

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,882

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying him payments of his Medicare premiums under the Qualified Medicaid Beneficiary program based on his refusal to allow the use of his social security number in processing these benefits.

FINDINGS OF FACT

1. The petitioner is a disabled SSI recipient who has a severe paranoid personality disorder. He is particularly concerned that his Medicaid card not contain his social security number because he feels it may result in an invasion of his privacy and violation of his right to confidentiality. The Department of Social Welfare has acceded to his concern by using a temporary number on his Medicaid card. He has agreed to the use of his social security number by the Department for internal matters only such as verification of income from SSA and other sources.
2. In May of 1994, the petitioner applied for payment of his Medicare premiums under the Qualified Medicaid Beneficiary program. That program required the Department to certify to the Social Security Administration that the petitioner was financially eligible for such benefits and that the Department should be billed for his Medicare co-payment (approximately \$40 per month) by SSA.
3. On May 25, 1995, the Department denied the petitioner's request for such payments stating that the petitioner had demanded that his social security number not be used in the certification process and claiming that the Department could not certify his eligibility to the Social Security Administration without using his social security number. The temporary number used on his Medicaid card could not "interface" with the computer program at SSA, which instructed SSA to accrete, or stop billing the petitioner for the Medicare payments, and to start billing the state.
4. No evidence was offered by anyone as to what the petitioner's exact instructions had been about using his social security number in this matter, whether his social security number would appear on his

Medicaid card as the result of QMB certification, or as to any conversations between the parties about this matter at all before the decision was made to deny benefits.

5. Shortly after this appeal was filed, the petitioner was notified that the Department would terminate his Medicaid benefits entirely because he was no longer financially eligible for such benefits due to an increase in income. The petitioner appealed that decision and at the time of the hearing in this matter, the parties were aware that a hearing on his Medicaid eligibility, which would involve fact finding about his income, was about to take place. The Department orally notified the petitioner and his attorney that his lack of financial eligibility would constitute an additional ground for denying QMB benefits and, if upheld by the Board, would moot out all or most of his claim for QMB benefits. Therefore, in order to avoid a waste of administrative resources, the hearing officer notified the parties that the decision in this matter would be delayed until the Board made a decision on the Medicaid termination.

6. On November 3, 1994 in Fair Hearing Nos. 12,918 and 12,956, the Board determined that the petitioner was over income for Medicaid benefits based on the receipt of \$903.48 monthly in the form of benefits from several sources, including the Canadian government. The Department's decision to terminate his Medicaid benefits as of July 1, 1994, was affirmed.

7. Subsequent to that decision, the Department notified the petitioner's legal representative that the only months subject to the social security number denial were May and June of 1994, since the Board's income findings in the above fair hearings had effectively precluded his financial eligibility for any QMB benefits beginning in July of 1994. The petitioner refused to agree to restricting his claim to those two months and sought to relitigate his eligibility for the following months as well, based on his disagreement with the factual findings in the Board's decision.

8. On February 8, 1994, the Department sent a formal corrected notice to the petitioner confirming what they had orally advised him of earlier: that the Board's factual findings in Fair Hearing Nos. 12,918 and 12,956 had made him ineligible for QMB benefits on additional financial grounds. He was also advised in that letter that the Department had reversed its decision not to pay his May and June, 1994, QMB benefits and that a check was enclosed for \$82.20 representing reimbursement for Medicare premium payments which had been deducted from his SSI for those months. That letter is attached hereto and incorporated by reference as Exhibit No. One.

9. The petitioner's legal representative agreed to the admission of Exhibit No. One into evidence herein, but stated that her client did not wish to withdraw his appeal in this matter because he disputed the conclusion that he was financially ineligible after July 1, 1994 based upon his disagreement with the facts found in Fair Hearing Nos. 12,918 and 12,956.

ORDER

The corrected decision of the Department dated February 8, 1995 allowing eligibility for QMB benefits for May and June 1994 only is affirmed.

