STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 16,898
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department of PATH finding him ineligible for Medicaid for the six-month period beginning December 1, 2000, until he incurs medical expenses in the amount of $3,973.92. The issue is whether the Department correctly calculated the petitioner's applied income within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is disabled and receives Social Security benefits of $566 a month.

2. The petitioner's wife works and has gross earnings that average $1,879 a month according to the Department's calculations. The Department based its calculations on information received from the petitioner and his wife's employer showing that for an eleven week period beginning December 9, 2000 and ending February 24, 2001, she received "draw pay" from commission sales that averaged $437.13 a week. The Department multiplied this average by 4.3, the average

number of days in a month, to arrive at an average monthly pay of $1,879.65.

3. The petitioner maintains that his wife incurs "employee selling expenses", which he does not further identify. He also maintains that her employer deducts customer sales returns from her commissions, but the employer's records show that her commission "draws" are based on her sales with ongoing adjustments made for customer returns. Thus, there is no basis to find that the "draw pay" reported by her employer is not an accurate reflection of the petitioner's wife's actual earnings.

ORDER

The Department's decision is affirmed.

REASONS

Under the regulations the petitioner's unearned income from Social Security is allowed a $20 disregard and his wife's earned income is allowed a $65 disregard[1]. The petitioner's net income ($546) is then added to one half of his wife's net

[1] Any "employee selling expenses" allegedly incurred by the petitioner's wife must theoretically be included in this deduction. No further deductions from earned income are allowed in the regulations. See §§ M241-241.1.

countable income ($1,814.65). That total ($1,453.32) is compared to the protected income level (PIL) for a household of two persons ($791). See Medicaid Manual § M243.1 and Procedures Manual § P-2420B[2]. Inasmuch as the petitioner's and his wife's countable income is above the pro rata PIL, he qualifies for Medicaid only if he can "show that...his Medicaid group has paid or incurred medical expenses...at least equal to the difference between its countable income and its Protected Income Level". Medicaid Manual § 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 $1,453.32 per month and the PIL of $791 is $662.32 per month. When multiplied by the six-month accounting period, a spend-down figure of $3,973.92 was reached.

As the spend-down amount calculated by the Department in this case was in accord with its regulations, the Board is bound to uphold the decision. 3 V.S.A. 3031(d), Fair Hearing

[2] The petitioner cites an inapplicable section of the Procedures Manual (§2424A2, which pertains to "working disabled") for his claim that the proper PIL for him is $2305.

Rule 17. All pending motions to continue or postpone the Board's consideration of this matter are denied.

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