

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,781

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Appeal of)

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INTRODUCTION

The petitioners appeal a decision of the Department of Social Welfare to refuse to allow the cost of hiring a person to maintain their lawn as an excess medical deduction for purposes of calculating their Food Stamp benefits.

FINDINGS OF FACT

1. The petitioners are husband and wife who each receive Supplemental Security Income disability benefits. For some time they have also received Food Stamp benefits through the Department of Social Welfare.
2. Under the Department's Food Stamp regulations, recipients are allowed a deduction for medical expenses in excess of \$35 per month. From time to time the petitioners have had a health care attendant living with them whom they paid from an essential person grant of \$180 received from another Department program. Whenever they had an attendant, the grant they received was counted as income to them. However, as long as the attendant was not counted as part of the Food Stamp household, the petitioners were allowed to add the cost of paying that health care attendant to their other medical expenses and the excess over \$35 per month--in their case \$160--was deducted from their countable income as an excess medical expense.
3. The live-in health care attendants hired by the petitioners assisted them by doing both household and yard chores which the petitioners were unable to physically do. The attendants did not assist the petitioners with their feeding, bathing or clothing, as they could perform those functions themselves. No attempt was made by the Department to sort out services performed by the attendant into deductible and non-deductible categories. The entire expense of the health care attendant was added to allowable medical expenses which were then deducted from the petitioners' income.

4. In November of 1994, the petitioners decided to hire a visiting home health aide instead of a live-in attendant and asked the Department if they could include amounts that they might pay for lawn care (in the coming spring), to housekeepers and to a "handyman" in their total monthly medical expenses because of their physical inability to perform those chores. The petitioners provided a note from their physician stating: "Because of their disabilities I recommend that they [the petitioners] have assistance in doing their household tasks that they are unable to perform."
5. The Department responded by written letter dated December 1, 1994, that only expenses for medically necessary household chores in excess of \$35 could be deducted from their income for Food Stamp purposes and that the petitioners would be required to show that they paid the expenses themselves, that the service purchased was of an ongoing nature and that receipts or statements from the service providers would have to be presented.
6. Nothing further occurred in this matter for some months, apparently because the petitioners hired no help. In late May of 1995, the petitioners again hired a live-in attendant for about six weeks and that expense was again included as a medical deduction. In early July of 1995, the petitioners reported that they would no longer have a live-in attendant or receive essential person benefits. They asked, however, that they receive an excess medical deduction of \$80 per month for amounts they paid to an individual to care for their lawn.
7. Based on that information, the Department recalculated the petitioners Food Stamp amount for the coming month of August by decreasing the household's income by \$180 per month and eliminating the excess medical deduction of \$160. No medical deductions were added in for the cost of the lawn care. The decrease in income also allowed a slight increase in allowed excess shelter and utility expenses (from \$63.60 to \$73.60) since this deduction is a function of the ratio of shelter costs to total income. (Shelter amounts over 50% of income are deductible.) The petitioners were mailed a notice on July 10, 1995, that their Food Stamp benefits would increase from \$32 to \$41 per month beginning August 1, 1995.
8. The petitioners appealed the decision the day it was mailed. They do not dispute the income figure or shelter allowance used but dispute the Department's failure to allow the cost of the lawn care as an excess medical deduction. They claim that the lawn mowing is a medically necessary service because one of them has asthma, but they presented no medical evidence in support of that claim. The Department continues to refuse to deduct that payment based on a lack of evidence that the lawn mowing is a necessary "medical expense."
9. Subsequent to this decision and their appeal of it, the petitioners presented evidence that they now use a home health service for medical care and were told that the amounts paid for that service could be deducted from their income because use of such a service is defined as a medical service in the regulations. The home health worker spends two hours per week in their home and cleans the bathroom and kitchen and dusts. The cost of the aide is about \$24 per month. The petitioners would like to find someone they can pay to do more heavy cleaning but are unsure whether such an expense will be considered a deductible medical expense and asked for a ruling on the inclusion of that expense before they incur it.
10. The hearing officer asked the Department to make a ruling on the treatment of payments made to housekeepers as a deductible medical expense prior to a decision in this matter. On August 29, 1995, the Department responded that the cost of the services provided by the home health care agency could

clearly be deducted under the regulations but that no other expenses for household chores could be deducted unless evidence was presented that the service was necessary due to age, infirmity or illness and performed, prescribed, or approved by a licensed practitioner, qualified health professional, or recognized facility. The Department did not feel that the medical note presented by the petitioners in November of 1994, met that standard for any service currently paid for by the petitioners.

