



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/166874

PRELIMINARY RECITALS

Pursuant to a petition filed June 25, 2015, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Department of Health Services, Division of Health Care Access and Accountability, in regard to Medical Assistance ([REDACTED]), a telephonic hearing was held on July 16, 2015.

The issue for determination is whether the petitioner is entitled to reimbursement for non-emergency medical trips.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Tip Pom, Contract Monitor
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Fond Du Lac County.

2. The Department of Health Services has not paid the petitioner for non-emergency medical trips taken on November 7, 2014, December 1 and 22, 2014, and March 6, 2015.
3. The petitioner submitted trip logs for the trips listed in *Finding of Fact #2*.
4. On May 19, 2015 [REDACTED], the MA contractor for non-emergency transportation in Wisconsin, issued notices of decision to petitioner stating that her requests for mileage reimbursement were denied because they were not submitted within 60 days of the appointments.

DISCUSSION

Medical assistance reimburses non-emergency medical travel for eligible recipients if they obtain prior authorization. Wis. Admin. Code, §DHS 107.23. The petitioner appeals here because she has not been reimbursed for the trips listed in *Finding of Fact #2*. The Division of Health Care Access and Accountability indicated that these trips were denied because she did not submit her trip logs within 60 days. The agency did not provide any legal authority for denying payment after 60 days. There is no such requirement in Wis. Admin. Code, §DHS 107.23, nor in any written policy. The only written statement about said requirement is in the instructions on the trip logs that says “Submit trip logs no more than 60 days past the date of the first appointment.” There is nothing stating that failing to submit the logs within 60 days is cause for denial. Further, the only limitation I can find in the Administrative Code on paying for MA-reimbursable expenses is stated at Wis. Adm. Code, §DHS 106.03(3)(b)1:

To be considered for payment, a correct and complete claim or adjustment shall be received by the department's fiscal agent within 365 days after the date of the service except as provided in subd. 4. and par. (c).

Thus, at least for MA providers, they have one year to submit claims for reimbursement. There is no evidence that petitioner's non-emergency transportation qualifies as a “provider” in this scenario, but if the Division of Health Care Access and Accountability wants to limit “common carrier” non-emergency transportation claims, it should do so by a similar rule.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. This means the agency must provide law and evidence to support its decision. It did not do so.

Additionally, I would take petitioner's representative's direct, credible testimony at hearing to establish that she mailed in the trip logs at the end of December, which would have been within the 60 days of the November and December trips. However, because I find no legal basis for the agency's position, I will also allow reimbursement for the March trip.

Based upon all of the above, I am persuaded the agency has not met its burden of going forward in this case.

CONCLUSIONS OF LAW

The petitioner is entitled to reimbursement for the medical trips discussed in this Decision.

THEREFORE, it is

ORDERED

That this matter is remanded to the Division of Health Care Access and Accountability with instructions that within 10 days of the date of this decision it reimburse the petitioner for all of the trips listed in *Finding of Fact #2*.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of August, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 25, 2015.

Division of Health Care Access and Accountability
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