

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,777
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Appeal of)

INTRODUCTION

The petitioner appeals the Department of Social Welfare's decision to terminate her child's Medicaid benefits due to income in excess of the Department's standards.

FINDINGS OF FACT

1. The petitioner is a disabled woman who lives with her minor son. Her sole source of income is disability benefits of \$491.00 per month (\$392.00 from Social Security and \$99.00 from SSI). Her child's income is \$991.00 per month of which \$920.00.00 is from child support payments and \$71.00 is from Social Security dependents' benefits.

2. The petitioner receives Medicaid by virtue of her categorical link to SSI. Until recently, her son received Medicaid benefits as a financially eligible dependent child. His Medicaid has been calculated separately from his mother as a household of one because that method was felt to work to their advantage.

3. During a routine review of the petitioner's and her son's Medicaid eligibility conducted in September of 1991, the Departmental worker assigned to the case determined child was not eligible for Medicaid because his countable income of \$941.00 (\$991.00 less a \$50.00 child support

disregard) is above the \$758.00 maximum income standard the Department uses for a one (or two) person household. The worker also determined that the child had actually been ineligible for some time based on his income but had been erroneously granted benefits through the error of a former worker who handled the case.

4. On September 12, 1991, the petitioner was mailed a notice informing her that her son's Medicaid would close on September 30, 1991 because "Your income is more than Department standards allow for basic living expenses for a family of your size." Her son was also advised to keep track of all his unpaid medical bills before October 1 and all bills paid or unpaid incurred between October 1, 1991 and March 31, 1992 in order to meet his \$1,098.00 spend-down amount. The notice did not say that past payments were in error. The Department has stated that it does not plan to take any action to recover those payments because it was their error.

5. The petitioner, confused because her son's income had not changed, appealed the termination. She also believes it is incorrect to calculate her son's eligibility as a one person household and feels their income and eligibility should be calculated as a two person household, although she could point out no advantage in that method.

6. Although the petitioner has not presented any unpaid medical bills to the Department as she was advised to

do by the notice (and an accompanying pamphlet) she claims that she has her own bills which could be used to meet the spend-down for a two person household.

ORDER

The Department's decision is affirmed.

REASONS

The regulations governing eligibility for Medicaid for dependent children broadly define income for the purposes of determining eligibility:

Income is defined as any cash payment which is not considered a resource which is received by a member of the Medicaid group or an individual who is a financially responsible relative of a member of the Medicaid group. Sources of income include, but are not limited to, earnings from employment or self-employment, and unearned income (pensions, benefits, interest, or return on investments, contributions, assistance from other agencies, etc.) 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 Guideline).

(emphasis supplied)

W.A.M. § 350

"The full amount of unearned income" under the regulations "shall be counted unless specifically excluded".

M § 351. There are numerous exceptions to the rule counting unearned income set out in the Medicaid regulations at M § 336 and, by reference therein, to the ANFC regulations at W.A.M. § 2255.1. Only one of those exceptions applies to child support payments:

Other excluded income

26. The first \$50.00 in child support payments made by an absent parent on behalf of an assistance group member within each calendar month. . .

W.A.M. § 2255.1

The clear import of the above exclusion is that all child support in excess of \$50.00 is to be counted towards income. Therefore, \$941.00 (991.00 - \$50.00) of the child's income has to be counted when determining his eligibility. To determine eligibility, the child's income must be compared to the "Protected Income Level" (P.I.L.) for his family size. M § 350. The protected income level for a one person Medicaid group in Chittenden County is \$758.00. P-2420(B)(1). As the child's countable income is in excess of that amount, he is eligible for Medicaid only if the child can show that he "has paid or incurred medical expenses at least equal to the difference between (his) countable income and (his) Protected Income Level", which in this case is \$1,098.00 (\$941.00 - \$758.00 = \$183.00 (P.I.L.) x 6 months). M § 402

Under M § 402, the child's mother's unpaid medical expenses cannot be used to meet his "spend-down" because she is not a member of his Medicaid group. The mother and child were not made members of the same group because as an SSI recipient, the mother has a right to have her eligibility determined separately. M § 200.1. If the mother and child were considered as a two person household, their combined

incomes would be \$1,432.00, far exceeding the \$758.00 P.I.L. for a two person family which is the same as that for a one person family. See P-2420(B)(1). In that event, the spend-down amount for the mother and child household would be \$4,044 for the same period, almost four times the spend down amount achieved by treating the child as a one person household.

The petitioner was advised that if she has unpaid medical bills, especially if they are close to \$4,000.00, which have not been used to meet a spend-down before, she should bring them in to the Department to see if it might be to her advantage to be considered as one household with her son. However, if she does not have such bills, the method currently being used to calculate her son's eligibility is both correct and advantageous.

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