STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Handi Van of Tomahawk LLC

PROPOSED DECISION

ML-09-0293

PRELIMINARY RECITALS

On October 1, 2009, Pamela Endl, on half of her company Handi Van of Tomahawk, LLC, filed a request for hearing under Wis. Admin. Code § HFS 108.02(9)(e), to review a decision by the Division of Health Care Access and Accountability to seek recovery of Wisconsin Medicaid and BadgerCare Plus payments made to Handi Van of Tomahawk, LLC. In response to the request for a hearing, the undersigned administrative law judge conducted prehearing conferences on November 3, and December 8, 2009. During the prehearing conferences, the parties agreed that this matter could be decided based on stipulated facts and written argument. Accordingly, no evidentiary hearing was scheduled.

The parties stipulated to the admission of exhibits which have been marked R-101 through R-123 and to a set of stipulated facts. The parties filed a set of the stipulated exhibits and a stipulation of facts on December 14, 2009. The Department of Health Services (Department) filed its initial brief on January 28, 2010. Pamela Endl filed a response brief on February 26, 2010. On March 1, 2010, the Department filed a statement indicating it did not intend to file a reply brief.

PARTIES IN INTEREST:

Petitioner:

Handi Van of Tomahawk, LLC, by

Ms. Pamela S. Endl
Handi Van of Tomahawak, LLC
N8517 State Highway 107
Tomahawk, WI 54487

Respondent:

Department of Health Services, by

Attorney Eric J. Wendorff
Department of Health Services
P. O. Box 7850
Madison, Wisconsin, 53707-7850

Administrative Law Judge:
Mark J. Kaiser
Division of Hearings and Appeals

FINDINGS OF FACT

1. Handi Van of Tomahawk, LLC, (Handi Van or petitioner) is a certified Wisconsin Medicaid and BadgerCare Plus Program provider of specialized medical vehicle (SMV) transportation services based in Tomahawk, Wisconsin. SMV services are covered under Wis. Admin. Code § DHS 107.23. SMV transportation is covered by Medicaid for a Medicaid recipient who is blind or disabled and unable to use common carriers for transportation.

2. The Wisconsin Department of Health Services (the Department) is the state agency responsible for administering the Medicaid Program, pursuant to Wis. Stat. Ch. 49, Subch. IV, §§ 49.43 - 49.499. The Wisconsin Medicaid Program is a federal-state program that pays for certain, covered, necessary physician services provided by participating, "certified," health care providers for qualified persons whose financial resources are inadequate to provide for their health care needs. For the purpose of administering the Wisconsin Medicaid Program, the Department has promulgated the rules set out in Wis. Admin. Code Chaps. DHS 101 through DHS 108. The rules establish, among other things, the criteria for recipient eligibility, the procedures for certifying health care providers as participants in the program, the specification of covered services, requirements providers must meet for reimbursement, and the rights and responsibilities of recipients and providers.

3. In pursuance of its statutory duties, the Department is authorized to audit the appropriateness and accuracy of claims for reimbursement submitted by a provider of Medicaid and BadgerCare Plus services and to recover money improperly or erroneously paid, or overpayments, to a provider, after a provider has had reasonable notice and an opportunity for a contested hearing under Wis. Stat. ch. 227. *See* Wis. Stat. § 49.45 (2) (a) 10 & (g); Wis. Admin. Code § DHS 108.02 (9) (a), (b) & (e).

4. As a condition of Handi Van's certification and participation as a provider of services under the Wisconsin Medicaid and BadgerCare Plus Program, Handi Van executed a Wisconsin Medicaid Program Provider Agreement (exh. R-117) and a Wisconsin Medicaid Specialized Medical Vehicle Providers Affidavit (exh. R-118).

5. On February 16 and 17, 2009, the Department conducted an audit of claims Handi Van submitted for Medicaid and BadgerCare Plus services during the period May 7, 2008 through January 12, 2009. As a result of the audit, the Department issued a preliminary findings letter to Handi Van, alleging that Handi Van had received overpayments totaling $1,100.78 (Exhibit R-119). Subsequently, the Department issued to Handi Van a Notice of Intent to recover $1,100.78 and an SMV Trip Findings Report (exh. R-120).

