will go without treatment unless Medicaid provides transportation for her child. The burden of proof is upon petitioner in a prior authorization case. Petitioner has not done so in this case. Despite petitioner's difficulties, she has found transportation and maintained her treatment. There was not

sufficient evidence to show that she would be unable to do so in the future.

If the petitioner's finds herself in a situation in which she cannot access treatment unless she brings her son, petitioner can reapply for coverage for her son.

The decision by the Department for Vermont Health Access is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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