

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,862
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Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare terminating her Medicaid benefits and imposing a spend-down amount based on a six-month accounting period.

FINDINGS OF FACT

1. The petitioner is a seriously ill woman who lives with her minor son. Her husband is in a nursing home as a result of an accident.

2. The petitioner is categorically eligible for Medicaid under ANFC rules. However, because her income is in excess of maximums, she is required to meet a "spend-down" by incurring a certain amount of medical expenses over a six month period before Medicaid will cover her expenses.

3. The petitioner has a current monthly income of \$967.08 derived from \$856.08 in worker's compensation and \$111.00 in Social Security payments. During February of 1992, the petitioner's situation was reviewed at the end of her previous six month period. She was notified on March 5, 1993, that her Medicaid would close on March 31, 1993 and that she would have to incur \$801.24 between that time and October 1, 1993 in order to be eligible.

4. The Department calculated the petitioner's "spend-

down" amount by dividing her income of \$967.08 by two, the number of persons in her household, for a countable income of \$483.54. The Department then compared that income to the protected income level in the regulations. The protected income level used was \$350.00, or half of the PIL for two people which is \$700.00. The difference between the petitioner's income of \$483.43 and the PIL of \$350.00 left a countable monthly income of \$133.54. That income was multiplied by six months for a total spend-down amount of \$801.24.

5. The petitioner does not dispute the income figures used by the Department or the calculations. Her problem arises from the fact that she takes very expensive and necessary medication for her condition which amounts to \$441.29 per month. She is unable to pay that amount in one month or to obtain any credit to get the medication. She also has other doctor bills amounting to about \$100.00 per month.

6. The Department has advised the petitioner that she may be able to obtain payment for necessary medications through the General Assistance program and have the amounts covered by GA count toward her spend-down amount.

ORDER

The Department's decision is affirmed.

REASONS

The Department has adopted detailed regulations covering the computation of "spend-down" amounts for persons who are categorically eligible for ANFC. M330-339. Those regulations require the Department to calculate countable income and the protected income level in exactly the way the Department did. The petitioner does not dispute the methodology used to compute her monthly spend-down amount of \$133.54 (an amount she theoretically has left to pay her own medical bills after standardized expenses are deducted from her income). Her grievance is that her monthly medical bills are four times larger than her theoretical ability to pay but only about half of what she needs to meet her spend-down. The result is that for the first two months of each spend-down period, until she has incurred the \$800.00 plus she needs, the petitioner will have no Medicaid coverage and obviously no ability to pay these bills herself.

The petitioner asks that this problem be solved by using a monthly accounting period for her spend-down instead of a six month period. The regulations governing spend-down accounting periods for persons living outside long term facilities is as follows:

Accounting Period

Eligibility for applicants who have "a spend down" is determined for a six-month period of time. The six-month period begins with the first month for which

Medicaid coverage is requested which is usually the month of application. If Medicaid coverage is requested for expenses incurred during any one or more of the three months preceding the month of application, the six-month period begins with the earliest of these three months in which expenses were incurred and the applicant met all other eligibility requirements.

Since the six-month period always includes some further months, each case requires individual determination, in consultation with the applicant. Reasonable estimates of future income must be made, subject to review and adjustment should the applicant's circumstances change during the remainder of the six-month period.

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The above regulation requires the Department to use a six month accounting period without exception. There are no other regulations which would allow a shortening of this period for persons living outside a long-term care facility. It must be concluded, therefore, that the Department's method of calculating the spend-down amount is correct.

The petitioner has been made aware that the Department's General Assistance program has a provision for paying for medical necessities for persons who have an emergency need and no money to meet it. The petitioner has been encouraged to fill out an application for that program. The Department has informed the petitioner that amounts it covers under that program will be counted toward the spend-down amount so that the petitioner may start receiving Medicaid as soon as possible. Given the fact that General Assistance is a totally state-funded program, the Department undoubtedly would like to use a monthly accounting system for the petitioner so she

could be continuously eligible for at least a partial payment by Medicaid. However, the Department is also bound by the regulations governing this federally assisted program promulgated by the Department of Health and Human Services and appears to have no discretion to vary the regulation.

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