

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 8951
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating her Medicaid benefits. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner, who was the subject of Fair Hearing No. 7248, began receiving Medicaid (as a result of the board's decision in that matter) as of October, 1987. In December, 1988, the department learned from copies of the petitioner's 1987 and 1988 income tax statements (furnished by the petitioner to the department as part of a routine review of the petitioner's eligibility) that the petitioner had been gainfully employed in 1987 and 1988, and had earned over \$6,000.00 in each of those years. The petitioner does not dispute these facts.

As of December, 1988, however, the petitioner had recently become unemployed but was receiving unemployment compensation benefits in the amount of \$89.00 per week. As of the date of this hearing (February 2, 1989) the petitioner continued to receive these benefits. As a condition of

receiving unemployment benefits, the petitioner has certified to the Vermont Department of Employment and Training (DET) that she is able to and available for work. The petitioner admits that she is cooperating with DET and is actively seeking employment.

As was partially the case in Fair Hearing No. 7248, this matter is complicated by the petitioner's inability or unwillingness to comprehend the eligibility requirements of the Medicaid program. As the board also noted in Fair Hearing No. 7248, it appears that the petitioner has continued to receive some highly questionable legal advice. (As was the case in Fair Hearing No. 7248, the petitioner alleged she had consulted with her attorney. That attorney again did not appear with her at the hearing, nor has he filed a notice of appearance with the board.) At the hearing, held on February 2, 1989, the petitioner did not allege that she was disabled. Neither did she deny that she had worked regularly over the past two years. The sole basis of her appeal is that she has high medical bills that she cannot afford to pay without Medicaid. Although he repeatedly attempted to explain to the petitioner the basis of Medicaid eligibility--i.e., disability--the petitioner did not appear to be willing or able to comprehend this. Thus, the petitioner offered no factual or legal defense, whatsoever, to the basis of the department's action. One can only hope that the petitioner will seek and obtain some

competent legal advise in the near future.¹

ORDER

The department's decision is affirmed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The regulations further specify that if an individual is working, and if that work constitutes substantial gainful activity, it must be concluded that the individual is not disabled--regardless of her medical condition. 20 C.F.R. § 416.920(b). The petitioner does not dispute that her work activity over the last two years was substantial, gainful, and competitive (i.e., not "sheltered") within the meaning of the pertinent regulations. 20 C.F.R. § 416.974. Moreover, the petitioner is presently receiving unemployment compensation and has certified to DET (and admitted to the hearing officer) that she is able to work and is actually seeking work. The regulations (supra) are clear that one cannot be considered disabled if one is performing

substantial gainful activity. Absent evidence that her medical condition has deteriorated, and as long as the petitioner continues to declare herself eligible for unemployment compensation (i.e, that she is able to and available for work) it must be concluded that she is not disabled within the meaning of the above regulation.

The department's decision is, therefore, affirmed.

FOOTNOTES

¹The hearing officer and the board again recommends the services of Vermont Legal Aid, Inc. in this regard.

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