

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,056
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is eligible for Medicaid under the "trial work" provisions of the federal and state Medicaid and SSI regulations.

FINDINGS OF FACT

The facts are not in dispute. The petitioner is twenty-eight years old. Until February, 1989, he worked as an electricians assistant. He then became disabled due to a severe liver disorder, and began receiving SSI and Medicaid disability benefits. In July, 1989, he received a liver transplant. The operation was successful in that the petitioner was able to return to work in January, 1990. It appears that he has worked steadily since that time.

When the petitioner first returned to work following his transplant operation he continued to receive SSI and Medicaid based on provisions in the federal and state statutes and regulations that allow for a "trial work" period of at least nine months, after which an assessment is made whether an individual remains "disabled". (See infra.) At the end of

the petitioner's trial work period--sometime in 1990--the Social Security Administration (SSA) determined that the petitioner was no longer disabled; and his SSI and Medicaid benefits were terminated.

It is not clear if or when the petitioner appealed that decision; but on January 20, 1992, the petitioner filed a new application for Medicaid--which is the subject of this appeal. The petitioner concedes he is no longer disabled, but maintains that the Department in denying him Medicaid on this basis has misinterpreted the "trial work" statute and regulations. He maintains that because he continues to suffer from an "abnormal liver", and requires continuous medication--which he cannot otherwise afford, and without which he could not continue to work, much less remain alive--he continues to meet the federal and state provisions regarding Medicaid eligibility.¹

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual (M.M.) § M200(D)(12) provides for Medicaid eligibility under the following circumstances:

A severely impaired blind or disabled individual who was eligible for a federally administered SSI/AABD cash payment for a previous month continues to be eligible for Medicaid under section 1619 (b) of the Act if he or she:

- continues to meet the criteria for blindness or

have the disabling physical or mental impairment under which the individual was found to be disabled;

- except for earnings, continues to meet all nondisability-related requirements for eligibility for SSI/AABD benefits;
- has unearned income in amounts that would not cause him or her to be ineligible for a payment under a section 1611(b) of the Act;
- is seriously inhibited by the lack of Medicaid coverage in his or her ability to continue work or obtain employment; and
- his earnings that are not sufficient to provide for himself or herself a reasonable equivalent of the Medicaid, SSI/AABD or publicly funded attendant care services that would be available if he or she did not have such earnings.

The Social security administration is responsible for determining Medicaid eligibility under this provision (which is identified as 1619 B). If an individual is terminated by the SSA, the Department must make a separate determination of whether or not the individual continues to be eligible for Medicaid under any other coverage group.

The above regulation is based on similar provisions in the federal SSI and Medicaid statutes and regulations.² Putting aside the issues of whether it is the Department or the federal agency (SSA) that makes the determination of eligibility under the above provisions,³ and whether the above provisions even apply in a situation such as this where the petitioner is an applicant for, rather than a continuing recipient of, SSI/Medicaid,⁴ it must be concluded that these "trial work" provisions simply do not apply to individuals, like the petitioner, who are working and who no longer meet the SSI and Medicaid definitions of

"disability". See 20 C.F.R. § 416.905 and M.M. § M211.2.

Although the petitioner concedes that he no longer meets the definition of disability, he argues that under the above "trial work" provisions he need only establish that he still suffers from the same condition that once caused him to be disabled. However, this is a misreading of both the plain language and the purpose of the "trail work" provisions--which are intended to encourage disabled individuals to "test" their ability to work over a limited period of time. See 42 U.S.C. § 1382h(d) and 20 C.F.R. § 416.920. These provisions simply cannot be read as establishing Medicaid eligibility indefinitely for individuals, like the petitioner, whose medical conditions have improved, who have returned to work, who have continued to work for an extended period of time, and who thus have shown that they are no longer "disabled". Unfortunately (and perhaps unfairly), the fact that the petitioner, like many others in the work force, must depend on continuing medical treatment if he is to maintain the ability to work is not, in and of itself, and regardless of the expense, a basis for either initial or continuing eligibility for Medicaid under the above provisions--or any other provision of which the hearing officer is aware.

The above legal analysis is certainly not meant to disparage either the petitioner's laudable efforts to remain gainfully employed or the deadly seriousness of the

financial and medical dilemma he now faces.⁵ Assuming that there are no other benefits for which the petitioner is eligible it appears that the petitioner would at least qualify for GA benefits every month to purchase his medications, once his income has been spent on other basic needs. See W.A.M. § 2602(d). However, inasmuch as the petitioner does not appear to meet any criterion for Medicaid eligibility, the Department's decision in this matter must be affirmed.

FOOTNOTES

¹The petitioner's medications cost about \$800 a month! His gross wages of \$320 a week are insufficient to pay for these medications and to meet his other basic living expenses.

²See 42 U.S.C. § 1382h and 20 C.F.R. § 416.992.

³The Department argues that under M.M. § M200(d)(12), supra, it is bound by the determination of the federal agency (SSA) regarding continuing eligibility.

⁴The petitioner has not specifically alleged that the Department improperly or unlawfully terminated his Medicaid prior to his current application.

⁵See footnote 1, supra.

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