

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 15,547
)
Appeal of)

INTRODUCTION

The petitioner, through his son, appeals the decision of the Department of Social Welfare setting the amount of his "patient share" for the long-term care Medicaid program.

The issue is whether the Department should give the petitioner an additional deduction from income to support his adult son who cares for him.

FINDINGS OF FACT

1. The petitioner is an elderly man who receives Medicaid long-term care assistance. Although he is in need of a high level of supervision and medical care (he is legally blind, has diabetes, heart problems, and has been through cancer treatment, knee replacement surgery and a stroke in the last few years), he is allowed under the ERC waiver program to receive that care in his home rather than in a nursing facility. His home care is managed by Central Vermont Home Health Care which pays a caretaker, who happens to be his adult son, the sum of \$362.32 every other week to provide sixty-three hours of assistance with living activities to the petitioner. In addition, he receives visits and nursing oversight from health professionals employed by the agency.

2. The petitioner was determined to be eligible for

this program in the Fall of 1997. He was mailed a notice on January 14, 1998, that he was expected to pay \$286.95 per month out of his own pocket as his "patient share" for these services. His share was calculated by adding his monthly income amounts from a pension (\$253.80) and Social Security (\$836.80), for a total of \$1,090.60, and deducting from that total income his monthly medical payments for Medicare (\$43.80) and health insurance (\$18.85), for a balance of \$1,027.95. That figure was further reduced by \$741.00 which represents the "protected income level" (PIL) allowed for a one-person household. The remainder, \$286.95, was determined to be the portion he had to pay toward his medical expenses, or his "patient share."

3. The petitioner did not appeal the establishment of the patient share amount at that time but made inquiries as to whether it could be lowered. He was advised that it could be lowered only if he submitted proof of uncovered medical expenses. For a few months he paid the patient share to the Central Vermont Home Health Agency and his son was paid by that same agency as his caretaker. However, his son, who handles his finances, found it increasingly difficult to pay the patient share and stopped paying it earlier this year. The agency in turn eventually stopped paying his salary as a caretaker although they continued to send health workers to the house. This impasse has not yet been resolved.

4. The petitioner believes that he should receive a

further reduction because he must support his adult son who cares for him twenty-four hours per day and, therefore, cannot work. Their expenses consume his monthly income as follows; \$775 for rent, \$80 for electricity, \$20 for telephone, \$37 for cable T.V., \$60 for insurance, \$350 for food, and \$150 for car expenses. The total of \$1,272 is, the petitioner points out, more than his gross monthly income of \$1,090.60. However, the household expenses are not more than the combination of his and his son's \$778 gross monthly income, which is about \$1,868 per month.

ORDER

The Department's decision is affirmed.

REASONS

The Department's regulations provide that patient share payments are determined as follows:

Once a long-term care individual is found eligible for Medicaid the Department computes how much of his/her applied income must be paid to the long-term care provider each month for the cost of care. This amount is called the patient share payment. It is the balance of applied income remaining after medical expenses allowed under M414.1. through 3. have been deducted. . . .

M415

The applied income referred to above is defined in the regulations as the "amount of monthly income remaining after allowable deductions" are made. M413. In addition to a spousal allocation (M413.21) the regulations do provide for allocations from income to other family members as follows:

A deduction from monthly income is allowed for the following family members:

- o children under age 18 or (tax) dependent children; and
- o (tax) dependent parent(s); and
- o (tax) dependent sibling(s) of either spouse.

. . .

M413.22

There are no deductions allowed under the regulations for adult children who live with the recipient, even if they are the caretakers of the relative. As such, the Department was correctly following its regulation when it determined not to grant a deduction for the son as his father's dependent.

The only deductions for which the petitioner is eligible are those referred to in M415 above. They are set forth as follows:

Eligible medical expenses must be deducted from the individual's countable income in the following order:

1. Health insurance expenses. . .
2. Non-covered medical expenses. . .
3. Covered medical expenses. . .that exceed limitations on amount, duration or scope of services covered. . . .

. . .

M414

The petitioner was given all of these deductions in the calculation of his "patient share" and was correctly informed that he could receive further reductions only if he could provide further evidence of the above. If he has such expenses he is encouraged to present them to the Department.

Otherwise the patient share amount must remain as set and the petitioner is obliged to pay that amount to the provider of his health care services. When and how to resolve unpaid back "patient share" amounts and salary that might be due to the petitioner is between him and the home health care agency. The Board has no jurisdiction over those matters. See V.S.A. § 3091(a)-(d).

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