6. Handi Van filed a timely request for an administrative hearing to contest the audit findings identified in the Notice of Intent to Recover.

7. The SMV Trip Findings Report (exh. R-120) identifies each of the audit findings that is included in the alleged overpayment of $1,100.78.

8. Exhibit R-121 accurately summarizes the audit findings.

9. Exhibit R-122 gives an accurate breakdown of the different categories of audit findings for all the audited trips and for each trip for which there is more than one audit finding. It presents an accurate breakdown of the information set out in the SMV Trip Findings Report (exh. R-120). It accurately identifies the recovery amounts that are based on the different categories of audit finding.

10. Exhibit R-123 comprises a copy of the SMV Trip Report and Handi Van's documentation the Department's auditor reviewed in making every audit finding identified in the report. It includes all the documents Handi Van has submitted to the Department for the purpose of conducting the audit that is the subject of this appeal. Each page of the SMV Trip Report is followed by the documentation the auditor reviewed in making the findings identified on that page.

11. Transportation by SMV is a covered service, and thus is generally eligible for Medicaid reimbursement, when the transportation is provided in accordance with the applicable administrative code requirements, as supplemented by the Special Medical Vehicle Services Handbook published by the Department. One requirement is that the SMV provider must maintain documentation verifying the necessity of transporting the Medicaid recipient via an SMV. Wis. Admin. Code § DHS 107.23(1)(c) 2 and 3. The required document verifying the necessity of transport is referred to as a Certificate of Need (CON).

12. A CON must be signed by the recipient's physician, physician's assistant, nurse midwife, or nurse practitioner (authorized medical evaluator). The authorized medical evaluator must also document why SMV transport is necessary on the CON. Wis. Admin. Code § DHS 107.23(1)(c)2 or 3. The SMV provider is required to document the need for the SMV transport in a format determined by the Department. To assist the SMV provider in providing the necessary documentation, the Medicaid program provides a form, HCF 1197, for this purpose as part of the Specialized Medical Vehicle Services Provider Handbook.

13. The "Instructions accompanying the Certificate of Need" (Form HCF 1197A), inform the SMV Provider that the CON "is valid only if it is completed fully and has an original signature (i.e., not a stamped or photocopied signature). Wisconsin Medicaid will not accept incomplete forms or forms without original signatures. However, faxes of CONs are acceptable." (exh. R-112, Attachment 1).

14. Handi Van's claims that were rejected based on invalid CONs fall into two categories. One category is CONs with incomplete information or that are not signed by an authorized medical evaluator. The other category is CONs that are missing.

Incomplete CONs

15. The Department rejected seven claims because the CONs were not properly completed or not signed by an authorized medical evaluator. The Department auditor determined during the audit that certain claims for reimbursement submitted by Handi Van were not verifiable due to an invalid CON and thus subject to recoupment. The total amount being disallowed for alleged invalid CONs is $309.15 (exh. R-122).

Missing CONs

16. The Department rejected three claims because no CON was on file. The Department is seeking reimbursement in the amount of $60.42 for claims rejected because the CONs supporting those claims were missing (exh. R-122).

Claimed excess mileage

17. Medicaid reimburses SMV providers based on the mileage between the pick-up and drop-off point that a recipient is transported. SMV providers are required to report the miles traveled based on the odometer of the vehicle used for the transport; however, the reimbursement is limited to the mileage for the shortest, most direct route between the two points. During an audit, Department auditors use the internet mapping utility, MapQuest, to determine the shortest, most direct route between two addresses. The Department determined that for some trips Handi Van had billed Medicaid for more miles than MapQuest reported as the shortest, most direct route for the trip. The Department has demonstrated that that Handi Vans was paid $377.64 in excess mileage reimbursement (of these claims $81.53 is also subject to recoupment for other reasons).

