

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 15,410
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare to terminate his Medicaid benefits. The issues are whether the petitioner can continue to receive Medicaid benefits from Vermont while he lives in another state and is covered by a private insurance program.

FINDINGS OF FACT

1. The petitioner became a Medicaid recipient in Vermont following a traumatic brain injury he received in an automobile accident which totally disabled him. As part of his treatment program, he was admitted on April 8, 1997, to the Medicaid waiver program for individuals with traumatic brain injury ("TBI"), a program which offered community-based rehabilitative services as an alternative to placement in out-of-state facilities. The program is expected to be one of short duration (generally no longer than two years), and is intended to assist individuals with moderate to severe brain injury to "achieve their optimal level of functioning and to successfully resume a productive and purposeful life in his/her own home community." Among the services available to recipients are rehabilitation services, transitional supervised living, case management,

assistive technology and respite care.

2. A brochure provided to the petitioner to explain the program also advised him that to be eligible he had to be sixteen or older; have sustained a recent moderate to severe head injury; demonstrated an ability to benefit from rehabilitation and potential for independent living and the possibility of returning to vocational activities in the near future; and, be a Medicaid recipient.

3. In a letter specifically addressed to him dated October 13, 1997, the petitioner was informed by the "TBI" program coordinator that he would be eligible for services until April 30, 1998. That decision was based on a recent review by the admission/discharge committee which had determined that he had made progress in all areas and had begun pursuing vocational and independent living goals. He was further advised in the letter that the "established criteria for discharge from the program include: a) the ability to consistently function at an optimal level of independence in the environment; b) no measurable progress demonstrated in a six month period; c) refusal of services by recipient/guardian; or d) recipient/guardian are non-compliant with program requirements." He was also advised he could appeal the determination of discharge date to the DAD Commissioner and the Human Services Board.

4. The petitioner did not appeal that discharge date. He pursued employment and found it at a medical center in

New Hampshire where he began working full-time on January 26, 1998. On February 19, 1998, he moved to a town in New Hampshire to be closer to work. He timely reported both of these events to the Vermont Department of Social Welfare. On March 4, 1998, the Department received confirmation from his employer that he had indeed begun working there and that he had medical and dental insurance coverage in effect as of March 1, 1998.

5. On March 6, 1998, the DSW mailed the petitioner a letter notifying him that his Medicaid eligibility would stop on March 16, 1998, because he was no longer a resident of the state of Vermont. He was also advised of his right to appeal the decision which he did and a fair hearing was held thereon.

6. Prior to the closure letter, the petitioner had scheduled two appointments in Vermont with his health care providers for April of 1998, both of which he attended. These visits were made in connection with his rehabilitative care, one for a check-up and another for restorative dental work. The petitioner argues that he was found eligible for the "TBI" program through the end of April 1998, that he only sought completion of that program and that the Department's action was an "abrupt, ungainly halt" to a process which was almost complete and which he termed an "astonishing recovery." He also added that he was grateful to the program for assisting him after he had been seriously

injured but felt that Medicaid should continue to cover him to the end of his program as he had been promised.

ORDER

The decision of the Department is affirmed.

REASONS

In order to be eligible to receive Medicaid benefits in the state of Vermont, an individual must be a resident of this state. Medicaid Manual § 213. The regulations state as follows:

An individual must be a resident of Vermont to meet the residence requirement . . .

4. For any non-institutionalized individual age 21 or older, residence is in the state in which the individual is living

- (a) with intent to remain permanently or for an indefinite period of time, or
- (b) while incapable of stating intent, or
- (c) after entering with a job commitment or in pursuit of employment whether or not currently employed.

. . .

M 213

An individual must be a resident of Vermont at the time a medical service is rendered in order for Vermont Medicaid to pay for that service. The service does not, however, have to be rendered in Vermont.

M 213.4

The petitioner does not argue that he was a resident of

Vermont on or after February 19, 1998. He agrees that he was a resident of New Hampshire at the time medical services were rendered to him in April of 1998. Given that fact, the state of Vermont is prohibited by statute and regulation from providing Medicaid benefits, which are funded partly through Vermont taxes, to him for those April services. The decision of the Department that he was no longer eligible for these services cannot be found to be in error and must be upheld. 3 V.S.A. § 3091(d). Fair Hearing Rule No. 17.

The petitioner's consternation no doubt arose from the letter he received on October 13, 1997, which he interpreted as establishing an entitlement to "TBI" waiver services through a date certain. That letter, however, also tells him that his discharge could happen upon "non-compliance" with program requirements. Those underlying program requirements are not spelled out in the letter to him. However, the brochure he received at the start of the program does point out that one of the underlying requirements for participation in the "TBI" program is receipt of Medicaid benefits. To be sure that brochure does not spell out the many eligibility requirements for Medicaid benefits. It cannot be said, however, that the petitioner was not on notice that his continuing participation in the "TBI" program was not subject to some contingencies.

The petitioner may be right that his severance from the program was graceless, and that is regrettable. Chances are

good that the "TBI" program coordinator and others he worked with there were not aware before the notice of termination was sent to him that he was about to be terminated on general Medicaid eligibility grounds through the DSW office.

However, it cannot be said that the termination was unfair to him as he had notice that the program would not cover his benefits before he attended those appointments and also appears to have had health insurance which would likely cover those visits through his new employer. It is indeed fortunate that the petitioner has had this remarkable recovery and that his medical care was both continued and paid for without serious interruption.

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