

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,142
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her reimbursement under Medicaid for medical transportation expenses incurred by the petitioner in the months December, 1991, through February, 1992. Inasmuch as the Department has not provided any rationale for its action, the only issue appears to be whether the Department's delay in paying the petitioner these benefits is justified.

FINDINGS OF FACT

In late March, 1992, the petitioner filed an appeal to the Board of the denial by the Department of her application for Medicaid benefits based on her alleged disability. After several continuances, during which time the Department reviewed recent medical evidence as to the petitioner's disability and its onset, the Department reversed its decision and granted the petitioner Medicaid effective as of September, 1991. The petitioner does not dispute this decision.

However, the petitioner had also applied for reimbursement for transportation expenses she had incurred to obtain necessary medical treatment during the pendency of her appeal. The case was continued again so that the Department

could determine why the petitioner had not been paid these benefits, although she appeared to be eligible for them. At a hearing on August 21, 1992, the Department represented to the petitioner and the hearing officer that the petitioner had been granted retroactive payment of her Medicaid transportation expenses as of March 2, 1992, and that it appeared to be only a "computer problem" that was preventing the Department from also paying transportation expenses submitted by the petitioner for the period December 2, 1991, through February 24, 1992. Assuming from the Department's representations that the case would soon be settled, the hearing officer again continued the matter.

Having heard nothing from either party, the hearing officer, on September 28, 1992, sent the following letter to the petitioner, with a copy to the Department:

On August 21, 1992, the parties indicated that we would be contacted if a hearing in this matter would be necessary. Unless we hear otherwise within 10 days, we will assume that neither party wishes to pursue the appeal and the matter will be closed and an entry of "withdrawn" made.

Please let us know immediately if and when you wish the matter set for hearing.

The petitioner called the Board a few days later to report that she had heard nothing from the Department since the hearing in August. On September 30, 1992, the hearing officer sent the following memorandum to Department's counsel:

In response to my last memo (September 28, 1992) the petitioner has informed the Board that she has still not heard anything from the Department. I will allow the Department until October 9, 1992, to either settle this matter (by paying the petitioner) or submit a written explanation and rationale for its denial of Medicaid transportation reimbursement to the petitioner for the period at issue. Otherwise I will recommend that the Board summarily reverse the (apparent) decision denying the petitioner these benefits.

Again hearing nothing from the Department, the hearing officer, on October 13, 1992, called the petitioner, who informed him that she had heard nothing from the Department either, and that she still had not received the benefits in question. To date, the Department has not responded to the hearing officer's memorandum of September 30 (supra).

ORDER

The Department is ordered to immediately pay the petitioner the benefits in question.

REASONS

3 VSA § 3091 includes the following provisions:

(d) After the fair hearing the board may affirm, modify or reverse decisions of the agency; it may determine whether an alleged delay was justified; and it may make orders consistent with this title requiring the agency to provide appropriate relief including retroactive and prospective benefits. The board shall consider, and shall have the authority to reverse or modify, decisions of the agency based on rules which the board determines to be in conflict with state or federal law. The board shall not reverse or modify agency decisions which are determined to be in compliance with applicable law, even though the board may disagree with the results effected by those decisions.

In the absence of any suggestion by the Department in this case that the petitioner is not eligible for the benefits in question (see Medicaid Manual § M755), the

Department's delay in paying these benefits to the petitioner, and its failure to provide the petitioner and the Board with any explanation for this delay, is indefensible.

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