

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

██████████ 2017
Signature Confirmation

Client ID # ██████████
Request # 800766

NOTICE OF DECISION

PARTY

██████████
████████████████████
████████████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Appellant requested an administrative hearing to contest LogistiCare not providing him with a choice of selecting the livery service company that provides his non-emergency medical transportation.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a Notice scheduling the administrative hearing for ██████████ 2016.

On ██████████ 2016, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

██████████, the Appellant
Eddie Tosado, LogistiCare’s Director of Operations
Claude Bisson, LogistiCare’s Transportation Manger
Shelley Starr, Hearing Officer

The hearing record remained open for the submission of additional information from LogistiCare. On ██████████ 2016, the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether LogistiCare is correct not to provide the Appellant with the choice of selecting his non-emergency medical transportation livery service provider.

FINDINGS OF FACT

1. The Appellant is a participant in the Medicaid program, as administered by the Department of Social Services (the "Department"). (LogistiCare's Testimony)
2. LogistiCare is a transportation broker for the State of Connecticut, providing non-emergency medical transportation to Medicaid eligible clients for Medicaid eligible services. (LogistiCare's Testimony)
3. The Appellant has been receiving transportation services for over five years. (LogistiCare's Testimony)
4. The Appellant wants the choice of selecting his non-emergency livery transportation provider because he believes the drivers are making false allegations against him, they are inconsiderate, and the condition of the vehicles is unacceptable. (Appellant's Testimony)
5. LogistiCare determines which type of transportation is appropriate and arranges the transportation service usually with the closest approved provider within a 15 mile proximity to the participant. (LogistiCare's Testimony)
6. For the period of [REDACTED] 2016 through [REDACTED] 2016, the Appellant received non-emergency transportation livery services provided by an approved service provider and arranged by LogistiCare seventy five (75) times. (Exhibit 3: Appellant's scheduling log for the period of [REDACTED] 2016 through [REDACTED] 2016)
7. LogistiCare has had increased difficulty scheduling non-emergency transportation services for the Appellant because numerous livery service providers refuse to transport him due to his alleged improper behavior. (LogistiCare's Testimony; LogistiCare's Exhibit 1: livery service correspondence; Exhibit 2: Email from Sky Transportation, dated [REDACTED] 2016)
8. LogistiCare has not denied the Appellant non-emergency medical transportation services. (LogistiCare's Testimony; LogistiCare's Exhibit 3: Transportation log [REDACTED]/16 through [REDACTED]/16; LogistiCare's Exhibit 1: Correspondence)
9. On [REDACTED] 2016, LogistiCare received a Grievance and Administrative Hearing request from the Appellant appealing that LogistiCare is not providing him with his choice of selecting a non-emergency medical transportation livery service provider. (Appellant's Exhibit A: Hearing Request dated [REDACTED] 2016; LogistiCare's Testimony;)

CONCLUSIONS OF LAW

1. Section 17b-2 and 17b-262 of the Connecticut General Statutes (“CGS”) provides that the Department of Social Services (“The Department”) is the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act. The commissioner may make such regulations as are necessary to administer the medical assistance program.
2. Section 17b-276(b) of the CGS provides that notwithstanding any other provision of the general statutes, for purposes of administering medical assistance programs, including, but not limited to, the state-administered general assistance programs and programs administered pursuant to Title XIX or Title XXI of the Social Security Act, the Department of Social Services shall be the sole state agency that sets emergency and nonemergency medical transportation fees or fee schedules for any transportation services that are reimbursed by the Department for said medical assistance programs.
3. Section 17-134d-33 of the Regulations of Connecticut State Agencies (“RCSA”) sets forth the requirements for payment of Medical Transportation Services rendered to persons determined eligible for such services under provisions of Connecticut’s Medical Assistance Program in accordance with Section 17-134d of the General Statutes of Connecticut.
4. Section 17-134d-33(b)(20) of the RCSA provides the definition of livery and states a livery vehicle is a sedan or van type vehicle capable of carrying up to ten passengers used for the transportation of ambulatory patients, who may require assistance, and which is operated by a livery carrier under the authority and in compliance with the statutes and regulations of the Department of Transportation and/or a transit district and registered as a livery vehicle by the Department of Motor Vehicles. Livery service is a door-to door service.
5. Section 17-134d-33(d) of the RCSA provides that payment for medical transportation services is available for all Medicaid eligible recipients subject to the conditions and limitations which apply to these services.
6. Section 17-134d-33(e) (1)(A) of the RCSA provides that Medicaid assures that necessary transportation is available for recipients to and from providers of medical services covered by Medicaid, and, subject to this regulation, may pay for such transportation
7. Section 17-134d-33(e)(2)(A) of the RCSA provides that the Department reserves the right to make the determination as to which type of transportation is the most appropriate for a recipient.


8. Section 17-134d-33 (g)(1) of the RCSA provides when two or more providers offer the same service, the least expensive one is used; there is no obligation to divide the business between them.
9. Section 17-134d-33 (g)(2) provides when two or more providers offer the same service, as the same rate, the Department may consider whether to divide the business between them in proportion to the quantity of business each provider can furnish and based on a provider's past performance and any other factors the Department may deem appropriate. Whether to divide the business and how to divide the business shall be determined by the Department in its sole discretion.
10. Uniform Policy Manual ("UPM") § 1570.05(B) provides that subject to the conditions described in this chapter, the requester has the right to a Fair Hearing if: (1) the Department denied the assistance unit's application for benefits.

UPM § 1570.25(C) provides in part that the administrative duties of a Fair Hearing Official is to determine the issue of the hearing, consider all relevant issues, and render a Fair hearing decision in the name of the Department, in accordance with the criteria in the chapter, to resolve the dispute.

LogistiCare continues to provide the Appellant with his non-emergency medical transportation livery services. Since LogistiCare has not denied the Appellant transportation services and has the authority and sole discretion to determine the most appropriate medical transportation livery service provider, there is no issue for the undersigned on which to rule.

DECISION

The Appellant's appeal is **DISMISSED** as the issue is moot.



Shelley Starr
Hearing Officer

cc: Carol Lynn Girona, LogistiCare
Mary Ann Gunn, LogistiCare
Holly Novicelli, LogistiCare
Mildred Rosado, LogistiCare
Eddie Tosado, LogistiCare
Claude Bisson, LogistiCare
Roderick Winstead, DDS

RIGHT TO REQUEST RECONSIDERATION

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within **25** days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a(a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Legal Counsel, Regulations, and Administrative Hearings, 55 Farmington Avenue, Hartford, CT 06105.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The **45** day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than **90** days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or his designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.