

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,815

)

Appeal of )

)

INTRODUCTION

The petitioner appeals the failure by the Department of Social Welfare to render a decision on her application for medicaid in a timely manner. The issue is whether the Department failed to comply with the pertinent regulations regarding medicaid decision time limits.

FINDINGS OF FACT

The petitioner filed an application for medicaid, based on disability, on January 25, 1994. On April 26, 1994, she filed a request for a fair hearing (received by the board via the Department's district office on May 3, 1994) because the Department had not yet rendered a decision on this application. In her request for fair hearing the petitioner requested that the Department be assessed a \$300.00

"penalty" for its delay. On May 6, 1994, the board scheduled the matter for hearing on May 25, 1994.

On May 10, 1994, the Department notified the petitioner that her application for medicaid had been denied. The petitioner has filed a separate fair hearing request regarding this notice.

At the hearing in this matter held on May 25th, the petitioner made clear that she wished to proceed only with her appeal regarding the timeliness of the Department's decision separate from any appeal on the "merits" of the Department's denial of her application; and she declined the hearing officer's offer to consolidate these two appeals for hearing on that day.<sup>(1)</sup>

Regarding the timeliness issue, documents in the petitioner's casefile show that the petitioner did not return all the documents connected with her application to the Department until roughly two weeks after she had first applied.<sup>(2)</sup> The case records also indicate that one of the petitioner's doctors did not respond to the Department's request for information for almost two months. They also indicate that a consultative examination of the petitioner ordered by DDS had to be postponed for two weeks at the request of the examining physician.

Despite the above delays, the records indicate that the Department notified the petitioner of its decision within 105 days--15 over the 90 day limit (see infra)<sup>(3)</sup>--but within 22 days of the date it had received all the medical reports it had requested in connection with the petitioner's application.

### ORDER

It is declared that the Department's decision in the petitioner's case was rendered within the time limits set by the regulations.

### REASONS

Medicaid Manual § M122 provides as follows:

#### Decision Time Limits

A decision on a Medicaid application must be made as soon as possible, but no later than:

90 days after the application date, if the application is based on a person's disability; or

30 days after the application date for any other Medicaid application.

The decision is not completed until a written notice of the decision has been given or mailed to the applicant.

Decisions may take longer in unusual situations, such as:

An examining physician delays sending a necessary report; or

An unexpected emergency or administrative problem beyond Department control delays action on applications.

In this case, not only did the Department encounter delays from at least two physicians (see supra), but the petitioner herself delayed the Department's consideration of her case by not promptly returning all the application-related forms to the district office. In light of these facts it must be concluded that the Department's delay in deciding this matter was neither inordinate nor inexcusable under the above regulation.

Even if it was, however, the board has held that "appropriate relief" (pursuant to 3 V.S.A. § 3091[d]) in such cases is a "de novo" hearing before the board on the "merits" of any application, which can be held relatively promptly whenever it is found that an inexcusable delay has occurred in the Department's decision-making process. Fair Hearing Nos. 7171 et al. In those cases the board expressly rejected as "inappropriate" the ordering of "interim benefits" or other monetary penalties against the Department in isolated cases of inexcusable delays.

The above conclusions will in no way affect the hearing officer's consideration of the "merits" of the Department's decision denying the petitioner's application for medicaid. These will be dealt with in the separate fair hearing requested by the petitioner for that purpose. As for the timeliness of the

Department's decision, however, it must be concluded that the Department was not in violation of the pertinent regulations.

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1. A separate fair hearing date has been set for the petitioner's appeal of the Department's denial of her application for medicaid.
2. It appears that the petitioner could have filled out these forms in the district office on the day she applied, but elected instead to take them home with her.
3. It appears that the petitioner was under the mistaken impression that the regulations require a decision within 60 days.