ORDER

The decision of the Department denying inclusion of lawn mowing expenses as a deductible "medical expense" under the Food Stamp program is affirmed. The Department's declaratory ruling that the petitioners cannot deduct payments they may make to a housekeeper under that same program is reversed.

REASONS

The Food Stamp regulations adopted by the Department (which are patterned almost verbatim on the federal regulations) allow certain deductions from gross income in order to figure a countable net income figure which is then used to determine both eligibility and benefit amount. See generally F.S.M. 273.9 and 273.10. Medical expenses are among the kinds of household expenses which may be deducted in certain circumstances:

3. Excess Medical Deduction

That portion of medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is elderly or disabled as defined in 271.2⁽¹⁾. . . Allowable medical costs are:

. . .

x. Maintaining an attendant, homemaker, home health aide, or child care services, housekeeper, necessary due to age, infirmity, or illness. . .

F.S.M. 273.9(d)

The petitioner presented no evidence from her physician indicating that she needs to have her lawn mowed for medical reasons. Even if she had made such a presentation, the above regulations do not include the cost of maintaining a lawn mower or a gardener as a medical cost deductible for Food Stamp purposes. The Department was, therefore, correct in denying the petitioner an excess medical deduction based upon her payments to someone for mowing her lawn. The fact that her fully cost-deductible live-in attendant performed this service for her does not require the Department to include that service when it is provided as a separate service by an individual employed exclusively for that purpose.

The petitioner has also asked the Department whether the cost of a housekeeper would be deductible under the medical cost provision. They seek a declaratory ruling on this request before they hire a housekeeper and are entitled to such under the Administrative Procedure Act. 3 V.S.A. § 808.⁽²⁾ The Department has ruled that the petitioners can only deduct home health care services and are prevented from receiving approval of any other housekeeping services they might incur based upon federal agency interpretations of medical costs found in the Food and Nutrition Handbook section 310, Section 1162.1.

The section referred to by the Department affirms the language in the regulations approving the deductibility of "attendant, homemaker, home health aid, child care services, housekeeper necessary due to age, infirmity or illness" but restricts medical deductions to services "performed, prescribed or approved by a licensed practitioner, qualified health professional, or recognized facility".

Unlike lawnmowing services, the Department's regulations do specifically include the cost of maintaining a housekeeper necessary due to infirmity or illness as an allowable medical cost. The regulation would appear to require only that the petitioners present evidence from their physician that a housekeeper is necessary because of their disabilities. The agency interpretation of that regulation relied upon by the Department does not in fact place any additional burden on the petitioners which is not already in the regulations. The "restriction" referred to is merely a method of verifying that the allowable medical service is really necessary due to age, infirmity or illness. In November of 1994, the petitioners did present evidence from their physician that he approves, and, in fact, recommends, the housekeeping services because the petitioners' disabilities keep them from performing household chores. It is difficult to see what more the petitioners need to provide to show that housekeeping is necessary for them due to their infirmities and illnesses.

There is no requirement in the regulation, as implied by the Department, that the petitioners show that keeping a clean house is in and of itself a medically necessary service. The regulation itself defines housekeeping, homemaking, attendant care, etc. as allowable medical costs if the recipient's physical condition makes it impossible for the recipient to perform those tasks herself. The fact remains that the petitioners' live-in attendant's main function was to provide housekeeping services. The Department allowed deduction of that expense without question because it was specifically listed in the regulation. The regulations also specifically allow deduction of housekeeping services provided by someone other than a live-in attendant. The Department's reluctance to allow deductions for payment for the services of a visiting housekeeper in this same situation is inconsistent with and not supported by the regulations or the FNS policy manual.

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1. F.S.M. 271.2 specifically includes SSI recipients in the definition of disabled persons.
2. That provision requires appellate Boards to treat declaratory rulings as decisions of the Department for purposes of appeals.