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In the Matter of the Appeal of  
██████████  
from a determination by the New York City  
Department of Social Services

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**DECISION  
AFTER  
FAIR  
HEARING**

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**JURISDICTION**

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on November 9, 2016, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

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For the Social Services Agency

C. Williams, Fair Hearing Representative

**ISSUES**

Was the Agency's determination not to provide the Appellant with reimbursement in the amount of \$20.00 for car service transportation from the Appellant's physician's office to the Appellant's home on May 2, 2012, correct?

Was the Agency's determination not to reimburse the Appellant for car service transportation in order to attend a Fair Hearing on October 5, 2012, correct?

Was the Agency's determination as to the adequacy of the amount of reimbursement provided for car service transportation in order to attend this Fair Hearing on November 9, 2016, correct?

**FINDINGS OF FACT**

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The Appellant has been in receipt of Medical Assistance benefits.
2. The Appellant requested this fair hearing seeking reimbursement in the amount of \$20.00 for car service transportation from the Appellant's physician's office to the Appellant's home on May 2, 2012.
3. The Appellant also requested this fair hearing seeking car service reimbursement in the amount of \$100.00 in order to attend a Fair Hearing on October 5, 2012.
4. At the hearing, a review of the adequacy of the amount provided by the Agency to reimburse the Appellant for the cost of necessary transportation to attend this hearing on November 9, 2016, was added as an issue.

**APPLICABLE LAW**

Section 358-5.9 of the Regulations provides in part:

(a) At a fair hearing concerning the denial of an application for or the adequacy of public assistance, medical assistance, HEAP, SNAP benefits or services, the appellant must establish that the agency's denial of assistance or benefits was not correct or that the appellant is eligible for a greater amount of assistance or benefits.

Section 505.10 of the regulations advises provides in part regarding transportation for medical care and services. (a) Scope and purpose. This section describes the department's policy concerning payment for transportation services provided to Medical Assistance (MA) recipients, the standards to be used in determining when the MA program will pay for transportation, and the prior authorization process required for obtaining such payment. Generally, payment will be made only upon prior authorization for transportation services provided to an eligible MA recipient. Prior authorization will be granted by the prior authorization official only when payment for transportation expenses is essential in order for an eligible MA recipient to obtain necessary medical care and services which may be paid for under the MA program.

The Department of Health (DOH) has contracted with a transportation manager, LogistiCare Solutions, to serve as the Prior Authorization Official in [REDACTED]. This management of transportation services was rolled out by borough and began May 1, 2012, in Brooklyn for Medicaid recipients not enrolled in managed care. The borough roll-out was based on the place of business of the medical facilities or providers requesting transportation - not the place of residence of the Medicaid recipient. In [REDACTED], the roll-out date began September 1, 2012.

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Department Regulations at 18 NYCRR 360-7.5(a) set forth how the Medical Assistance Program will pay for medical care. Generally the Program will pay for covered services which are necessary in amount, duration and scope to providers who are enrolled in the Medical Assistance program, at the Medical Assistance rate or fee which is in effect at the time the services were provided. 18 NYCRR 360-7.5(a)

In instances where an erroneous eligibility determination is reversed by a social services district discovering an error, a fair hearing decision or a court order or where the district did not determine eligibility within required time periods, and where the erroneous determination or delay caused the recipient or his/her representative to pay for medically necessary services which would otherwise have been paid for by the Medical Assistance Program, payment may be made directly to the recipient or the recipient's representative. 18 NYCRR 360-7.5(a)

18 NYCRR 358-3.4(d) provides, in part, that:

Upon request of the appellant, the social services agency must provide necessary transportation and transportation expenses to and from the fair hearing for the appellant and appellant's representatives and witnesses and payment for appellant's necessary child care costs and for any other necessary costs and expenditures related to the fair hearing.

## **DISCUSSION**

At the hearing, the Appellant testified that she requested this fair hearing seeking reimbursement in the amount of \$20.00 for car service transportation from the Appellant's physician's office to the Appellant's home on May 2, 2012. The record establishes that, at that time, the Appellant was in receipt of fee-for-service Medical Assistance benefits. The record further establishes that, at that time, the physician's office was in [REDACTED]. The Appellant's evidence included a letter from the physician's office that indicates the Appellant was scheduled with "Approved Ambulette" on May 2, 2012, that she was transported to the physician's office, but was not picked up for the return trip and thus, the Appellant paid \$20.00 out-of-pocket for the return trip home.

