

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 10,307  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals the Department of Social Welfare's decision to terminate her family's Medicaid coverage.

FINDINGS OF FACT

1. The petitioner is the mother of two year old twins and, until April 28, 1990, was an ANFC recipient. On that date she obtained a temporary one year job which will end April 28, 1991. She lives outside of Chittenden County, and has put forth no evidence that she has dependent care expenses associated with her employment.

2. For over six months following her employment, the petitioner continued to receive Medicaid benefits for herself and her children under transitional rules which allow continuance of these benefits.

3. At the end of the second quarter following her employment, the Department reviewed the petitioner's income to determine her continued Medicaid eligibility. Her gross income for December was reported to be \$1,630.43 (12/7 - \$487.38; 12/14 - \$369.91; 12/21 - \$369.91 and 12/28 -\$403.23)

The Department compared that figure minus a \$90.00 employment expense disregard to the protected income level (PIL) of

\$841.00 per month and determined that she was no longer eligible. The Department also determined that the petitioner had to incur medical bills in excess of \$4,196.58 (six times the difference between her net monthly income of \$1,540.43 and the \$841.00 PIL), in a six month period to re-establish her eligibility. In January, the petitioner was notified that she was no longer eligible for Medicaid but the notice erroneously contained no reason.

4. On February 25, 1991, the petitioner was notified of the reasons for her ineligibility via a corrected notice. She was told that she and her children were ineligible for Medicaid due to excess income and that their benefits would cease on March 31, 1991. (This closure date represented a one month extension due to the notification error.) She was also notified that her children were eligible for the "Doctor Dynasaur" health insurance program. She was informed of the \$4,196.58 spend down amount and given a pamphlet explaining that program.

5. The petitioner asserts that her December, 1990, earnings were not typical monthly earnings as she had considerable overtime that month and that a lower figure should be used. She submitted a income tax wage withholding statement from 1990, showing that the petitioner's average gross monthly pay was about \$1,618.00. Pay stubs provided by the petitioner for October, November and December of 1990, showed that she worked 41, 33, and 35 hours of

overtime respectively. She also received \$102.00 in holiday pay in both November and December.

ORDER

The Department's decision is affirmed.

REASONS

Under the Department's Medicaid regulations, "(i)ncome is defined as any cash payment which is not considered a resource which is received by a member of the Medicaid group . . . (s)ources of income include earnings from employment . . ." M ə 350 The regulations further define "earned" income as including all wages from employment "prior to any deductions for income taxes, FICA, insurance or any other deductions voluntary or involuntary. . ." subject to certain exemptions which are not at issue here. M ə 352. In order to determine how much income is countable, the regulations allow a \$90.00 standard employment expense deduction and a dependent care expense deduction up to \$175.00 if all requirements are met. M ə 352.2, 352.3, and 352.4

If the petitioner's average monthly gross figure from her tax form of \$1,618.00 per month is used, it would be reduced by the \$90.00 standard expense to a countable income of \$1,628.00. (The petitioner reported no dependent care expenses or self-employment expenses.)

"To pass the income test for Medicaid, the total

countable income for the Medicaid group cannot exceed the applicable income test (Protected Income Level or one of the income tests based on the federal Poverty Income Guidelines)" M 350 The Medicaid regulations provide that families terminated from ANFC solely because of increased earnings:

. . . continue to be eligible for Medicaid for 6 calendar months beginning with the month which immediately follows the month in which the ANFC assistance group becomes ineligible for an ANFC grant if the following three requirements are met:

- a. The family (ANFC assistance group) received ANFC in at least three calendar months during the six-month period immediately preceding the month in which the family becomes ineligible for ANFC; and,
- b. The family (Medicaid group) continues to include a child who meets the ANFC age criteria for a child as defined in WAM 2301; and
- c. The family continues to reside in Vermont.

M 300(2)

After the six month extension is up, the regulations require comparing the coverage group's income to the Protected Income Level to determine eligibility unless there are children in the group, in which case they may be subject to a different income test. M 300. For children over age one but under age six, a "special poverty line level" is employed:

- F. By applying for Medicaid and meeting all the non-financial requirements of the Medicaid program including a Special Poverty Line Level corresponding to 133 percent of the federal Poverty Income Guidelines. Coverage under this Special Poverty Line Level is restricted to

children who have attained one year of age but have not attained six years of age. There is no resource test under this provision. However, if the Medicaid group to which the child belongs has income over this Special Poverty Line Level, it must spend down to the Protected Income Level (PIL) and must also pass the resource test.

The protected income level for the petitioner's three person family found in the Department's Procedures Manual is \$841.00. P. 2420 B(1) Even using the petitioner's lower countable income figure of \$1,526.00 that amount is well above the protected level. (It would also be well above the level if the petitioner had the maximum child care expense deduction of \$175). The petitioner's children, however, because they are two-years-old, are subject to the "special poverty line level" representing 133% of income. P. 2420E(3). That level for a three person family is \$1,235.00. P. 2420B(3) Although the petitioner is closer to eligibility under that test, she is still almost \$300.00 over the maximum.<sup>1</sup>

Given the above figures, the Department's decision is correct and the petitioner can only become eligible for Medicaid if she incurs expenses over a six month period equal to the difference between her countable income and the PIL of \$841.00. M 300(F), 350 Of course, if the petitioner does lose all or part of her employment on April 28, she should reapply for a new determination of her eligibility as none of the above principles would then be applicable.

FOOTNOTES

<sup>1</sup>There was no indication in the record that the 133% test was ever applied by the Department to determine the children's eligibility.

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