

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,352

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying her eligibility for Medicaid based on her failure to provide information about her parents' income. The Department has filed a motion to dismiss for lack of timeliness of the appeal.

FINDINGS OF FACT

1. The petitioner, who was then twenty years old, pregnant and living with her parents, applied for Medicaid on May 27, 1994, to cover expenses associated with her impending childbirth. She had lived with her parents since February of 1993, when she left college and had been paying them room and board of \$50 every two weeks until she stopped working in the Fall of 1993. Her father's health insurance would not cover her while she was not attending college.
2. On June 13, 1994, as part of her Medicaid application, the petitioner was asked in writing to provide a pregnancy certification form, information on her vehicle, income and verification of her parents' income by June 24, 1994, in order to maintain her eligibility. She was advised to inform her worker if there was a problem with getting this information. On June 17, 1994, after the Department became aware that the child had been born on June 2, 1994, the petitioner was additionally asked to provide her child's social security number and to fill out a form regarding declaration of her retroactive need for medical assistance.
3. The petitioner is vague about the receipt of these notices and her action in regard to them. She believes that the Department had information it needed on her child and his social security number, but doesn't remember sending it to them. She also could not affirm that she had reported on her income or motor vehicle, but testified she had none to report. She agrees, though, that she did not provide information about her parents' income and resources.
4. The petitioner's worker affirmed that she did receive the certification form about her son but none of the other information. She was particularly unable to move forward on the application because the

petitioner had not provided information about her parents' income and resources.

5. On July 11, 1994, the petitioner was mailed a notice stating that her Medicaid had been denied as of July 8, 1994, because she had "not provided information that is necessary to determine your eligibility." The front of that notice advised the petitioner that her rights were explained on the other side of the notice. The back side of the notice stated that "you can ask for a Fair Hearing any time up to 90 days after this notice is mailed to you".

6. The petitioner agrees that she received and understood the denial notice. She did not discuss her right to appeal with anyone at the Department of Social Welfare. She decided not to appeal because she did not think she had any defense to her failure to provide the information requested.

7. In April of 1996, the petitioner talked to someone at a "Law Line" about her outstanding medical bills and was told that she should have been found eligible for Medicaid in June of 1994, because she was not required to provide her parents' income and resources if she was obligated to pay room and board. The petitioner felt that she had been liable to pay those amounts, although she was not able to do so at that time and that her parents' income was, therefore, not reportable. The petitioner decided to appeal the July 11, 1994 denial and did so on May 6, 1996.

8. The worker in charge of the petitioner's case agreed that she should have asked the petitioner at that time whether she paid room and board. She also agreed that if she had made such payments she would not have been required to verify her parents' resources and income. The request for verification came about due to some kind of misunderstanding, but the matter occurred so long ago that she could not remember what happened. However, the worker never heard from the petitioner again after she sent the letter of denial and right to appeal.

### ORDER

The Department's motion to dismiss this appeal for lack of timeliness is granted.

### REASONS

The petitioner is correct, as the Department now admits, that she would not have been required to verify her parents' income if she could first show that she made a monthly room and/or board payment to her parents. M331. If she had been asked for and was able to provide the necessary information on the room/board issue, the petitioner might have been successful in overturning the denial of her Medicaid claim. However, the petitioner did not appeal that decision in the ninety day time period specified in the notice and did not present that information to the Board.

The petitioner is bound, as is every applicant and recipient, by time limits for filing Medicaid appeals by Human Services Board, Fair Hearing Rule No. 1 which reads, in pertinent part:

Appeals from decisions by the Department of Social Welfare and the Office of Child Support shall not be considered by the board unless the appellant has either mailed a request for fair hearing or clearly indicated that he or she wishes to present his or her case to a higher authority within 90 days from the date when his or her grievance arose.

The petitioner's grievance arose when she received the July 11, 1994 notice that her Medicaid application was denied. The petitioner indicated that she understood that her application was being denied at that time, that she understood that she had ninety days to appeal and that she did not attempt to appeal or indicate to anyone at the Department that she was dissatisfied with the action. She did not appeal because she did not understand at that time that she had a defense to the Department's action. However, she certainly could have investigated the denial at that time and have gained an understanding of her rights under the regulation by contacting legal aid or another source of legal advice, as she did later. Her failure to do so does not stop the appeal period from running.

The petitioner's time to appeal ran out some time around October 15, 1994. That deadline could only be extended if the petitioner could show that either her own incapacity or the Department's failure to communicate made her unaware that the grievance existed at the time it actually arose. See Fair Hearing No. 8198. The petitioner has made no such showing. An appeal filed over a year and a half after the grievance arose is not timely, and the Board, following its own rules must dismiss the appeal. Fair Hearings No. 8105 and 10,106. This is so even though the petitioner might have had some success on the merits of the case if she had timely appealed or might have misunderstood her defense. The poor memories of both the petitioner and the Department's witness at a hearing held almost two years after the denial vividly illustrates why it is important for appeal hearings to be conducted in a timely manner and why deadlines must be imposed.

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