The Department of Health (DOH) has contracted with a transportation manager, LogistiCare Solutions, to serve as the Prior Authorization Official in [REDACTED]. This management of transportation services was rolled out by borough and began May 1, 2012, in Brooklyn for Medicaid recipients not enrolled in managed care. The borough roll-out was based on the place of business of the medical facilities or providers requesting transportation - not the place of residence of the Medicaid recipient. In [REDACTED], the roll-out date began September 1, 2012, not May 1, 2012. Inasmuch as the record establishes that on May 2, 2012, the date of service in question, the Appellant was in receipt of fee-for-service Medical Assistance benefits, the physician's office was in [REDACTED], and, in [REDACTED], the LogistiCare Solutions roll-out date began afterwards on September 1, 2012, it has been determined that the Agency is the financially responsible agency for this issue, not LogistiCare Solutions, to the extent the Appellant can meet her burden of proof and establish her entitlement to reimbursement.

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In order to be entitled to reimbursement, a recipient of Medical Assistance must establish that there was an erroneous Medical Assistance eligibility determination or delay and that such erroneous Medical Assistance eligibility determination or delay caused the recipient or his/her representative to pay for medically necessary services which would otherwise have been paid for by the Medical Assistance Program.

Inasmuch as the record establishes that the Appellant was in receipt of fee-for-service Medical Assistance benefits on May 2, 2012, the Appellant failed to establish that there was an erroneous Medical Assistance eligibility determination or delay. Based thereon, the Appellant failed to establish her entitlement to reimbursement in the amount of \$20.00 for car service transportation from the Appellant's physician's office to the Appellant's home on May 2, 2012, under the Regulations.

At the hearing, the Appellant also testified that she requested this fair hearing seeking reimbursement in the amount of \$50.00 each way for car service transportation in order to attend a prior Fair Hearing on October 5, 2012. The back page of the Fair Hearing appointment letter provides that, "The local agency must provide for transportation for you, your representatives and witnesses and for child care and other costs related to attending this hearing, if necessary. Please be prepared to present verification of these costs including medical verification of inability to travel by public transportation, to the local agency."

At the present hearing, the Appellant presented testimony, that the Agency did not controvert, that established that the Agency's Fair Hearing transportation unit's employee told her on October 5, 2012, that she could not be reimbursed because the worker did not have the proper form in his or her files that needed to be filled out. The Appellant further credibly testified that she subsequently twice, in 2013 and again in 2014, mailed in verification of these costs including medical verification of inability to travel by public transportation, to the Agency at the addresses that she was told to mail it to. The Appellant presented verification of these costs from October 5, 2012, including medical verification of inability to travel by public transportation. Although there was some question at the hearing as to the correct mailing addresses in 2013 and 2014, the Agency's Representative, for which the Agency was uniquely in possession of the correct mailing addresses, was unable to identify the correct mailing addresses. Based on the particular facts and circumstances of this case, the Appellant's testimony that she mailed her request for reimbursement to the correct addresses was credited. The Agency's determination not to reimburse the Appellant for car service transportation in order to attend a Fair Hearing on October 5, 2012, cannot be sustained.

With regard to the Agency's determination as to the adequacy of the amount of reimbursement provided for car service transportation in order to attend this Fair Hearing on November 9, 2016, the record establishes that the Agency provided the Appellant with full cash reimbursement of \$55.00 for coming to this Fair Hearing via car service, but not for the return trip home because the Appellant did not yet have verification of this car service expense to return home. The Appellant further testified that she was advised by an employee of the Agency's Fair Hearing transportation unit to mail to the Agency the needed documentation, including but not limited to the driver's name or car number. Inasmuch as the Appellant did not have the

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necessary proof or documentation of the expense for the return trip home by car service, the Agency's determination as to the adequacy of the amount of reimbursement provided for car service transportation in order to attend this Fair Hearing on November 9, 2016, must be sustained.

**DECISION AND ORDER**

The Agency's determination not to reimburse the Appellant for car service transportation in order to attend a Fair Hearing on October 5, 2012, is not correct and is reversed.

1. The Agency is directed to forthwith provide reimbursement to the Appellant in the amount of \$100.00 without requiring any additional documentation or information from the Appellant.

The Agency's determination not to provide the Appellant with reimbursement in the amount of \$20.00 for car service transportation from the Appellant's physician's office to the Appellant's home on May 2, 2012, is correct.

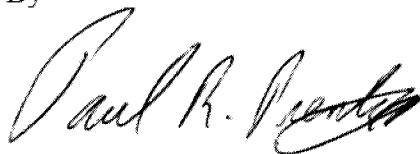
The Agency's determination as to the adequacy of the amount of reimbursement provided for car service transportation in order to attend this Fair Hearing on November 9, 2016, is correct.

As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York  
11/21/2016

NEW YORK STATE  
DEPARTMENT OF HEALTH

By



Commissioner's Designee