

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,665

)

Appeal of )

)

INTRODUCTION

The petitioner filed an appeal with the Board after he had not received a response from the Department of Social Welfare seven weeks after filing a written request with the Department for a renewal of a medicaid exception for the drug Pericolace. The appeal raises several issues regarding the Department's process and notification procedures involving medicaid exceptions.

DISCUSSION

The facts are not in dispute. The petitioner is a disabled adult who requires a wheelchair to move about. For several years (since a Human Services Board decision in his favor) the petitioner has received from the Department an "exception" that allowed him medicaid coverage for the drug Pericolace, a stool softener that is necessary to regulate his irritable bowel syndrome and prevent obstruction and pain.<sup>(1)</sup>

In July, 1993, the petitioner received notification from the Department of an "exception authorization" for a six-month supply of Pericolace. In early December, 1993, he had his doctor write to the Department requesting an exception authorization renewal. Unbeknownst to the petitioner, the Department at that time was in the process of implementing a new computer-programmed tracking and notification system for medicaid authorizations.

Having heard nothing from the Department for a month following his doctor's request, the petitioner, on January 4, 1994, resubmitted his request to the Department. Again hearing nothing, he sent a follow-up letter to the Department on January 13, 1994, stating that he would be out of the medication in less than one week. When he had still not heard from the Department, the petitioner purchased his next month's supply of Pericolace out of his own pocket, and on January 26, 1994, he filed this appeal.

A few days later the petitioner received a coded form "medical assistance exception authorization" from the Department that made no reference to Pericolace and which was otherwise unintelligible to him. After several phone calls to Department personnel, the petitioner learned that his authorization for

Pericolace had been approved through May, 1994.

At the hearing in this matter (held on April 27, 1994) the Department readily conceded that there were several problems with its new system that it was working on resolving--including the timeliness of its responses and the intelligibility of the form notifications. The Department agreed to reimburse the petitioner for the Pericolace he had purchased while he was waiting to be notified that his authorization had been renewed.

At this point, the petitioner is seeking "declaratory relief" from the Board regarding the medicaid exception authorization process. The Department agrees, however, that its notification system (i.e., the new computer generated form) needs overhaul, and states that it is working on a process to provide recipients and providers with prompt, intelligible, and meaningful information regarding requests for medicaid exception authorizations, and on informing and training Department staff in this process.

In light of the Department's acknowledgements and representations, the board will not set any absolute deadlines or requirements on the Department at this time. The Department appears to be aware of its own regulations requiring action on medicaid applications within 30 days, and appears to be sincere that it is working to implement the types of modifications requested by the petitioner.<sup>(2)</sup> The petitioner is scheduled to reapply for his next six-month authorization in May, 1994. If the Department has not made progress on its authorization and notification procedures by this time, the petitioner is free to request further relief from the Board. As of now, however, inasmuch as the Department has acknowledged its problems and given its assurance that they are being addressed, a declaratory judgement is, hopefully, unnecessary.

The petitioner also requests that he be reimbursed his costs of pursuing this appeal. These include \$51.78 for six hours of "extra personal care attendant time" that the petitioner required to prepare for and attend his hearing, and \$10.50 for "postage, copying, and transportation costs".

Fair Hearing Rule No. 5 provides:

Travel expenses. Except in cases involving licensure issues, if the hearing is held outside the town of residence of the appellant the agency shall pay the appellant's reasonable travel expenses.

In this case, the petitioner lives outside of the city where his hearing was held. Because he is disabled, any additional personal care attendant time he incurred as a result of getting to and from the hearing (in addition to his other claimed "transportation costs") would certainly constitute "reasonable travel expenses". The usual procedure with such expense claims is for petitioners to apply directly to the Department. The board is unaware of any such claim ever having been denied, and there has been no indication in this matter that the Department would dispute paying the petitioner any "travel expenses" as set forth above. The board is unaware of any provision, however, that requires or allows reimbursement of discretionary costs like copying and postage.

### ORDER

The petitioner's request for declaratory relief is denied with the understanding that the Department has agreed to correct virtually all of the problems addressed in the petitioner's complaint, and with the proviso that the petitioner can reinstate his complaint if these problems are not substantially corrected

within a reasonable amount of time. The Department shall (if it has not already done so) pay the petitioner's travel expenses in connection with this appeal as set forth above.

# # #

1. Pericolace is not otherwise covered under medicaid.

2. The petitioner requested that the time limit for responding to requests for exception authorizations be set at 14 days. While not patently unreasonable, the board would have no authority to require any time limitations beyond those currently set in the regulations. The Board also has no authority to discipline any individual Department employees, or to order the Department to do so. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.