

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,544

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare refusing to consider his mother eligible for medicaid more than three months prior to the date it received a signed application in his mother's behalf. The issue is whether the petitioner's mother can receive medicaid effective as of the date that the petitioner mailed a prior application that was lost in the mail and never received by the Department.

FINDINGS OF FACT

The essential facts are uncontroverted. In June, 1993, the petitioner's mother entered a nursing home in Brattleboro, Vermont. In early July, 1993, the petitioner filled out an application for medicaid for his mother that had been given to him by the nursing home. The petitioner maintains that he mailed this application to the Department's Brattleboro District Office during the first week of July, 1993.

Later that month the nursing home called the petitioner to inform him that the Department's District Office had not received the application. The nursing home then arranged for the petitioner to get a new application to fill out and mail to the District Office.

The petitioner's mother died on July 18, 1993. Her funeral was held in Oregon. The petitioner's sister, who lives in Oregon, maintains that she mailed the second application for medicaid for her mother to the District Office later that same month. Inexplicably, however, this application also was never received by the District Office.

In November, 1993, the petitioner was informed by a pharmacy that his mother had incurred a bill before she died that was not covered by medicaid. This prompted the petitioner to contact the Department's District Office, at which time he was informed that it had never received a medicaid application for the petitioner's mother. The District Office then mailed the petitioner another application, which the petitioner filled out and mailed in, and which was received by he District Office in December, 1993.

Unfortunately, however, this application was received too late to effectuate any retroactive coverage (which is limited to the previous three months) for any medical expenses incurred by the petitioner's

mother before she died. The Department has refused to extend medicaid coverage to the petitioner's mother based on any of the prior applications that it did not receive.

ORDER

The Department's decision is affirmed.

REASONS

This case poses the issue of whether medicaid coverage can be based on applications that are mailed by an applicant but never received by the Department. For purposes of framing this issue the Department concedes that it has no evidentiary basis to question the credibility of the petitioner's allegation that he and his sister mailed the lost applications when they said they did. On the other hand, the petitioner concedes that he has no evidence that the Department ever received the earlier applications. Neither party contests the finding that the applications in question were somehow lost in the mail.

Medicaid Manual (MM) §§ M111 and M114 contain the following provisions:

M 111 Application Requirement

Any individual who wants Medicaid must file a Medicaid application with the Department . . .

Filing an application means taking or mailing a signed Medicaid application form to a Department office . . .

M 114 Date of Application

The date of application is the day on which a signed Medicaid application form is received in a Department office . . .

The above regulations are clear that applications are considered "filed" upon mailing, but that they cannot be effective until they are actually "received" by the Department. As noted above, the petitioner in this matter does not allege that the Department ever received the first two applications that he and his sister mailed.

The petitioner's argument is based primarily on MM § 121, which provides, in pertinent part:

When an applicant has done everything he was asked to do, the application will not be denied even though a decision cannot be made before the time limit.

The petitioner maintains that by mailing the applications in question, he did everything he was required to do in regard to those applications.

As the Department points out, however, the above provision applies only to "decision time limits" and does not require any application for medicaid to be granted--only that a pending application (i.e., one

already received by the Department) cannot be denied simply because consideration of that application is not completed within the required (sixty to ninety days, depending on whether a finding of disability is necessary) time limits. This provision does not contradict the requirement of § M 114, supra, that applications can only be effective based on the day they are received by the Department.

Although it is arguable as a matter of policy that the Department should allow for effective coverage based on the day of mailing, the regulations as written clearly do not allow this.⁽¹⁾ Inasmuch as the Department's decision in this matter is in accord with the pertinent regulations, it must be affirmed.

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1. As a practical matter, however, it would be next to impossible for the Department to verify when "unreceived" applications were actually mailed. The petitioner's analogy to the Rules of Civil Procedure (VRCP 5) is inapt largely for this reason. In civil court actions a "certificate of service" is customary, and copies are mailed at the same time to opposing parties; both of which make "lost mailings" less problematic in such cases.