STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,949

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare terminating her Medicaid benefits based on excess income. The issue is whether the petitioner's Workers' Compensation benefits should be subject to earned income disregards.

FINDINGS OF FACT

1. The petitioner and her two children were Group 1 ANFC recipients when the petitioner became employed on April 1, 1996. Pursuant to a regulation of the Department, the petitioner continued to be Medicaid eligible during the first year of her employment without regard to her income.

2. In December of 1996, the petitioner was injured on the job and began to collect Workers' Compensation benefits of $899.52 per month in January of 1997 which benefits she continues to receive.

3. In March of 1997, in anticipation of the one year anniversary of her employment, the Department reviewed the petitioner's Medicaid eligibility to see if she could continue to receive Medicaid on other grounds beyond the one year period. The Department compared the entire $899.52 in Workers' Compensation benefits to the $825 maximum household income for a family of three and concluded that the petitioner was ineligible for Medicaid benefits until she "spent down" the difference between those two figures, $74.52 per month, over a six month period amounting to $447.12. The petitioner's children were still found eligible for benefits under the Dr. Dynasaur program.

4. On March 17, 1997, the petitioner was notified of the Department's determination of ineligibility for Medicaid which was to be effective on April 1, 1997. She appealed that determination because she felt she should get the same deductions for working she would get if she had been employed even though her income is now in the form of worker's compensation. After reviewing her request, the Department determined that it had been correct in not granting the deductions but reduced her "spend down" amount by two-thirds because her two children (who were Medicaid eligible) had been erroneously included in the spend-down. The petitioner's new spend down amount was calculated as $149.04. She does not dispute these calculations other than the denial of the employment expense deduction.

ORDER

The decision of the Department is affirmed.

REASONS

The Medicaid regulations classify wages, salary, commissions or profit from self-employment ventures as "earned" income under the Medicaid program. M352. Such income is subject to a "standard employment expense deduction" of the first $90 earned each month. M352.3.

That deduction represents an attempt to adjust the gross income figure to reflect work related expenses which ordinarily come out of wages such as taxes, transportation and the like.

The Medicaid regulations treat income from pension and benefit programs as "unearned" income which is not subject to a deduction for employment expenses. M351. "Workers' Compensation" payments are benefits as that term is defined in the unearned income regulation. The regulations require that the "full amount of available unearned income shall be counted unless specifically excluded. . . ." M351. There is no exclusion for Workers' Compensation benefits found anywhere in the regulations.

The petitioner argues that she should get a standard employment expense deduction from her Workers' Compensation benefits because it replaces her earnings. However, the petitioner did not present evidence that she pays any taxes on this income or has any other expenses (transportation, uniforms, etc.) usually associated with earning income.[(1)] As the Department's action is in accord with its regulations and that regulation is reasonable, the decision must be upheld. 3 V.S.A. § 3091(d).

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1. The IRS treats worker's compensation paid from a state fund to persons injured in the course of their employment as nontaxable. It is treated like damages awarded in a lawsuit to compensate personal injury, rather than payment for services. See Publication 525, Taxable and Nontaxable Income.