

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 17,634  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals the decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying her request that her daughter be placed on fee-for-service Medicaid rather than being required to enroll in a managed care plan. The issue is whether there is good cause not to require enrollment in managed care.

FINDINGS OF FACT

1. The petitioner lives with her husband and their five-year-old daughter. The daughter has pulmonary and allergy problems that have frequently required treatment by a pulmonary specialist and an allergist.

2. Prior to November 2000 the petitioner's daughter received Medicaid through a fee-for-service arrangement. The Department represents that at that time it did not have enough managed care pediatricians in the petitioner's county of residence, and thus did not require any Medicaid recipients in that area to enroll in managed care.

3. In November 2000 the petitioner's daughter was placed in SRS custody. At that time she was enrolled in managed care as a recipient of Medicaid through her status as a foster child.

4. The Department represents that it began enrolling Medicaid recipients in the petitioner's county into managed care as of April 2001.

5. Sometime after that date SRS returned the child to the petitioner's home. The petitioner is now living in an area well served by managed care. Since November 2000 the petitioner's daughter has remained enrolled in managed-care Medicaid.

6. In February 2002 the petitioner requested that the Department disenroll her daughter from managed care. The petitioner alleged that her daughter's principal treating physician would not provide her with a standing referral to the child's pulmonary specialist.

7. At a hearing in this matter, held on March 22, 2002 by phone, the petitioner was advised to submit medical evidence that the lack of a standing referral to the specialist posed any risk to her daughter's health. At that time the Department offered to allow the petitioner to switch to any number of other doctors in her area to be her

daughter's primary physician under her managed care plan. The petitioner rejected this offer because she does not believe any doctor in the managed care network can oversee all her daughter's physician services.

8. At an in-person hearing held on May 24, 2002 the petitioner reported that her daughter's specialist would not provide her with a statement regarding the risk or inadequacy of managed care. The petitioner rejected the hearing officer's offer to contact the specialist himself, or require the Department to do so, to see if such a statement could be obtained.

9. One of the main reasons for the petitioner's concerns appears to be her allegation that her daughter was injured last year when she fell off the examining table of the pediatrician who presently her daughter's primary care physician, and that this pediatrician was responsible for SRS taking her daughter.

ORDER

The Department's decision is affirmed.

REASONS

Section M103 of the Medicaid regulations includes the following provisions:

Benefit Delivery Systems

Eligible beneficiaries receive covered services through either the fee-for-service or a managed health care delivery system. Most beneficiaries are required to receive covered services through a managed health care delivery system. The following beneficiaries are exempt from managed health care enrollment and will receive covered services through the fee-for-service delivery system:

- a) home and community-based waiver beneficiaries;
- b) beneficiaries living in long-term care facilities, including ICF/MRs;
- c) beneficiaries who are receiving hospice care when they are found eligible for Medicaid;
- d) children under age 21 enrolled in the high-tech home care program;
- e) beneficiaries who have private health insurance that includes both hospital and physician services or beneficiaries who have Medicare (Parts A and/or B);
- f) beneficiaries who meet a spend-down who are not enrolled in a VHAP managed health care plan; and
- g) beneficiaries whose requirement to enroll in a managed health care delivery system is anticipated to last for three or fewer months based on known changes, such as imminent Medicare eligibility.

If the beneficiary is not exempt under subsections a-g above, he or she will be required to receive covered services through a managed health care delivery system.

There is no allegation or indication in this matter that the petitioner's daughter is exempt from managed care under any of the above provisions. The regulations refer to most managed care as "PCCM (Primary Care Case Management) Programs". Id.

W.A.M. § M103.3(3), as follows, governs requests by individuals to disenroll from managed care:

Disenrollment

The department has sole authority for disenrolling beneficiaries from the PCCM program. The department may disenroll beneficiaries from the PCCM program for any of the following reasons:

- The beneficiary loses Medicaid eligibility;
- The beneficiary is placed in a nursing facility or ICF-MR for more than thirty (30) days, enrolls in any other state waiver program, enrolls in the department's "High Tech Home Care" program, or enrolls in Medicare or other comprehensive health insurance plan;
- The beneficiary's change of residence places him or her outside the area where choice of PCCM provider is available, and the beneficiary chooses not to continue enrollment in the PCCM program;
- The department has found that there is a rational and justifiable reason for determining that good cause exists, or upon appeal, the Human Services Board finds good cause exists, as the result of a formal request for disenrollment filed by the beneficiary;
- The department has found that there is a rational and justifiable reason for determining that good cause for disenrollment or transfer to another PCCM

provider exists, as the result of a formal request for disenrollment filed with the department by the beneficiary's PCP;

- The department has found that there is a rational and justifiable reason for determining that good cause exists, or, upon appeal, the Human Services Board finds good cause exists;
- The beneficiary poses a threat to PCCM providers, staff or other beneficiaries;
- The beneficiary regularly fails to arrive for scheduled appointments without canceling, despite documented aggressive outreach efforts by his or her PCP; and
- The beneficiary does not cooperate with treatment and has not made an affirmative decision to refuse treatment, despite documented aggressive outreach efforts by their PCP.

Grounds for disenrollment do not include beneficiaries who have cooperated with their PCP in his/her effort to inform them fully of the treatment options and the consequences of their decisions regarding treatment and who have subsequently made an informed decision to refuse treatment.

The Department apparently concedes that under the above regulation the Board is free to determine "good cause" on a *de novo* basis.

This case is problematic because the apparent lack of rationality to the petitioner's views of managed care is more than made up for by her adamancy. To date, however, there is no indication that the petitioner has "refused to cooperate"

or has otherwise impeded her daughter's access to medical care, or that she is likely to do so in the future.

Were she to do so, this would presumably trigger "aggressive outreach efforts" by her physician to have her cooperate in her daughter's medical treatment. If these efforts failed, the Board could find, and the Department would unlikely disagree, that there would be a risk to the petitioner's daughter by insisting that she remain in managed care.

In the Board's view, however, such a scenario is unlikely for two reasons. One is that the petitioner is obviously a concerned mother who appears to understand her daughter's health care needs. The other is that based on past experience she is well aware that her refusal to obtain medical care for her daughter could lead to further problems with SRS.

In light of the above, it cannot be concluded that suspicion and hostility alone are sufficient to establish good cause under the regulations. In view of the lack of any evidence that managed care is not in her daughter's best medical interest, the Department's decision to deny the petitioner's request for disenrollment from managed care must be affirmed.

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