STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,991

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare discontinuing her medicaid coverage for transportation costs in getting to and from the office of her chiropractor. The issue is whether a medically suitable alternative provider is available within the petitioner's service area.

FINDINGS OF FACT

The petitioner lives in Winooski, Vermont, and is a recipient of medicaid. She sees a chiropractor on a regular basis for a painful back condition. Medicaid covers her chiropractic treatment.

Until September, 1995, medicaid also covered the cost of the petitioner's transportation to and from her chiropractor's office. The transportation was provided by Chittenden County Transportation Authority (CCTA), which is the medicaid transportation "contractor" in the petitioner's service area.

Normally, CCTA issues bus passes to medicaid recipients in its service area that the recipients can use to travel by bus to their medical appointments. The petitioner has such a bus pass. However, because the petitioner's chiropractor's office is not on a CCTA bus route, and because there were no other chiropractors in the CCTA service area that accepted medicaid, until September, 1995, CCTA also provided the petitioner with free taxi service to get to and from her chiropractic appointments.

As of September, 1995, however, CCTA learned that another chiropractor who has an office on the CCTA bus route was accepting medicaid patients. CCTA contacted the petitioner's chiropractor to determine if the technique of service he was providing to the petitioner was being offered by anyone else in the petitioner's service area. The Department represents that at that time, the petitioner's chiropractor was unable to verify whether this was the case. CCTA then notified the petitioner that because there was a chiropractor (who CCTA specifically identified for the petitioner) on its bus route who would accept medicaid, CCTA would no longer provide taxi service to the petitioner's present chiropractor.

At the hearing (held on November 29, 1995) the Department explained to the petitioner that the services of any Vermont chiropractor she chose (who accepted medicaid), including her present chiropractor,

would continue to be covered under medicaid. However, the Department further explained that its policies only allowed medicaid transportation coverage for the least expensive means of transportation to a provider suitable to meet the medical needs of the patient (see infra).[(1)] The parties then agreed to allow the hearing officer to contact the petitioner's chiropractor to try to determine whether there was a medical basis upon which to conclude that the petitioner should continue in his service rather than that of the chiropractor identified by CCTA.

On December 22, 1995, the hearing officer received the following note from the petitioner's chiropractor:

[Petitioner] has been seen due to a severe degenerative process and subluxation in the spine, which has responded to the Chiropractic Biophysics Technique that is used in this office. It is my understanding that we are the only Medicaid providers in the area that use Chiropractic Biophysics Technique. This technique helps [petitioner's] condition and/or problem. I am not aware of the techniques [other chiropractor] uses. As you may know Chiropractic techniques and Chiropractors vary in what they do with each patient. [Petitioner] in the past has benefited from regular Chiropractic Adjustments, using the Chiropractic Biophysics Technique.

In my opinion [petitioner] should continue with this type of care in order to live a more productive life.

Despite the hearing officer's solicitation, the Department did not file any response to the above opinion, and there is no evidence either that the other chiropractor identified by CCTA practices the technique described above by the petitioner's chiropractor or that any other chiropractic technique would be medically appropriate for the petitioner.

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual (M.M.) § M755 provides as follows:

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:

1. Prior authorization is required. (Exceptions may be granted in a case of a medical emergency.)

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

3. Transportation is to and from necessary medical services.

4. The medical service is generally available to and used by other members of the community or locality in which the recipient is located. A recipient's freedom of access to health care does not require Medicaid to cover transportation at unusual or exception cost in order to meet a recipient's personal

choice of provider.

5. Payment is made for the least expensive means of transportation and suitable to the medical needs of the recipient.

6. Reimbursement for the service is limited to enrolled transportation providers.

7. Reimbursement is subject to utilization control and review in accordance with the requirements of Title XIX.

8. Any Medicaid-eligible recipient who believes that his or her request for transportation has been improperly denied may request a fair hearing. For an explanation, see the "Fair Hearing Rules" listing in the Table of Contents.

Fair Hearing Rule No. 11 includes the provision: "The burden of proving facts alleged to be the basis for agency decisions to terminate or reduce an assistance grant...shall be on the agency, unless otherwise provided by statute."

In this case, the Department originally approved medicaid transportation coverage in the form of taxi rides to the petitioner's chiropractor because he was the only one in the petitioner's service area to accept medicaid. Although it now appears that another chiropractor whose office the petitioner can reach more cheaply by bus will accept medicaid, there is no evidence that this other chiropractor practices the particular technique that appears to be medically appropriate for the petitioner. In fact, the only evidence on this issue is the statement from the petitioner's present chiropractor that he believes he is the only medicaid provider in the area practicing this technique.

Under the Board's rules, it is not the petitioner's burden in this matter to prove the negative. The Department cannot discontinue medicaid transportation coverage to the petitioner's present chiropractor unless and until it can establish that there exists a medicaid provider on the CCTA bus route (or otherwise closer to the petitioner) who can provide medical services "suitable to the medical needs of the recipient". See M.M. § M755(5) (supra). Based on the evidence presented it cannot be concluded that the Department has met that burden.[(2)] Therefore, the Department's decision is reversed.

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1. The petitioner's position was that she should be able to choose her provider regardless of transportation costs.

2. A mere statement from the chiropractor identified by CCTA or from another medical expert familiar with the technique used by the petitioner's present chiropractor may well be sufficient to meet the Department's burden of proof.