

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,572

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare terminating his Medicaid eligibility based on a determination that he is over-income and establishing a spend-down amount of \$2,214 for him.

FINDINGS OF FACT

1. The petitioner and his wife are both disabled and have gross unearned income in the form of the petitioner's VA pension of \$1,052 per month. They applied for Medicaid as a couple in the past and have been found eligible because their worker allowed the petitioner and his wife to be separate households for purposes of eligibility and attributed a good portion of the petitioner's income to his wife in the calculations. The portion of "petitioner's" income which was attributed to his wife reduced his income below the maximum amount so that both he and his wife were found eligible.
2. On March 1, 1996, relying upon a new policy interpretation, the Department determined that it could no longer split off the petitioner's wife from his assistance group and attribute income to her as long as they both lived together and applied as a couple for Medicaid. The Department determined that the entire amount of the income had to be used for both spouses together. When the petitioner's total monthly income of \$1,052 was compared with the maximum for two persons of \$683 per month the couple was determined to be ineligible until they incurred \$2,214 during the period from October 1, 1996 to March 31, 1997. That amount was calculated by taking the difference between their income and the maximum and multiplying it by the six month calculation period. The petitioner was notified of his ineligibility (as of September 30, 1996) and the spend-down amount by a letter mailed on September 20, 1996. (A corrective notice was mailed October 10, 1996 because the wrong spend-down date had been included in the first notice.)
3. The petitioner does not disagree that the amount of his family income used by the Department is correct. He argues, however, that the old method of computation should be used. He has heavy medical expenses related to a heart attack, seizures, diabetes, and emphysema which he cannot pay on his own. He has a new medication for psoriasis which costs him \$38 every three days. He is a veteran of the Korean War and gets some medical benefits from the Veterans Administration. However, he is concerned that he needs a cataract operation for which he cannot pay. He is unable to qualify for any

insurance because of his disabilities. He asks that the amount of his spend-down be reduced as excessive in his circumstances.

ORDER

The decision of the Department is affirmed.

REASONS

The regulations at M242(1) define VA pensions as unearned countable income in the Medicaid program. The Medicaid regulations also require that the "income and resources of spouses, within 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". M221 Under this regulation, the resources and incomes of couples are combined and compared to the resource maximum for two persons. M221(1).

An exception to the above rule is made for applicants who live with a person on public assistance:

The public assistance benefits of individuals who are living with an applicant, as well as any income that was used to determine the amount of those benefits, are not considered available to the applicant in determining his/her countable income for Medicaid eligibility.

"Public assistance benefits" refers to cash assistance based on need, such as ANFC, SSI/AABD, Refugee Act of 1980 payments, Disaster Relief and Emergency Assistance Act payments, general assistance programs of the Bureau of Indian Affairs, State or local government assistance programs and U.S. Department of Veterans Affairs programs (only those payments based on need).

For an applicant/recipient whose spouse and/or children receive public assistance, only the applicant/recipient's income and resources are counted in determining his/her net income. No allocations from the applicant's income may be made to dependent children who are receiving public assistance.

M260

Apparently, this regulation was used in the past by some workers in the Department to split the petitioner and his wife into two Medicaid applicant households and to attribute some of the petitioner's income to his wife, thus reducing his available income as well which allowed him to become eligible in his own right. On March 1, 1996, the Department issued the following PP & D memo interpreting that regulation:

Could you explain this policy?

Yes. This policy applies to an individual or couple applying for SSI-related Medicaid and living in a household in which every other member of the household receives public assistance. When you determine SSI-related Medicaid eligibility for an individual or couple living in a public assistance household, do not count the income (including the public assistance) or resources of other members of the household.

Example I

Mrs. Jones is disabled and applies for Medicaid. Her husband is not aged, blind or disabled according to the Social Security Administration's definition, and he is not applying for or receiving Medicaid. He

meets the Va definition of disability however, and receives a VA pension. Mrs. Jones, therefore, lives in a public assistance household. Mr. Jones' VA pension and the income used by the U.S. Department of Veterans Affairs to determine the amount of his pension are not considered available to Mrs. Jones in determining her eligibility for Medicaid.

Example II

Mr. Smith is disabled and applies for Medicaid. His wife is employed and does not receive any public assistance. Mr. Smith, therefore, does not live in a public assistance household. The income and resources of his wife must be counted in determining his eligibility for Medicaid.

The PP & D interpretation is consistent with the wording of the policy. It appears that the Department acted correctly in combining the two into one financial household under the above regulation because the petitioner and his wife applied together for benefits. If they apply as a couple, there is nothing in M260 which would require that any of the petitioner's income be disregarded. That would not be true if the petitioner's wife applied for Medicaid as an individual. It appears if she did apply individually, her husband's VA pension would not be counted at all towards her eligibility. She is encouraged to make such an application if she has not already done so. However, there is nothing in this regulation which would assist the petitioner himself in his quest for Medicaid eligibility or help the petitioner and his wife as a couple.

As the Department has correctly determined that the petitioner's income may not be reduced by attributing it to his wife, the only remaining question is whether the petitioner's spend-down was correctly determined. The protected income level for a household of one or two is \$683 per month. P-2420B. As the petitioner's income is above that amount, he may qualify for Medicaid only if he can "show that his or her Medicaid group has paid or incurred medical expenses . . . at least equal to the difference between its countable income and its Protected Income Level". M402. A six month accounting period is used to determine the amount of incurred medical expense required. P2424A(1). The difference between the petitioner's countable income of \$1,052 per month and the protected income level of \$683 is \$369 per month. When multiplied by the six month accounting period, a spend-down figure of \$2,214 is reached. There is nothing in the regulations which would entitle the petitioner to any further deductions under the above facts. Regular household expenses are not individually taken into consideration nor are excessive medical expenses, although they can certainly be counted towards meeting the spend-down. As the spend-down amount calculated by the Department is in accord with its regulations, the Board is bound to uphold the decision. 3 V.S.A. 3031(d), Fair Hearing Rule 17.

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