STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,992

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare finding her ineligible for Medicaid for the six-month period beginning May 1, 1997, until she incurs medical expenses in the amount of $1,975.94. The issue is whether the Department correctly calculated the petitioner's applied income within the meaning of the pertinent regulations.[(1)]

FINDINGS OF FACT

The petitioner and her husband are both disabled. They receive Social Security benefits totalling $1,500.30 a month. Out of each of their Social Security checks there is a deduction for a premium for Medicare coverage. Those premiums are $43.80 a month for the petitioner, and $74.50 a month for her husband. The Department credited these Medicare premiums as a medical expense that counted toward the petitioner's applied income (see below).

In January, 1997, the petitioner received a notice from the Department stating that her Medicaid coverage would end April 30, 1997. The notice also included the following sentence:

A new period of Medicaid coverage cannot be authorized until you have reapplied for Medicaid and given proof that your medical expenses will be more than the amount you are responsible for from your income during any six month period beginning May 1, 1997, or after.

The petitioner did reapply for Medicaid, and the Department initially found her ineligible for the six month period beginning May 1, 1997, until she met an applied income or spenddown amount (see infra) of $4,783.80. However, shortly thereafter, the petitioner met with her worker and produced evidence that she had recurring non-covered pharmaceutical and medical transportation expenses, which, after the Department applied them to her spenddown (along with her and her husband's Medicare premiums), lowered her spenddown to $1,975.94.

The petitioner does not dispute the Department's calculations of either her income or her non-covered medical expenses. She maintains, however, that the Department's notice to her was misleading; and she is concerned that her and her husband's income is not sufficient to pay the medical expenses they must incur before her spenddown is met.

ORDER

The Department's decision is affirmed.

REASONS

In this case the petitioner does not dispute the amount of her applied income as determined by the Department (see infra). But she maintains that the portion of the Department's notice quoted above misled her into believing that she could be eligible for Medicaid without a spenddown if she could demonstrate in advance that she would incur medical expenses in the six-month eligibility period in excess of the spenddown amount.

To the extent that the wording in question does not distinguish between covered and non-covered medical expenses, it is misleading. As noted above, the Department did consider the petitioner's expected recurring pharmaceutical and transportation expenses, neither of which are covered by Medicaid, and which, therefore, can be counted in advance toward meeting an applicant's applied income.

It is obvious, however, that the Department can't count Medicaid-covered medical expenses in advance. If it did, there would be no "applied income" left for the petitioner to incur before she became eligible for Medicaid. The Department should reword its notices to make this clear. In this case, however, the only harm to the petitioner caused by the notice appears to be her momentarily-raised expectation that her applied income might be lower.

The protected income level for a household of two persons is $683 per month. P-2420B. As the petitioner's income is above that amount, she qualifies for Medicaid only if she can "show that . . . 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 $1,480.30 per month (after a standard $20 deduction) and the protected income level of $683 is $797 per month. When multiplied by the six month accounting period, a spend-down figure of $4,783.80 is reached. As noted above, the petitioner showed that she will have non-covered medical expenses in the six-month period of $2,807.86 (including her and her husband's Medicare premiums), which the Department has deducted from her spenddown. As the revised 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.

At the hearings in this matter the hearing officer and the Department advised the petitioner that she could apply for GA if she had no available income and an unmet emergency medical need. After the first hearing the petitioner advised the hearing officer that she had applied for and been granted GA, but that her GA worker had advised her that there would be a limit to how many GA applications she could make for emergency medical expenses. The petitioner is again advised that she can request a fair hearing on an expedited basis if and when any application for GA is actually denied.

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1. The petitioner's appeal of the Department's denial of Medicaid coverage for a chair lift for the petitioner's husband is being considered by the hearing officer in a separate proceeding.