



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MNP - 211393

PRELIMINARY RECITALS

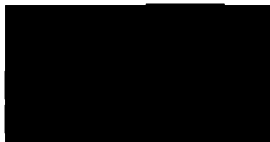
Pursuant to a petition filed on December 14, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on January 24, 2024, by telephone.

The issue for determination is whether the Division of Hearings and Appeals has present authority to order the Department to pay for Petitioner's out-of-state emergency land ambulance transport.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
No Appearance
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a ten-year old resident of Barron County who has received Medical Assistance benefits since 2017.
2. On April 18, 2023, Petitioner and her family were in Florida when she began to have uncontrollable seizures. Petitioner was then transported via land ambulance operated by [REDACTED] to a medical facility in Florida where she was intubated.
3. [REDACTED] mailed Petitioner’s mother an invoice for \$1,222.50 dated December 6, 2023 for the cost of the April 18, 2023 land ambulance transport. The invoice included the following notation, “This claim is not a covered service by your insurance.”
4. On December 14, 2023, Petitioner filed a request for hearing with the Division of Hearings and Appeals seeking Medical Assistance payment of the April 18, 2023 land ambulance expense.

DISCUSSION

Petitioner seeks Medical Assistance payment for emergency medical services that she received while she was in Florida. The Department submitted the following unsigned, written response to the Division of Hearings and Appeals (“the Division”) regarding Petitioner’s appeal:

The service in question was rendered by a provider out-of-state. ForwardHealth requires out of state providers who render services to Wisconsin Medicaid members to be enrolled in Wisconsin Medicaid (ForwardHealth Handbook Topic 194). The ambulance provider would need to enroll as a Wisconsin Medicaid provider in order to be able to submit a claim to ForwardHealth for reimbursement. The Out of State Providers page (<https://www.forwardofhealth.wi.gov/WIPortal/Subsystem/Certification/EnrollmentCriteria.aspx?topic=13>) on the ForwardHealth Portal provides more information on Out of State Provider Enrollment.

DHS reached out on 4 separate occasions on this and left a voice message each time:

- 12/18/23
- 12/22/23
- 12/28/23
- 1/12/24

At this time, no response has been received from the provider.

(I note that the Department did not send a copy of the above-quoted response to Petitioner. Accordingly, the undersigned administrative law judge (“ALJ”) forwarded that response to her via e-mail on the date of the hearing. As stated by ALJ Tedesco in a recent decision, the Department should, in future cases, submit a response to appeals in the form of a signed letter to the ALJ and must provide a copy to the petitioner prior to the date of the scheduled hearing. In addition, the Department should forward relevant documentation including but not necessarily limited to relevant policies or other legal authority and claim denials to both Petitioner and the Division of Hearings and Appeals prior to hearing.)

The *Medicaid Eligibility Handbook* includes the following relevant language regarding covered services:

A covered service is any medical service that Medicaid will pay for an eligible member, **if billed**. The Division of Medicaid Services enrolls qualified health care providers and reimburses them for providing Medicaid-covered services to eligible **Medicaid members. Members may receive Medicaid services only from enrolled providers, except in medical emergencies. Medicaid reimburses emergency medical services necessary to prevent the death or serious impairment of the health of a member even when provided by a non-certified provider.** (Emphasis added).

Medicaid Eligibility Handbook, §21.4.1

This policy is consistent with the following state administrative code provisions:

DHS 104.01 Recipient rights.

- (6) **COVERAGE WHILE OUT-OF-STATE.** Medical assistance shall be furnished under any of the following circumstances to recipients who are Wisconsin residents but absent from the state provided that they are within the United States, Canada or Mexico:
- (a) When an emergency arises from accident or illness;
 - (b) When the health of the recipient would be endangered if the care and services were postponed until the recipient returned to Wisconsin;
 - (c) When the recipient's health would be endangered if the recipient undertook travel to return to Wisconsin . . .

DHS 107.01 General statement of coverage.

- (1) The department shall reimburse providers for medically necessary and appropriate health care services listed in ss. 49.46 (2) and 49.47 (6) (a), Stats., when provided to currently eligible medical assistance recipients, **including emergency services provided by persons or institutions not currently certified.** . . .” [Emphasis added.]

DHS 107.05 Coverage of emergency services provided by a person not a certified provider.

