

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,493

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare to terminate her Medicaid benefits because she is no longer categorically eligible as a pregnant woman.

FINDINGS OF FACT

1. The petitioner is a twenty-five year old single, able-bodied woman who has no dependent children. She is currently a full-time college student.
2. In June of 1993, the petitioner applied for and received Medicaid benefits as of July 1, 1993 because she was pregnant. In the late summer, an ultrasound revealed that the petitioner had what is called a "molar pregnancy" which meant cancerous cells were forming in place of the fetus' placenta. She was advised to terminate her pregnancy because it could not succeed and posed a danger to her. She took that advice and ended the pregnancy on September 7, 1993.
3. Because the "molar pregnancy" continues to pose a residual cancer danger to the petitioner, even after its termination, she must continue to have bimonthly examinations and laboratory tests for a year after the end of the pregnancy. The petitioner asks that she continue to be found Medicaid eligible for this period because her medical need is related to the pregnancy.
4. On November 16, 1993, the petitioner was notified that her Medicaid would close on November 25, 1993⁽¹⁾ because she was "between the ages of 18 and 65; . . . not pregnant or responsible for the care of a child who is deprived of parental support and care according to Aid to Needy Families with Children standards; and . . . have not claimed to be disabled or blind according to Department records.

ORDER

The Department's decision is affirmed except that the petitioner's last date of eligibility for Medicaid

should be amended to read, "November 30, 1993".

REASONS

In order to be eligible for Medicaid, a person must be both financially needy and a member of a category of persons covered by Medicaid. M100, M115 Those categories include the aged, blind and disabled (M200 et seq.); persons age twenty or younger and their caretaker relatives (M300 et seq.) children; and pregnant women. The petitioner agrees that the only category her situation fell into was "pregnant women." She also agrees that she no longer meets that category but asks that her Medicaid continue because her current medical problems stem from the complications of a pregnancy.

The regulation granting eligibility to "Pregnant Women" states as follows:

A pregnant woman is categorically eligible for Medicaid when her pregnancy has been medically verified; she remains categorically eligible for an additional 60 days beginning on the day her pregnancy ends with the following limitation. Although a woman may be granted up to three months retroactive coverage if she was pregnant and met all eligibility criteria, she is not eligible for the 60-day post-pregnancy period if she applied after her pregnancy has ended. She may, however, be eligible after her pregnancy ends based on another categorical criterion or coverage provision and a different income test. Eligibility for the post-pregnancy period ends on the last day of the month during which the 60th day falls.

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Under the Department's regulations, the petitioner was not eligible to receive Medicaid beyond the end of the month in which the sixtieth day fell. In her case, as the sixty days were completed on November 7, Medicaid benefits should have ended on the last day of November of 1993, not on November 25, as her notice stated. (See Footnote 1) There is no provision for continuing Medicaid benefits beyond the sixty day period because a medical condition exists which was related to the pregnancy which formed the original basis for eligibility. To continue to be eligible, the petitioner must meet another eligibility category which she cannot do in her present situation. The petitioner is advised that if she has an emergency medical need which cannot be met through other means, she can apply for General Assistance.

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1. The notice mailed on November 16, 1994 for a termination date nine days later falls short of the ten day notice period required by the regulations. See M 141. It is amazing to find that after all the Board decisions on this issue, that the Department (or its computers) continues to deprive recipients of their right to ten full days of notice before termination. In this case, the petitioner, who appeared pro se, did not raise the inadequacy of the notice as a ground for her petition and did not, in fact, suffer from this inadequate notice as she appealed in a timely manner to obtain continuing benefits. In addition, for reasons discussed below, the termination date on the notice was in error anyway. Therefore, the lack of notice will not be an issue at this hearing. The Department should be aware by now, that the Board will

raise this issue sua sponte at any appeal where it appears that the petitioner may have been prejudiced by this illegal practice.