STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,401

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating his Medicaid benefits. The issue is whether a personal injury settlement of $43,490.00 to the petitioner's wife should be counted as a resource in determining the petitioner's eligibility for Medicaid.

FINDINGS OF FACT

The facts are not in dispute. The petitioner lives with his wife, and until recently both of them were eligible for medicaid. The petitioner's wife was injured in a fall outside a department store in 1989. She recently received a settlement of $43,490.00 for her injuries in that accident. When it learned of the settlement the Department notified the petitioner and his wife that they were no longer eligible for Medicaid due to excess resources.

The petitioner does not dispute that his wife should be found ineligible for Medicaid. He maintains, however, that the settlement is hers alone and should not be considered a resource to him. The petitioner has no health insurance of his own and has substantial recurring medical expenses.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual Section M 221 provides:

In determining the financial eligibility of an individual or a couple, the income and resources of spouses, with certain limits, must be counted as available to the applicant(s) if they are living together in their own home or in the household of another.

The "certain limits" referred to in the above regulation apply only to situations in which both spouses are

living in a nursing home. Since neither the petitioner nor his wife are in a nursing home the above regulation requires that in determining the petitioner's eligibility for medicaid the income and resources of his wife must be considered available to him.[(1)] Inasmuch as the couple's resources, including his wife's recent settlement, are far in excess of the program maximum, the Department's decision must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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1. At the hearing the hearing officer advised the petitioner and his wife to consult with another attorney concerning any further legal rights they might have in light of the apparent failure of their previous attorney to consider the effect the settlement would have upon their eligibility for Medicaid.