Multicarry Mileage

18. The SMV Provider Handbook defines "Multiple Carry" as a "trip in which a specialized medical vehicle (SMV) transports two or more Wisconsin MA recipients at the same time." By picking up a second recipient, the distance traveled for the first patient will usually be greater than if the SMV operator had simply transported the first patient alone to his destination, taking the shortest distance route. Where more than one patient is transported on the same trip, the provider is paid the regular reimbursement rate for the recipient traveling the longest distance (primary rider) and a reduced rate for the other recipients being transported. The Department contends that the mileage for transporting the primary rider should be limited to the mileage of the shortest distance route to the patient's destination, and not increased for the mileage traveled in picking up the second recipient. The Department is seeking reimbursement in the amount of $6.73 for excess mileage charged for one multi-rider trip.

Missing Pick-up and Drop-off information

19. Medicaid requires an SMV provider to maintain documentation of every transport, including the pick-up and drop-off addresses. The Department has drafted a form referred to as "trip ticket" that has spaces for all the required information (exh. R-112,

Attachment 3). SMV providers can use the Department's form or an equivalent form that includes all the required information

20. The Department treats each leg of a round trip as a separate transport and requires that the SMV provider complete the designated portion of the trip ticket for each leg of the trip. Undoubtedly, there are a significant number of transports where a recipient is not returned to the original pick-up address after a medical appointment. It is reasonable for the Department to require that the pick-up and drop-off addresses for a return trip are included on a trip ticket even if those addresses are the reverse of the addresses of the initial trip. The Department is seeking reimbursement in the amount $341.70 for six incomplete trip tickets.

Missing Odometer Readings

21. An SMV provider is required to document on the trip ticket the "full odometer readings (to the tenth of a mile) from the beginning and end of the trip." The instructions for completing the trip ticket state: "Failure to supply the information requested by the form may result in denial of Medicaid payment for the services." (exh. R-112, attachment 3). In two instances the petitioner failed to document odometer readings on trip tickets. The amount of overpayment for these two instances is $93.40.

Discussion

The issue presented in this appeal is whether the Department is entitled to recover certain payments. A Medicaid provider is required to prepare and maintain truthful, accurate, complete, legible, and concise documentation, both of medical and financial records. Wis. Admin. Code § DHS 106.02(9). Included in the required records are prescriptions for necessary services. Wis. Admin. Code § DHS 106.02(9)(b)8. Where documentation and record keeping requirements are not met, services are non-reimbursable. Wis. Admin. Code § DHS 106.02(9)(f). The Department may recover Medicaid payments on claims where the provider fails to prepare and maintain records as required. Wis. Admin. Code § DHS 106.02(9)(g). These general documentation requirements are explained to providers in the MA Providers Handbook, Part A, pp. A4-002 and A4-005-006.

The Department conducted an audit of the petitioner's records and determined that a number of its claims did not comply with Wisconsin Medicaid or BadgerCare Plus requirements. Based on these findings the Department's auditor determined that the petitioner was overpaid $1,100.78 and is seeking to recoup this amount. The Department has documented these overpayments in the exhibits admitted by stipulation in this matter. The petitioner has not presented any documents or arguments rebutting the Department's findings. Accordingly, the Department's audit findings must be affirmed.

CONCLUSION OF LAW

The Department in its audit correctly determined that the petitioner was overpaid $1,100.78 for specialized medical vehicle transportation billed to Wisconsin Medicaid or BadgerCare Plus during the period from May 7, 2008 through January 12, 2009.

NOW, THEREFORE, it is **ORDERED**

If, and only if, this Proposed Decision is adopted by the Secretary of the Department of Health Services as the Department's Final Decision, *then* the Department of Health Services' final audit finding as set forth in the Notice of Intent to Recover dated September 10, 2009, that Handi Van is liable for an overpayment of Wisconsin Medicaid and BadgerCare Plus payments totaling $1,100.78 is AFFIRMED.

NOTICE TO RECIPIENTS OF THIS DECISION

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Health Services for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat § 227.46(2).

Given under my hand at the City of Madison, Wisconsin, this 28th day of April, 2010.

Mark J. Kaiser, Administrative Law Judge
Division of Hearings and Appeals

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