

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,535

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Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare terminating his eligibility for Medicaid based on his resumption of employment.

FINDINGS OF FACT

1. The petitioner lives with his wife and two children and until recently has been unemployed. He has been receiving Medicaid since May of 1996, based on his categorical relation to an ANFC-UP family assigned to Group 2. The family has not received ANFC benefits due to his unemployment other than for a two month period in the Fall of 1994 (September 15-November 15).
2. The petitioner became employed on June 10, 1996, earning a monthly gross income of \$1,178.88 per month. He made a timely report of his employment to the Department and his eligibility was recalculated.
3. On July 18, 1996, the petitioner was mailed a notice by the Department advising him that his two children would still be eligible for Medicaid under the Dr. Dynasaur program, but that his eligibility and that of his wife would end on July 28, 1996 based upon an increase in income. He was also advised that he could be eligible again for Medicaid if he had \$930 in medical bills during the coming six months under the "spend down" program.
4. The petitioner did not receive that notice but it was never returned as undelivered to the Department. On August 1, 1996, he went to the emergency room in the hospital where he works on the third shift to receive non-emergency treatment for a minor illness and was charged \$280 for the visit and \$35 for medications. He visited the ER because it was more convenient for him to do so than to visit a doctor in the morning when his shift was finished. He was informed by the hospital that Medicaid would not accept billing for these charges which was the first time he realized there was a problem with his Medicaid.
5. Sometime between August 2 and 6, 1996, the petitioner called to speak with someone at DSW about the Medicaid denial and was advised that he had been mailed the notice of termination on July 18, effective July 28. He was further advised that the closure date and reason for closure had been erroneous

in the prior notice and that he would soon receive a new notice.

6. On August 7, 1996, DSW mailed a corrected notice to the petitioner advising him that his and his wife's Medicaid had been closed effective July 31, 1996 with no opportunity to becoming eligible due to a spend-down because they were "between the ages of 21 and 65 and not the parent of a child who is deprived of parental support."

7. The petitioner did not know how his working status would affect his Medicaid benefits and never felt it was necessary to check back with the Department about his continued eligibility. He believed when he heard nothing that he was still eligible for Medicaid in spite of his new job. If he had known that he was not eligible for Medicaid, he would have obtained health insurance through his employer. The closure period for enrollment was July 31, 1996 and he will not have another opportunity to enroll until January of 1997. The petitioner does not dispute that lack of parental deprivation now makes his family ineligible for regular Medicaid. He asks rather that the Department be prevented from cutting his Medicaid off prior to the August 7, 1996, notice because he was unaware of the cut off and took actions he would not have otherwise taken, including the visit to the emergency room.

ORDER

The decision of the Department is affirmed.

REASONS

Under the Department's regulations, a parent who is not disabled, blind or aged (65 years of age or older) can only receive Medicaid for her or himself if her or his child is "deprived of parental care and support in accordance with the rules of the ANFC-related Medicaid program." M115. The ANFC program defines deprivation of parental support as those situations in which at least one parent has died, is absent from the home, is physically or mentally incapacitated or when the principal wage earner is unemployed. W.A.M. § 2330. The petitioner does not argue that his situation falls into any of these categories. He and his wife are present in the home, are able to work and he does work full-time. The Department's decision that he is not eligible for Medicaid based on his lack of categorical eligibility must be upheld as correct.

The question for purposes of this appeal is whether the petitioner can prevent, or equitably estop, the Department from terminating his Medicaid as of July 31, 1996, based on his failure to receive notification of the termination before he took actions adverse to his interests. The Board clearly has the power to make such a ruling, see Stevens v. Department of Social Welfare 159 Vt. 408, 620 A.2d 737 (1992), but in order to do so, the petitioner must show that the elements necessary for estoppel are met.

The four essential elements of equitable estoppel are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that its conduct shall be acted upon or the acts must be such that the party asserting the estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped.

Burlington Fire Fighter's Ass'n v. City of Burlington, 149 Vt. 293, 299 (1988); and Stevens, supra.

Based on the evidence in this case it must be concluded that the Department did what it was obliged to

do, namely, mailed the notice of termination to the petitioner. There is no evidence that the Department was aware that the petitioner had not received the notice and the Department took no other actions which would have led the petitioner to believe that he was eligible for Medicaid when he actually was not. Although it does not appear that the petitioner was aware that he had been found ineligible for Medicaid until after his visit to the emergency room, he was aware that he had a substantial change in his income and that his Medicaid could have been affected. Nonetheless, he made no effort to confirm his eligibility before he turned down his employer's health insurance offer and incurred the emergency room cost. Finally, the petitioner could have avoided the large emergency room bill by receiving treatment for his non-emergent illness at his regular doctor's office. He cannot now blame the Department because he chose an expensive and unnecessary form of treatment, for which, as he was too soon discover, he, and not Medicaid, would be required to bear the financial responsibility.

Under these circumstances the Department cannot be estopped from refusing to pay the emergency room bill. See Fair Hearing Nos. 10,205, 10,426, 10454, 11,765 and 12,081.

The fact that the reason for his ineligibility was subsequently amended by a further corrective notice does not militate in favor of the petitioner's argument. The Department had still done what it had to do to put him on notice that his benefits were ending by the first notice. Inasmuch as the Department's decision in the petitioner's case is fully in accord with the pertinent regulations, it must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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