

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,240

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare (DSW) to terminate her Medicaid benefits due to excess income. The issue is whether the petitioner's income is countable under the regulations.

FINDINGS OF FACT

1. The petitioner is a fifty-nine-year-old woman who

receives \$628.00 in Social Security payments each month as well as \$21.76 monthly from a pension fund. On August 11, 1993, the petitioner notified DSW that she had begun a part-time job from which she earned \$85.00 per week.

2. Based on that information, DSW recalculated the petitioner's Medicaid eligibility, using the following method:

(1) The petitioner's unearned income (her Social Security and pension) were added together for a total of \$649.76.

(2) \$20.00 was subtracted from that amount as a disregard for the aged for a total countable unearned income of \$629.76.

(3) Her earned income from employment was determined to be \$340 per month (\$84 per week times 4 weeks).

(4) From the \$340 earned income figure, \$65 was subtracted as an elderly deduction, leaving \$275 per month.

(5) Of that \$275 figure, half was disregarded under a further exemption for the elderly and the blind, leaving a countable earned income of \$137.50 per month.

(6) The two countable income figures, \$629.76 (unearned income) and \$137.50 (earned income) were then added together for a total of \$767.26 in countable income.

(7) The \$767.26 was compared to the protected income level for a one person household which is \$700 per month. It was determined that the petitioner's income placed her \$67.26 per month over the Medicaid eligibility limit.

(8) The \$67.26 was multiplied by 6 months to arrive at a \$403.56 "spend-down" amount which is the amount of medical expense which the petitioner must incur in order to become eligible for Medicaid again.

3. On August 11, 1993, DSW mailed a notice to the petitioner that her Medicaid would close as of August 20, 1993, because her income "is more than Department standards allow for basic living expenses for a family of your size; therefore, we consider that you have income available for medical expenses." She was also advised that if her medical bills reached \$403.56 between August 1, 1993 and February 1, 1994, she could be found eligible again and was told to notify the Department of changes in her circumstances. An explanatory pamphlet was provided as well.

4. The petitioner does not take issue with the method of calculation used by the Department, rather she states that the entirety of her earned income should have been excluded because it is the result of her participation in a temporary training program which she asserts is funded through a federal senior citizen's employment program. The petitioner was told by the hearing officer that she needed some documentation of exactly what that program was from her sponsors. The record was held open for that information and the petitioner stated that she would provide such documentation but she has failed to do so without explanation. Therefore, no finding can be made as to the source of her earnings.

5. The petitioner has several physical conditions for which she needs medical attention and medications. When the "spend-down" concept was further explained to her at hearing, she felt that she may already have bills equal to that amount and planned to have them reviewed by the Department. However, she is worried about how she will pay for her medical care unless she is eligible for Medicaid year round.

ORDER

The decision of the Department is affirmed.

REASONS

Under regulations governing Medicaid eligibility for the aged, blind and disabled "all earned and unearned income of the aged, blind or disabled applicant/recipient(s) and his/her responsible relatives must be counted, except income that is specifically excluded under Definition of Earned Income and Definition of Unearned Income. M240. The detailed regulations concerning "earned income", the income at issue here, provide as follows:

M241 Definition of Earned Income

Earned Income: includes all gross salary, wages, commissions, bonuses, severance pay received as a result of employment. It also includes net earnings from self-employment. Net earnings is defined as gross income from any trade or business less allowable deductions, including, but not limited to, the active management of capital investments, such as rental property. In addition, the following types of income are counted as earned in the month received:

(1) Payments received under any of the following Economic Opportunity Act (EOA) programs whether as beneficiaries or employees:

-Youth Employment Demonstration Act Programs -Job Corps Program (Title I, Part A) -Work/Training Programs (Title I, Part B)

-Work Study Programs (Title I, Part C) -Community Action Programs (Title II) -Voluntary Assistance Program for Needy Children (Title II)

(2) Income from employment under Title I of the Elementary and Secondary Education Act (e.g., as a teacher's aide, lunch room worker, etc.) is earned income.

(3) Wages received from participation in the Limited Work Experience Program under the Job Training Partnership Act (JTPA). Support service payments made directly to the providers of services or needs-based payments of \$10 per day made to participants are excluded income.

M241.1 Exclusions from Earned Income

The following are not counted as earned income

(1) The earned income of a child under the age of 22 who is a student regularly attending school. This applies to wages received from regular employment, self-employment, or

payments from the Neighborhood Youth Corps, Work Study and similar programs.

(2) Foster care payments received for children and/or adults who are living with the applicant/recipient and were placed there by a public or private nonprofit agency.

(3) Infrequent or irregular earned income received, not to exceed \$30 per calendar quarter.

(4) Any in-kind assistance received from others.

(5) Earned Income Tax credit payments (both refunds and advance payments).

Under the above regulations, only income which is specifically excluded in the regulations is not countable; all other income must be included. Although the petitioner did not pinpoint the actual source of her income, she did not argue that it fell under any of the categories excluded above and it does not appear that any money regularly (even if only temporarily) earned by an adult working outside her home could be excluded under any category. Unlike some federal benefit programs (e.g. Food Stamps) which do exclude income from certain federal job program sources, the Medicaid program specifically lists those jobs for inclusion, excluding only certain moneys paid to reimburse support services (i.e. transportation, uniforms, etc.). Given the clarity of the above regulations, it must be concluded that the Department properly counted the petitioner's part-time earnings when it calculated her Medicaid eligibility.

The petitioner is encouraged to bring in her medical bills at once, if she has not already done so, to see whether she may have already met the spend-down. The petitioner was advised at the hearing that she could apply for General Assistance if she needs up-front money to obtain necessary services or medications while she is in her period of disqualification.

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