

appealed that determination and has continued to receive Medicaid benefits.

3. The petitioner and his wife indicated at the hearing that they were attempting to separate in order to exclude the wife's income from his Medicaid eligibility computation. At the present, the two still live in the same home although the petitioner has moved to the living room couch. They continue to have joint financial accounts. It cannot be found at present that they are living separately.

4. The petitioner also indicated at the hearing that he was looking into the "working disabled" VHAP program to see if he could obtain some medical insurance in that way.

ORDER

The decision of PATH terminating the petitioner's Medicaid benefits is affirmed.

REASONS

The Medicaid regulations require that the incomes of a couple who are living together in their own home must be counted as available to the Medicaid recipient. M221. The gross "earned" income of the couple as well as the "unearned" Social Security income must be counted. M241 and 242(1). Both the earned and unearned income are subjected to deductions to determine net income. M243.1. In the

petitioner's case, his unearned Social Security income is subjected to a \$20 disregard. M243.1(2).¹ His wife's earned income is subjected to a \$65 disregard and then a 50 percent disregard of the remainder. M243.1(7) and (9). The petitioner's countable net income is \$423 and his wife's is \$612.50. Those two figures combine for a countable net income of \$1,035.50 which figure must be compared to the protected income level for a family of two. M221. The current protected income level for a family of two is \$733 per month. P-2420B(16). As the couple's countable income is some \$300 in excess of that amount, they cannot be eligible for Medicaid benefits.²

The petitioner did not specifically appeal his denial of VHAP benefits but it appears that the Department's decision in that program is correct as well. The same kinds of income must be counted as in Medicaid and the only deduction from income available to the petitioner and his wife is a \$90 work expense deduction. Thus, their countable income in that program is \$1,643 per month. See W.A.M. 4001.8 et seq. The

¹The petitioner's Medicare insurance payment cannot be deducted from his income under the regulations. However, it can be applied to his "spend-down" amount. See Footnote No. 2.

²Of course, as the petitioner was advised by the Department, he can become eligible for Medicaid under the "spend-down" provisions at M400 if he incurs medical expenses which are equal to the excess of his income over the protected income level multiplied by a six month period. In the petitioner's case, this amount was \$1,815 less \$300 which he would incur for a Medicare premium over a six month period.

maximum income for a two-person family in VHAP is \$1,452 per month. P-2420B(16). The petitioner is encouraged to discuss his potential eligibility for Medicaid benefits for working disabled persons and to file an application for that program. If at some point in the future the couple can present credible evidence that they have actually stopped living together in the same home and operating as a single financial unit, the Department can reassess whether the wife's income must be included in the petitioner's Medicaid eligibility. For now, however, the Department's decision is correct and must be affirmed by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

#