

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,573

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Appeal of )

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INTRODUCTION

The petitioner appeals the onset date established by the Department of Social Welfare for benefits under the Vermont Health Access Plan (VHAP).

FINDINGS OF FACT

1. The petitioner applied for VHAP benefits on August 28, 1996. Accompanying her application was a letter in which she explained that she had experienced an acute ankle injury two months earlier, had developed severe pain and needed to see an orthopedic specialist as soon as possible. She explained that she had been able to obtain a doctor's appointment for September 4, had no insurance and was relying on VHAP for payment. She concluded by saying, "I hope I will hear promptly from you regarding my eligibility" and "I hope I will qualify".
2. The petitioner discussed this appointment both with the worker at the district office and with a staff worker in Waterbury who makes eligibility decisions on VHAP applications. She was told only that the application would be processed as soon as possible but no guarantees were made to her as to when that would be. The petitioner believed that her eligibility would go back to the date of her application but that belief was based on her own logic, not anything she was told by anyone at the Department of Social Welfare. She did not express that belief to anyone at the Social Welfare office.
3. The petitioner attended her orthopedic appointment on September 4, 1996, and incurred a bill for \$114 for an examination and X-rays.
4. On September 9, 1996, the petitioner was mailed a notice by the Department of Social Welfare telling her that she had been found eligible for VHAP benefits as of September 5, 1996, and that she would not be required to pay a premium. The petitioner appealed the effective date of that decision saying that the Department had an obligation to tell her that she should not make an appointment until she was found eligible for the program. She argues that because of that failure, the Department should be required to set her eligibility date back to September 4, 1996 and cover the \$114 bill. The Department responds that

it did not mislead the petitioner as to the date of her eligibility and that the petitioner made the appointment at her peril. The date of onset was established as September 5, 1996, because that was the day that her application was reviewed in Waterbury and she was determined to be eligible. The hearing officer asked the Department to reconsider the onset date but the Department declined saying its decision was supported by its regulations.

### ORDER

The decision of the Department is affirmed.

### REASONS

The regulations governing the VHAP program require that the Department make eligibility decisions on applications "within 30 days of the date the application is received". VHAP 4002.2. The regulations further provide that "[i]f all eligibility criteria . . . are met and no premium is required, the individual shall be accepted into the VHAP program effective the day eligibility is approved . . .". VHAP 4002.31. The facts are undisputed that the petitioner's eligibility was approved on September 5, 1996. That day was well within thirty days of the application date, August 28, 1996. It must be concluded from these facts that the Department followed its own regulations in establishing the onset date and is not required as a legal matter to choose another onset date.

The petitioner's argument in favor of a new date is in the nature of estoppel, that is, she argues that the Department should be prevented from applying its regulations to her because to do so would be unjust. The four essential elements of 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 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).

The petitioner claims the Department had an affirmative duty to tell her not to make an appointment until she was found eligible for benefits. Surely, however, that is common sense advice which the petitioner could have given herself. The Department gave the petitioner no information as to which day she might be found eligible. The petitioner was aware that her eligibility for the program had yet to be determined and that the entire eligibility issue could have been decided against her. Although the petitioner had informed the Department of her appointment, the Department had no obligation to make a determination before the appointment date and made no promises to her that it would do so. Instead, it appears that the petitioner engaged in some wishful thinking that the Department would or could facilitate a decision in time to accommodate her needs. It cannot be found that the Department misled the petitioner. She took a gamble on the Department's responsiveness to her request and lost.

Although the Department cannot be faulted as a legal matter for the decision that it made, it is difficult to see what harm could have come to the Department from exercising its discretion to revise the day of approval from the 5th to the 4th once it became aware of the harm to the petitioner. The information the Department needed to determine her benefits was in its possession on the 4th. The petitioner was just as eligible and needy on September 4 as she was on September 5, the date when the Department happened to review her application. A decision by the Department to revise the date of eligibility and pay that bill would advance the purpose of the program which is to help indigent Vermonters obtain health care and would have placed the financial burden on the party which was intended to and is best able to absorb the

cost of the medical care. Unfortunately, the Department declined to take that action, relying instead on the letter of the law in its regulations, as it has a right to do, but not without some tarnish on its reputation as a "helping" agency. It is not the province of the Board to overrule the Department when its decisions, however ungenerous, are consistent with the law and is bound to uphold the result. See 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

Board members Robert Orleck and Theodore Kramer concur in the result and reasoning with the exception of the final paragraph which they would have deleted.