REASONS

Under the Medicaid regulations, an individual who is entitled to Medicare Part A and who has countable income and resources which do not exceed a maximum limit are designated "Qualified Medicaid Beneficiaries" and are eligible for Medicaid payment of his or her Medicare premiums, deductibles and coinsurance. M200 (1). Eligibility results in the state notifying the Social Security Administration via a computer programmed file to bill the state monthly for the cost of the premiums for the eligible individual. P-2441(b)(2). These files, apparently, identify persons through the use of social security numbers. The petitioner, though an eligible QMB was denied because he allegedly would not allow the Department to use his social security number to access the program file.

This matter has been in a somewhat confused posture from the very outset. Although the petitioner's primary reason for refusing to allow the use of his social security number appeared to be his concern that it would appear on his Medicaid card, no evidence was offered that the internal use of the number would necessitate that outcome. Neither was it clear why the petitioner might object to the Department and the SSA using his social security number between themselves to confirm information (since they already do it for his income), so long as it was not revealed to outside sources. It appears that the petitioner may be confused about the effect of the number's use in this matter. It also appears that the Department either did not or was unable to make this clear to the petitioner before the denial occurred. It was also unclear as to what actions, if any, the Department had taken to accommodate his concerns. The murkiness of the "facts" presented by the parties (the burden is on the petitioner in this matter see Fair Hearing Rule No. 12) make this a difficult case to analyze under the petitioner's claim: that the actions violated the Americans with Disabilities Act (ADA) 42 U.S.C. § 13101 *et seq.*

Following the hearing in this matter, the hearing officer suggested to the parties that they try to resolve, or at least better define the remaining issues in this matter, since it seemed the decision may have been the result of a misunderstanding on both sides. The hearing officer noted the probable obligation the Department had to the petitioner to make a reasonable accommodation for his handicapping paranoia under the ADA based on the Board's recent analysis in Fair Hearing Nos. 11,260 and 11,648 (since affirmed by the Vermont Supreme Court in Elaine Howard, et al. v. Dept. of Social Welfare, Docket No. 93-342, Dec. 30, 1994) and also noted the petitioner's apparent willingness to allow the use of his social security number internally for many purposes including verification. The parties were encouraged to work the matter out while the other Medicaid appeal was being decided on the financial eligibility issue.

For whatever reason, the Department, to its credit, did finally try to resolve this problem and reversed the denial of benefits for the first two months of application for May and June of 1994, and paid out the benefits by reimbursing the petitioner for amounts deducted from his checks for Medicare premiums during those two months. Those benefits have been sent to the petitioner and he raises no remaining issue for those two months. It must be found, therefore, that his appeal for those two months is now moot.

The petitioner still strongly disputes the finding of the Department that he was ineligible for QMB benefits for subsequent months based upon the findings of the Board in Fair Hearing Nos. 12,918 and 12,956 with regard to his income. The petitioner disputes and wishes to relitigate his income figures for July 1, 1994, and the following months. However, he presented no argument that the Board's findings should be set aside due to fraud, mistake, newly discovered probative evidence or some other ground that might be cause for reviewing the prior findings. As such, the Board is entitled to take judicial notice

of its own findings and is collaterally estopped from making new findings on his income for the months at issue.

In those prior decisions, the petitioner was found by the Board to have \$903.48 in monthly income from various sources. Based on his income, he was found to be ineligible for regular Medicaid benefits. However, Medicaid eligibility is not necessary to receive QMB benefits. M200(1). Under the regulations governing the QMB program, the income limit for a one person group is \$614 per month. P-2420(B)(2). Although that is a higher limit than regular Medicaid, the petitioner's monthly income since July 1, 1994, makes him considerably over that income amount and thus, disqualifies him as a QMB recipient.

In addition to the QMB program, another program exists known as SLMB, (Specified Low-Income Medicare Beneficiaries) which provides payment for Medicare Part B premiums (only) for persons who are entitled to Medicare Part A and who meet the resource and income tests. See M200(3). However, the resource limit for that program for a single individual is \$736. P-2420(B)(3). The petitioner's income since July 1, 1994 is similarly too high for that program. It must, therefore, be concluded that the Department's decision that he is financially ineligible for both QMB and SLMB as of July 1, 1994, is correct.

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