

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,888

)

Appeal of)

)

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare not to require its regular Medicaid emergency transportation contractor to serve her needs.

FINDINGS OF FACT

1. On January 20, 1997, the petitioner, who is a Medicaid recipient, called the Department to arrange for transportation for her daughter to an emergency medical appointment to determine if she had "strep throat." The petitioner has a bus pass provided by the Medicaid division which she can use on business days to get to medical appointments but the day at issue was a holiday (Martin Luther King Day). The petitioner was told by a recording to call a taxicab service which contracts with the Department to provide emergency transportation and to give her Medicaid number to the driver who would then be paid by the Department.
2. The taxi arrived at the petitioner's house close to 9:00 a.m. and the petitioner and her daughter got into the cab. At that time, an unpleasant confrontation occurred between the petitioner and the cab driver. The petitioner claims she was trying to give her name and Medicaid card to the driver who was calling it back to the dispatcher who was getting the information all wrong. When she tried to correct him, she says he threw the Medicaid card into the back seat and ordered her out of his cab. The driver claims the petitioner yelled at him and treated him in a rude manner. In any event, the cab did not take the petitioner to the medical appointment but rather the physician was forced to make a house call to her daughter. There was no evidence offered that the Department was aware before the physician visited the petitioner's home that she had been refused transportation service by the cab company.
3. The petitioner later complained of this treatment by the cab company to the Department of Social Welfare which contacted its state-wide Medicaid transportation coordinator, the Vermont Public Transportation Authority, which in turn contacted its local broker, the Central Vermont Transportation Authority, to try to resolve the matter. The VPTA coordinator suggested to the CVTA contractee that she should (1) request a written apology from the taxi company and an acknowledgement that they would take action to improve their employees' customer service skills, (2) insist that the taxi service train drivers with regard to customer sensitivity and monitor that sensitivity as a condition of continuing

the contract, and (3) ask for assurances regarding client confidentiality which came about as a result of the petitioner complaining that there was too much talk between the dispatcher and the driver about her circumstances. If the cab company was unwilling to comply, a suggestion was made by VPTA that use of their services be discontinued.

4. Under its written agreement with VTPA, CVTA is to assure that local arrangements are made for provision and reimbursement of emergency medical transportation during non-business hours, and report those arrangements to VPTA. It must also assure that brokers take steps necessary to assure the confidentiality of any eligibility information with which it is entrusted, and provide additional training as necessary for sub-contractors to implement and maintain the program.

5. The CVTA had several conversations with the cab company and the petitioner in the ensuing weeks. The cab company refused to make an apology and also refused to offer any further transportation services to the petitioner. It is not clear from the evidence whether it agreed to take any of the other actions.

6. CVTA notified the petitioner by letter dated May 13, 1997, that it had attempted to streamline and sensitize some of the procedures used with its brokers based on her complaint but advised her that it could not compel the cab company to apologize or to provide her services. The petitioner was advised that she would need to arrange some private transportation which could be reimbursed because cab companies in rural areas were not always available at all times they might be needed and she was reminded that everyone needed to be courteous. The letter did not say how her emergency transportation needs were going to be handled. 7. However, the Department represented at the hearing, through its agent VPTA, that it would arrange emergency transportation through another cab company if the petitioner should need it. It was not inclined to sanction or end its agreement with the cab company because it was the only one in existence serving the petitioner's geographical area.

8. Since the hearing was held, the petitioner raised the lack of availability of a second taxi service which could assist her. When this matter was further looked into by the parties, a subsequent agreement was filed stating that the taxi service involved in the original action has stopped serving the petitioner's home area. Another taxi company has taken over that service and will be available to transport the petitioner for emergency Medicaid appointments. The parties agreed that it is possible that the original taxi service will start up again in this area and always possible that the current service will go out of business. There was no evidence offered as to whether the Department plans to sign a contract with the original taxi service if it should start operating again in the petitioner's home area.

ORDER

This matter is dismissed as moot.

REASONS

The petitioner asks for a declaration that the petitioner was entitled to Medicaid transportation services on January 20, 1997, that she was denied those services and that the denial violated the Department's regulations. The Department asks that this matter be dismissed because it is moot, saying that the Department is in no position to remedy what happened on January 20, and that the petitioner has not shown that she will suffer any future harm as a result of the Department's action.

There seems to be no real dispute that the petitioner met the criteria in the regulations for Medicaid transportation services on January 20. See M755.⁽¹⁾ She was Medicaid eligible, she had an emergency need, she followed the procedures for setting up transportation by the Department and the Department undoubtedly would have paid for that trip if it had been completed. However, without the knowledge or consent of the Department, a provider refused her service on that day. Since the need was restricted to and resolved that day by the physician visiting the patient's home⁽²⁾, the Department had no retroactive remedy to offer the petitioner for that event.

At the time of her appeal, the petitioner was justifiably concerned that she would have no Medicaid provided transportation if another emergency should occur in the future. At that time, the Department's failure to give her a specific assurance about how her needs would be met in the face of the cab company's refusal to serve her gave her a legitimate ground to appeal. The Department's argument that such a claim was too "attenuated" and mooted out her appeal was not supported by common sense. Such a future need was entirely within the realm of possibility and was indeed likely. The Department owed the petitioner an assurance that the same kind of transportation services provided to other Medicaid recipients, would be provided to her even if another method for doing so had to be found.

However, in spite of its legal arguments, the Department did make that assurance to the petitioner at the hearing and responded to the petitioner's post-hearing request for more information by assuring her that she would indeed be served by a completely new taxi company which was now operating in that area. As the parties point out, there is no certainty as to how long this or any other cab service will be in business. However, at the present moment, the petitioner has no controversy with the Department regarding provision of this service. Since neither the Department nor Board can offer the petitioner any retroactive relief and since the Department is not disputing her eligibility on January 20 and is currently offering her Medicaid transportation services through another cab company, there is no issue which the Board can resolve. As such, the matter must be dismissed as moot. *In re Moriarty*, 156 Vt. 160 (1991). Should the Department become unable in the future to assure this recipient the availability of the same level of Medicaid services offered to other recipients, she may have a new claim.

#

1. M755 Transportation:

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 exceptional 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 the Table of Contents.

2. Although no evidence was offered on the issue, presumably the Department paid for that physician's visit through the Medicaid program.