

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 17,254  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision of PATH finding that her son is not eligible for the Dr. Dynasaur program (Medicaid) because he is no longer in the petitioner's household.

FINDING OF FACT

1. The petitioner is the mother of a seventeen-year-old boy who has multiple disabilities, including learning deficits, ADHD, polysubstance abuse and major depression. He is on an I.E.P. at school. The petitioner has enrolled her son in substance abuse and psychiatric counseling which is paid for through the Dr. Dynasaur program.

2. The petitioner is divorced from her son's father and she has sole physical custody of her son pursuant to a family court order. The boy's father attempted to get custody changed in February of 2001 because he was not supportive of the substance abuse treatment. The court denied the father's request and continued custody solely in the petitioner.

3. The petitioner has great difficulty controlling her son's movements and he frequently leaves the home for weeks at a time without her permission. Sometimes he stays with his father, sometimes with friends and other times the petitioner does not know where he is. She continues to maintain a home for him and encourages him to return to it. She also encourages her son to remain in counseling and in school.

4. During a discussion with a PATH worker in July of 2001, the petitioner revealed that her child had not spent the night at her home since the beginning of July. The worker then sent the petitioner a notice that the child's Dr. Dynasaur benefits would close in August of 2001 because he was no longer in the household. The petitioner appeals that determination.

ORDER

The decision of the Department terminating the petitioner's son's Dr. Dynasaur benefits is reversed.

REASONS

Dr. Dynasaur is a Medicaid program which will cover children under eighteen in a household within the income limits. W.A.M. 3001.22 and 3001.3. The regulations for this program are sparse and say little about living arrangements other than that the parents of children "living in the

household" must be included to determine financial eligibility. W.A.M. 3001.31.

The general Medicaid regulations link eligibility of families with dependent children to the requirements of the ANFC (now Reach Up Financial Assistance) regulations. M302.1. Those regulations state that "[t]o be eligible for Reach Up, a child must be living with a relative or a qualified caretaker". W.A.M. 2302.1.<sup>1</sup> The term "living with" is not further defined in the regulations. However, the regulations defining "home" do shed some light on what "living with" might mean:

A home is defined as the family setting maintained, or in the process of being established, in which the relative or caretaker assumes responsibility for care and supervision of the child(ren). . . The child(ren) and relative or caretaker normally share the same household. A home shall be considered to exist, however, as long as the relative or caretaker is responsible for care and control of the child(ren) during temporary absence of either from the customary family setting.

W.A.M. 2302.13

This regulation focuses on a child's home as the dwelling place of the relative who is responsible for the care and control of the child and who maintains that home for the child. That same focus can be found in a RUFA regulation

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<sup>1</sup>The Medicaid regulations also state that a caretaker relative must be "living with" an ANFC-related child in order to get Medicaid benefits for herself. M323. As the petitioner does not receive Medicaid benefits herself, this is not an issue in this case.

which more fully defines the temporary absence of a child from the home:

Family Separation

An adult participant in the Reach Up program . . . shall notify the district director of any physical separation of the adult and child that continues or is expected to continue for 30 days or more. Eligibility shall continue when the following conditions are met:

1. The adult participant . . . continues or supervises continuing care and supervision of the eligible child; and
2. A home is maintained for the child or for return of the adult participant within six months; and
3. Eligible family members have continuing need.

W.A.M. 2224

The Board has interpreted the above provision as triggering a "review of the situation to determine whether the parent is continuing to exercise control over the absent child and to determine whether the child is expected to return to the home within six months" whenever a child appears to be absent from the home. Fair Hearing No. 15,433.

That review does not appear to have taken place in this case. If it had, the fact of the mother's continuing legal care and control over the child would have been revealed as well as the fact that the child has no other home and is expected to live in the petitioner's home on a daily basis. Given these facts, the child's eligibility for Dr. Dynasaur as

a member of his mother's household is undeniable. To hold otherwise would require a declaration that this unfortunate child is not eligible for Dr. Dynasaur at all because he lives in no household. Such a declaration runs afoul of the legislative purpose of providing health coverage for all Vermont children without financial means. See. W.A.M. 3000.

Furthermore, it is worth pointing out that in Fair Hearing No. 15,433 (cited above), both divorced parents attempted to collect ANFC benefits for the child. The above regulations served in that case to clarify which relatives may receive benefits on behalf of a child and to insure that benefits are actually being use for the child. Those considerations are not present in a Dr. Dynasaur case where the caretaker relative gets no money to spend on behalf of the child. All payments are made to persons who provide medical services to the child. Therefore, it makes no sense to impose strict rules of eligibility based on how often the child sleeps at or be present in the home of his parental custodian. PATH's conclusion that the child is not living in his mother's household for purposes of the Dr. Dynasaur program must be reversed as inconsistent with its own regulations and the purposes of the program.

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