

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 17,172  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision of the Department of PATH finding him eligible for V-Script benefits with a 50 percent copayment, but based on his income finding him ineligible for V-Script with a \$1-2 copayment.

FINDINGS OF FACT

1. The facts are not in dispute. The petitioner receives Social Security benefits of \$1,257 a month. Of that amount \$85 is deducted each month for his Medicare premium, leaving the petitioner with a check for \$1,172.

2. In June 2001, the Department notified the petitioner that based on his income he was eligible for V-Script but would have to pay 50 percent of his prescription costs as a copayment.

3. The petitioner does not dispute any of the figures used by the Department. However, he reports that his pharmacy bills are extraordinarily high. At several previous fair hearings, and in the several decisions the Board has issued in

his cases, the petitioner has been advised that he remains categorically eligible for Medicaid. Therefore, he should check with the Department to determine whether, with the 50 percent copayment he now will incur, his medical expenses are in excess of the spenddown amount that he is over income for Medicaid.

ORDER

The decision of the Department is affirmed.

REASONS

Under the V-Script regulations, all unearned income is included as countable income for eligibility. W.A.M. § 3201.61. There are no deductions allowed from unearned income, even for uncovered medical expenses and insurance premiums. (As noted above, medical expenses can be considered in determining eligibility for Medicaid, and the petitioner has been advised to pursue his potential eligibility for that program with the Department.)

The Department is correct that the petitioner has countable income of \$1,257 per month. The maximum for eligibility under the V-Script program with a \$1-2 copayment

for a single-person household is \$1,253 per month. W.A.M. § 3203, Procedures Manual § P-2420 B (16). The maximum for V-Script with a 50 percent copayment is \$1,611. Id.

Unfortunately, the petitioner is only \$4 a month over the income maximum to receive V-Script with a \$1-2 copayment. As the Department's decision is in accord with its regulation, the Board is bound by law to affirm it. 3 V.S.A. 3091(d), Fair Hearing Rule 17.<sup>1</sup>

This case illustrates, however, what the Board believes is a glaring inequity in the manner in which eligibility for the Department's VHAP programs is determined. None of the VHAP programs takes into account a household's medical expenses. This leads to circumstances where individuals, like the petitioner, with extraordinary medical expenses are ineligible for medical assistance programs that other far-less-needy individuals qualify for. It strikes the Board that programs designed to meet the medical needs of low income persons should at least make some attempt to take into account the medical expenses faced by those persons in determining their eligibility. Inasmuch as the Department already makes

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<sup>1</sup> The petitioner should also be aware that he might be eligible for general assistance (GA) from the Department if he is ever unable to purchase necessary prescription medication. The petitioner should apply to the Department of GA if that need arises.

such determinations for the Medicaid program, it does not appear that administrative expense or inconvenience is a valid justification for failing to do so for the VHAP programs. It also appears that raising the overall net eligibility standards of the VHAP programs could offset the number of additional people who would become eligible for VHAP on the basis of their medical expenses. Although this would surely disqualify some people who are now eligible, overall the programs would then better reach people based on their medical needs, not just their incomes.<sup>2</sup>

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<sup>2</sup> Board Members Wasik and Russell would have remanded the matter to the Hearing Officer to allow the petitioner further opportunity to obtain legal advice regarding whether the Department's refusal to allow medical expense deductions violates federal Medicaid law and/or Vermont's VHAP waiver.