Emergency services necessary to prevent the death or serious impairment of the health of a recipient shall be covered services **even if provided by a person not a certified provider**. A person who is not a certified provider shall submit documentation to the department to justify provision of emergency services, according to the procedures outlined in s. DHS 105.03. The appropriate consultant to the department shall determine whether a service was an emergency service.

DHS 105.03 Participation by non-certified persons.

- (1) **REIMBURSEMENT FOR EMERGENCY SERVICES.** If a resident of Wisconsin or of another state who is not certified by MA in this state provides emergency services to a Wisconsin recipient, that person shall not be reimbursed for those services by MA unless the services are covered services under ch. [DHS 107](#) and:
- (a) The person submits to the fiscal agent a provider data form and a claim for reimbursement of emergency services on forms prescribed by the department;
 - (b) The person submits to the department a statement in writing on a form prescribed by the department explaining the nature of the emergency, including a description of the recipient's condition, cause of emergency, if known, diagnosis and extent of injuries, the

services which were provided and when, and the reason that the recipient could not receive services from a certified provider; and

(c) The person possesses all licenses and other entitlements required under state and federal statutes, rules and regulations, and is qualified to provide all services for which a claim is submitted.

The term person is defined to include “an individual, corporation, partnership, association, trustee, governmental unit or other entity.” See Wis. Admin. Code §DHS 101.03(115).

The Department’s brief written response quoted in its entirety above does not reference the emergency nature of the services provided to Petitioner or whether the Department believes that the emergency nature of those services is relevant here. Rather, the Department simply stated that the out-of-state provider must “enroll in Wisconsin Medicaid” in order to submit a claim to Wisconsin Medicaid. The administrative code provisions cited above, on the other hand, state that emergency services are coverable even when provided by a non-certified provider as long as the provider complies with the criteria set forth in Wis. Admin. Code §DHS 105.03. Those criteria do not include an explicit requirement for the out of state provider to enroll in Wisconsin Medicaid. (I note that the terms “certified” and “enrolled” in reference to Medicaid providers are typically used interchangeably. And, if the Department used “enrolled” in its written response to mean something other than “certified”, it did not say so or articulate what the difference might be.) If there is legal authority that supports the Department’s position that the out-of-state provider that rendered emergency services to Petitioner must enroll in the Wisconsin Medicaid Program, the Department has not identified it.

The Department did not effectively support its legal position but I cannot order the remedy sought by Petitioner based on the hearing record in front of me. Although Petitioner has a right to appeal a claim denial and the Division of Hearings and Appeals has authority to review Medicaid claim denials, the hearing record does not include clear evidence of a claim denial here. See 42 C.F.R. §431.220(a)(1), Wis. Admin. Code §DHS 104.01(5)(a)1, and Wis. Admin. Code §HA 3.03 (1). Neither Petitioner nor the Department provided a copy of a claim denial. Moreover, it is not clear to me whether the provider has refused or neglected to file a claim with the Department, whether the provider filed a claim that the Department has refused to process because the provider is not enrolled in Wisconsin Medicaid, or whether there is in fact a claim denial that has not been offered as evidence. I only have evidence that the provider sent Petitioner a bill for payment and that the provider asserted that Petitioner’s “insurance” will not pay. See Finding of Fact No. 3.

Because there is no clear evidence in the hearing record to show that a claim was, in fact, denied or that the Department refused to process a claim and thereby effectively denied payment, the matter of non-payment of a claim is not ripe for determination.

I note that if the Department has issued a claim denial or if the provider has filed a claim that the Department has refused to process, Petitioner may consider filing a request for rehearing along with supporting documentation pursuant to the instructions below. If the Department has not issued a claim denial but does in the future, Petitioner may file a new hearing request.

CONCLUSIONS OF LAW

There is no issue ripe for determination by the Division of Hearings and Appeals.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

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, 4822 Madison Yards Way, 5th Floor North, 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

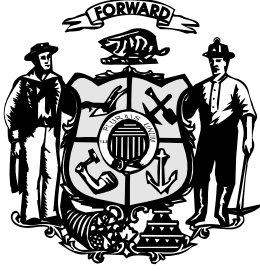
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 Madison,
Wisconsin, this 8th day of March, 2024



\s _____
Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-7709
FAX: (608) 264-9885
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Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 8, 2024.

Division of Medicaid Services

