

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 16,946
)
Appeal of)

INTRODUCTION

The petitioner appeals the closure by the Department of PATH of her Vermont Health Access Program (VHAP) medical benefits. The issue is whether the petitioner's income is in excess of the program maximum. The facts are not in dispute.

FINDINGS OF FACT

1. The petitioner lives with her husband and their son. She has gross income from employment of \$2,239.31 a month. Prior to March 1, 2001 she and her husband were eligible for VHAP on the basis of this being their only income.

2. In January 2001 the petitioner's son began receiving a monthly social security payment on his father's account of \$255. Upon reviewing the petitioner's eligibility for VHAP based solely on this new source of income the Department, after allowing the petitioner a standard deduction from her earned income of \$90 and child care expenses of \$175 (see infra), determined her countable family income to be \$2,239 a month, which placed her slightly over the protected income level of \$2,182 for a three-person household.

3. However, at about the same time, the petitioner's husband also began receiving Social Security benefits of \$580 a month. This would have to be added to the family income, which places them even farther in excess of the program maximum.

ORDER

The Department's decision is affirmed.

REASONS

Under the VHAP regulations gross earnings from employment and all unearned income are considered in determining eligibility, and the only deductions allowed are for self-employment business expenses, a standard employment expense, and dependent care expenses. W.A.M. § 4001.81(c). The petitioner is not self-employed, but does incur child care expenses. The only deductions for her allowed in the regulations is the standard employment expense of \$90 and \$175 child care expenses. Id. § 4001.81(e). If her husband's and her son's social security payments were both counted this brings the petitioner's countable income to \$2,809.31 a month.

Under the current regulations (see W.A.M. § 4001.84) the maximum allowable income for three persons is \$2,182 a month. Procedures Manual § 2420. Unlike the Medicaid program, there is no provision in VHAP for a determination of "applied income" or a "spenddown", by which the incurring of a

predetermined amount of excess medical expenses within a six-month period can trigger eligibility at that point. Inasmuch as the Department's determination in this case is in accord with the regulations, the Board is bound by law to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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