

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,113

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare to deny his application for ANFC-related Medicaid based on his failure to meet the incapacity criteria.

FINDINGS OF FACT

1. The petitioner is a thirty-nine-year-old man who incurred serious injuries in August of 1995, as the result of his car plunging into a deep gully when the road near his home washed out in a flash flood. He was hospitalized for eleven days, from August 6 to 17, 1995, with multiple rib fractures and hydrothorax in his right chest. He was released on pain medications.
2. The petitioner usually works as a bus driver for a school district and was due to begin work for the school year on August 24, 1995. He was usually required to work two shifts per day of two hours each during school days and to maintain his bus. He could choose to drive the bus for school field trips if he wished. The petitioner also does wood cutting and mechanical repair, mostly on a barter basis to supplement his income. Because the petitioner was fearful of losing his job, his doctor released him for his two shifts per day of school bus driving although he was not entirely healed and still taking medications and ordered him to rest for the balance of the time. The petitioner began driving the school bus on August 24, 1995, but did no bus maintenance and took on no further bus trips until late October of 1995. He did no further other labor during this period.
3. The petitioner earns \$37.50 each day he drives the school bus. As his pay is prorated across a twelve month year (rather than paid during the ten month school calendar), he was paid approximately \$500 per month for September and October of 1995.
4. On September 25, 1995, the petitioner applied for Medicaid to assist with the \$30,000 in hospital and physician expenses incurred as a result of the accident. In support of his application, he provided a report covering an August 24, 1995, follow-up examination which described him as doing well in his recovery:

On examination today, he can move about freely without discomfort. He can cough and breathe deeply without discomfort. His lungs are clear to auscultation and percussion. Heart tones are of good quality. Chest tube sutures are removed. Hematocrit today is 33% . . . Percocet #20 given for one HS PRN for pain at night and Ferrous Sulfate 325 mg. PO TID for one month. Patient will be following up with his personal physician . . . and to return here PRN.

5. Based upon this information the petitioner was denied Medicaid on November 1, 1995, based on the petitioner's failure to meet the criteria for categorical eligibility under the ANFC program. Specifically, he was informed that he did not meet the criteria for incapacity. The petitioner's application was ANFC-related because he lives with his spouse and their two minor children.

6. Subsequent to the hearing, the petitioner obtained a report from his treating physician based on an examination he conducted of the petitioner on September 1, 1995, stating that he could resume working at least 35 hours per week at his usual occupation in four weeks.

7. Although the petitioner did not actually resume his full schedule of activities until almost November 1, 1995, his physician's reports make it clear that he could have done so by at least October 1, 1995, if he had so desired.

#### ORDER

The decision of the Department is affirmed.

#### REASONS

The Medicaid regulations provide for eligibility for persons who are "ANFC-related" under one of several categories, including the parent of a child who is deprived of parental care and support under ANFC rules. M323. Under the ANFC rules, a child is deprived of parental care and support due to the death, continued absence, physical or mental incapacity, or unemployment of a parent. W.A.M. 2330-2339.

The petitioner claims to meet the criteria for a physically incapacitated parent. The regulations provide that the incapacitated parent standard is met as follows:

A child is deprived of "parental support" when a parent is unable, due to his or her physical or mental condition, to maintain his or her earning capacity for a period of not less than 30 days from the date of application. If an applicant for ANFC Incapacity works 35 hours or more per week he or she is not eligible on the basis of incapacity.

. . .

W.A.M. 2332

The petitioner applied for Medicaid assistance on September 25, 1995. In order to be eligible for Medicaid under the ANFC-incapacity category, the petitioner has the burden to show that his physical condition prevented him from maintaining his earning capacity for at least 30 days from that date, or through October 25, 1995. The petitioner was unable to make that showing. The evidence clearly shows

that following his accident he was partially released for work as early as August 25, 1995, and appears to have been able to earn, if not all, then substantially all, of his usual income during the following months.<sup>(1)</sup> He was fully released for work by his physician as of September 29, 1995, only four days after his application.

As the petitioner has failed to show that he was unable to maintain his usual earning capacity for the thirty day period (September 25-October 25, 1995) following his application, he was properly determined to be ineligible for Medicaid.

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1. The petitioner put forth no evidence as to the value of his other "barter" activities.