STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,122

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Appeal of)

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INTRODUCTION

The petitioners appeal a decision by the Department of Social Welfare finding that they are ineligible for Medicaid until they meet a certain calculated spend-down level.

FINDINGS OF FACT

1. The petitioners are a husband and wife who live together in the same household. They are both sixty-three years old and in December of 1995, received combined Social Security benefits of $928.92 per month. Beginning in January of 1996, their joint income increased to $952 per month due to a cost of living raise.

2. The petitioners have considerable monthly medical expenses, primarily due to costly medications, averaging about $300. The petitioners have been able to obtain Medicaid through most of 1995 to assist with the bulk of their bills even though their combined income has been significantly above the $691 maximum "protected income level" for a two person household. They have been able to accomplish this through meeting a fairly modest "spend-down" amount as calculated for them by their benefits worker. For example, in May of 1995, the petitioners were found to be $217.92 over the maximum protected income level for two. (Calculated by deducting a standard $20 allowance from their income of $928.92 and comparing it to the $691 maximum.) At that point, their worker divided the excess in two and informed the petitioners that either one of them could get on Medicaid as an individual as soon as one of them incurred expenses equal to one-half of the $1,307.52 spend-down ($217.92 x 6 months), or $653.76.

3. During a routine review of their eligibility in November of 1995, another worker discovered the divided spend-down calculation and checked with the Department to see if it had been properly calculated. He was advised by the state office that spend-downs could not be divided between a husband and wife in the same SSI-related household. At that point he sent a notice to the petitioners dated November 28, 1995, notifying them their new spend-down amount for December 1, 1995 to May 31, 1996 would be $1,471. That amount was calculated by using the excess for December of 1995 of $225.92[(1)] and the projected income for January through May of 1996 ($951) based on the increased

cost of living payments, minus the $20 deduction compared to the new PIL of $683. This calculation resulted in an excess of $248 per month multiplied by the five remaining months, or $1,240. All months added together equaled $1,465.92, a figure which the Department now relies on as the correct spend-down amount, although the petitioners were told in the notice that it was $1,471. The petitioners were also informed that they had already produced evidence that they had incurred $1,000.19 in medical expenses and that they needed $400.81 more to become eligible for Medicaid. The Department now agrees that the real figure they need to become Medicaid eligible is actually $395.73.

4. The petitioners appealed the establishment of the above spend-down amount. They do not disagree with the accuracy of the figures used or the calculations themselves. What they do disagree with is the Department's requirement that the entire amount of the spend-down must be reached before either one of them is eligible for Medicaid. They want the spend-down amount divided in two for each of them as it had been before.

5. The Department refuses to return to the old method of calculation saying that it was done in error and that the regulations require spouses receiving SSI to be treated as a group and that they cannot be eligible for Medicaid separately.

ORDER

The decision of the Department is affirmed.

REASONS

Under Medicaid eligibility rules, a husband and wife who are each SSI eligible must apply as a couple for Medicaid unless only one of them wants assistance. In that instance, the one who wants assistance can apply as an individual. M200.1 However, even if the other spouse does not apply, spousal financial responsibility rules require that the income of the applicant and non-applicant spouse be combined and compared to the maximum eligibility limit for two so long as they are living together. M221(2).

The petitioners in this case applied as a husband and wife group, which makes sense since they both want Medicaid and are both potentially eligible to receive it. As such, their income was combined, reduced to a net figure and compared to the protected income level for two as required by the regulations. If the total countable income exceeds the applicable PIL, the "couple cannot pass the income test for Medicaid until eligible paid or incurred medical expenses equal the difference between total countable income and the applicable PIL (i.e. the spend-down requirement is met.)" M240. The petitioners here had income considerably in excess of that protected level. P-2420(B)(1). As such, they have to incur medical expenses equal to the difference between their total countable income and the PIL for two people.

There is nothing in the above regulation which would indicate that the couple can split up its excess income as if they were individuals to meet their group spend-down. The spend-down regulation itself provides as follows:

Excess Income

A person who passes all eligibility tests, except that his or her Medicaid group's monthly income is more than any of the income tests for which he/she may be eligible (see P-2420 B) may qualify for Medicaid

coverage. To do so, he or she must show that his or her Medicaid group has paid or incurred medical expenses (see Medical Expense Deductions in the M430 Section) at least equal to the difference between its countable income and its Protected Income Level. This difference is called the "spend-down" requirement...

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The language of the above regulation makes it clear that an individual on SSI cannot meet the spend-down requirement unless he or she shows that his or her entire Medicaid group has incurred expenses equal to the difference between the group's ("its") countable income and the group's ("its") Protected Income Level. There is no justification under the above language for splitting up the excess income among individuals in an SSI Medicaid group and requiring only that they meet "their portion" of the expenses. Just as the petitioners can use each other's medical expenses to meet the group spend-down, they are also deemed by the regulations to have each other's excess income available to meet their medical expenses. As the Department's latest calculation is in accord with its regulations, the Department's decision must be affirmed. 3. V.S.A. § 3091(d).

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1. On July 1, 1995, the protected income level went down to $683, although the petitioner's income did not change, thereby adding $8.00 per month on to their excess income.