

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,440
)
Appeal of)

INTRODUCTION

The petitioners appeal a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) that they were not eligible for VHAP benefits on a certain date. The issue is whether a notice closing their benefits was ever mailed to the petitioners.

FINDINGS OF FACT

1. The petitioners, Mr. and Mrs. B., have been VHAP recipients for some time. On November 5, 2001, Mr. B., who has a number of serious medical problems, went to his physician's office where he had five different laboratory tests performed. After his appointment, he went to the pharmacist to fill a prescription and was told by the pharmacist that he was no longer covered by VHAP.

2. Mrs. B. testified credibly that this was the first time they had heard that they were not covered by VHAP. They called their worker and were told that they had been cut off

as of November 1, 2001 due to increased income. They told the worker that they had never received a notice of this termination. The worker told them he would mail them a copy of the original notice. The petitioners received the copy of the notice on November 16, 2001.

3. The notice sent to the petitioners had a place on it to enter the date of the mailing. That place was not filled in. Mrs. B. testified that they had no reason to believe that the letter was mailed out to them. The worker whose name was on the letter and who allegedly mailed the letter did not appear at the hearing to testify that he had mailed it. No evidence was offered by the Department from which it could be concluded that the notice was actually sent to the petitioners before November 16, 2001.

4. The petitioners incurred \$254 worth of laboratory bills on November 5, 2001 which they thought were covered by VHAP. The petitioners do not disagree that they are no longer eligible for VHAP. They want the Department to pick up that bill only because they were not notified prior to that appointment of their ineligibility for VHAP.

5. Based on the above evidence, no finding can be made that the worker actually mailed the letter of termination before November 15, 2001.

ORDER

The decision of the Department terminating the petitioner's VHAP before November 15, 2001 is reversed and bills incurred on November 5, 2001 must be covered by VHAP.

REASONS

Under regulations governing Medicaid programs (VHAP is a Medicaid-waiver program¹) "when an eligibility review decision will end or reduce the amount of Medicaid coverage an individual has been receiving, the notice of decision must be mailed at least (10) days before the closure or change will take effect". M141.

There was no evidence in this case that the notice was actually mailed ten days before November 1, 2001. The only inference that can be drawn from the credible evidence on the record is that the notice was mailed a day or two before it was received on November 16, 2001. Since there was no proof that the notice was mailed before November 5, 2001, the determination that the petitioners were not eligible for VHAP

¹ Medicaid due process rules continue to apply for VHAP unless they are specifically waived under the demonstration project. See W.A.M. 4000. The Department does not assert that these due process provisions were waived and it does attempt, in fact, as indicated by the face of the

could not have taken effect on that date. Therefore, the petitioners must be found to have been eligible for VHAP on November 5. The decision of the Department to the contrary should be reversed.

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notice in this case to provide ten-day advance notice to termination of VHAP benefits.