

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,646

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Appeal of)

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INTRODUCTION

The petitioner appeals the Department's decision to terminate his ANFC and Food Stamp benefits for his failure to attend a scheduled interview and his Medicaid benefits for failure to provide necessary information.

FINDINGS OF FACT

1. The petitioner is an ANFC, Food Stamp and Medicaid recipient who became due for recertification of his eligibility in August of 1996. He returned his recertification application on August 27, 1996. On August 28, 1996, he was mailed a notice to attend an interview on September 5, 1996. He was advised that unless he provided verification of items listed in the notice by September 9, 1996, his ANFC, Medicaid and Food Stamps would be terminated as of September 30, 1996. He was also advised that if he turned in the information between September 9 and September 30, 1996, his benefits would be reinstated. However, if he turned it in after September 30, 1996, he could only receive benefits if he could show good cause for not providing the proof. He was specifically asked to return his application, agreement to report change form, citizenship legal alien form, and a Reach-Up referral form. He was also asked in the letter to inform the Department as to whether a certain individual was still in his home and, if not, the date he left.
2. The petitioner turned in all the forms requested by the Department. (The Department agreed at the hearing that the Reach Up form was not necessary because the petitioner was exempt from that program.) Apparently, the only information outstanding was the question about the individual who had been residing in his home. On September 4, 1996, the petitioner called and asked that the interview be rescheduled because of a doctor's appointment the next day. On September 6, 1996, the Department sent him a notice advising him that he needed to get all information regarding his recertification in by September 20, 1996, and that his failure to respond to the letter would cause his benefits to end on September 30, 1996. He was also told that a personal interview may be necessary and was asked to come to the office for an appointment on September 17, 1996, or to arrange an interview over the phone if it caused a hardship for him.
3. The petitioner received the notice from the Department but through inattention did not open it until after September 17, 1996. Therefore, he was not aware of and did not attend the September 17, 1996

meeting.

4. On September 18, 1996, the Department mailed the petitioner a notice that his ANFC and Food Stamps would close effective October 1, 1996 because he did not appear for a required interview. He was also notified both that his Medicaid eligibility needed to be reviewed by September 30, 1996 and that his Medicaid benefits would cease as of September 29, 1996 and his daughter's would cease September 30, 1996 because he had not provided information necessary to determine his eligibility.

5. On October 28, 1996, the petitioner appealed the closing saying that it was his "fault" that he did not open the letter containing the interview date because it had gotten "caught in the paperwork on his desk" and that he had "no excuse for that" but stated that he needed the benefits. The petitioner reapplied for benefits, attended an interview and provided the needed information and was found eligible again beginning November 18, 1996. He asks that his benefits be reinstated for the period from October 1, 1996 through November 18, 1996.

6. The Department decided an interview was necessary for Medicaid benefits in this case because it needed clarifying information on whether an individual was still living in his home and contributing to expenses. Following the petitioner's failure to show for the September 17, 1996, interview, no further attempts to contact the petitioner were made to obtain this information.

ORDER

The decision of the Department is reversed and the matter should be remanded for the computation of benefits for the period from October 1, 1996 through November 17, 1996.

REASONS

Under the ANFC program, personal interviews are required for reviews of eligibility on the same basis as for initial eligibility. W.A.M. 2218.1. The ANFC regulations governing applications require a personal interview in all cases. W.A.M. 2211.2. However, the regulations also state a denial or closure of benefits can only result from a "refusal of information or action necessary to establish eligibility." W.A.M. § 2211.

The Food Stamp program has a similar mandatory "face-to-face" interview requirement at both initial and recertification reviews. F.S.M. 272.3(e). The regulations further require as follows:

d. Household Cooperation

I. To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate with the State agency in completing this process, the application shall be denied at the time of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied. The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility, including reviews generated by reported

changes and applications for recertification. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until it cooperates with the State agency. The State agency shall not determine the household to be ineligible when a person outside the household fails to cooperate with a request for verification. The State agency shall not consider individuals identified as non-household members under 273.1(b)(2) as individuals outside the household.

F.S.M. § 273.2(d)

The Medicaid program has no general mandatory interview requirements per se, although the Medicaid program requires an interview when there are questions about statements made on the application:

Interview

. . . An interview must be held when:

. . .

The application and statement of need do not give enough clear and consistent information about the applicant's situation to make a decision on his application . . .

M § 124

The Medicaid regulations also provide that Medicaid coverage may be closed "when a recipient fails to do his or her part in the eligibility review" such as "failing to give necessary information or proof asked for." M § 133.

It is clear from the facts in this case that the petitioner did not refuse to attend his interview but rather, in the words of the Food Stamp regulations, "merely failed to attend an interview." Although chronic failure to keep appointments or answer requests for information can create a presumption of refusal to cooperate⁽¹⁾, it is patently inappropriate and unfair to make that presumption from one missed interview. The evidence shows that the petitioner returned all forms requested of him and called to reschedule his interview when he was unable to make it. His interest in maintaining his application was apparent. The Department made no further attempt to call or inquire about his circumstances following his failure to show up for the September 17 interview. It cannot be found under either the ANFC or Food Stamp regulations cited above that the petitioner has refused to cooperate in establishing his eligibility for those programs. Therefore, the appropriate relief is to allow him to attend an interview and provide whatever information the Department feels is lacking to make an eligibility determination for this period.

The Department closed the Medicaid benefits not for failure to attend an interview but for failure to provide information necessary to determining his benefits. However, that regulation gives the Department the discretion to determine whether or not to terminate the benefits when some information does not come in as requested. It is hard to see why it was necessary to terminate the petitioner's benefits the day following his one failure to appear without some further inquiry. The Department had another twelve days to make an eligibility determination according to the notices it sent. The Department does not say why it could not have gotten the single missing piece of information it wanted from the petitioner over the telephone. It closed the case merely because of his failure to attend the interview, not because it exercised any discretion in determining whether there might be some other way to obtain that

information in a timely manner. The Department offered no explanation as to why it took that course. It must be concluded under these facts that the decision to close the Medicaid benefits was arbitrary, capricious and an abuse of its discretion in a program which clearly does not favor technical defaults for persons in need. The petitioner should also be given an opportunity under this program to provide the needed information and have his eligibility determined.

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1. See e.g. Fair Hearing No. 10,217 where the petitioner did not attend three scheduled interviews and was specifically warned before the third interview that her failure to attend would cause the Department to "assume" that she was refusing to cooperate.