

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,647
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying her application for Dr. Dynasaur Medicaid benefits for her children. The issue is whether the petitioner's children meet the requirements for citizenship under the pertinent regulations. The following facts are not in dispute.

FINDINGS OF FACT

1. The petitioner, her husband, and their two children are citizens of Ukraine. They came to the United States from Ukraine in October 2001. They have resided in Vermont since December 2001.

2. The petitioner and her husband have obtained green cards and are considered legal permanent residents of the United States.

3. The petitioner has applied to the Department for medical benefits for herself and her family.

4. In a decision dated January 28, 2002 the Department found the petitioner and her husband eligible for VHAP benefits based on their status as lawfully admitted permanent residents of the U.S.

5. In a decision dated January 17, 2002 the Department determined that the petitioner's children were ineligible for Dr. Dynasaur benefits under Medicaid because they have not been in the U.S. for at least five years.

6. Nobody in the petitioner's family is considered a refugee, asylee, or deportee.

ORDER

The Department's decision is affirmed.

REASONS

The Department's VHAP program covers only adults. W.A.M. § 4000. VHAP is a state program subject to its own eligibility rules. An individual meets the citizenship requirement for VHAP as long as she "is a resident alien lawfully admitted for permanent residence". W.A.M. § 4001.3. There is no duration requirement under VHAP to qualify as a resident alien. As noted above, the petitioner and her husband have been found eligible for VHAP.

Children are only eligible for medical benefits if they qualify for Medicaid, a federal program. W.A.M. § M302.1. In addition, "[c]hildren under age 18 who would be eligible for ANFC-related Medicaid¹ except that their income or resources exceed the maximums are categorically eligible for Dr. Dynasaur as long as their family income does not exceed 300 percent of the federal poverty level (FPL)." In all other respects the Dr. Dynasaur program follows federal Medicaid eligibility guidelines. W.A.M. § 3000.

The citizenship requirements for Medicaid set forth in W.A.M. § M311 include the following provisions:

An individual meets the citizenship requirement as long as he or she is one of the following:

- (1) a U.S. citizen;
- (2) a qualified alien who is a refugee, asylee, or deportee;
- (3) a qualified alien who is a legal permanent resident, parolee, or conditional entrant and:
 - entered the U.S. before August 22, 1996, or
 - has been in the U.S. at least five years; and
- (4) a qualified alien who is a legal resident and either a veteran with an honorable discharge or

¹ Adults and children who are disabled can also qualify for Medicaid as "SSI-related". See W.A.M. § M200. The petitioner's children are not disabled.

a member of the U.S. armed forces on active duty, or the spouse or unmarried dependent child of such an alien.

- on active day, other than active duty for training, in the Armed Forces of the United States; or
- the spouse or unmarried dependent child of an individual described immediately above.

There is no argument in this matter that the petitioner or her children meet any of the requirements of subsections (1)-(2) or (4)-(5) of the above regulation. Subsection (3), above, is clear that unless and until an individual has resided in the U.S. for at least five years, neither she nor any family member is eligible for Medicaid or a Medicaid-based program such as Dr. Dynasaur. At the hearing in this matter, held on May 15, 2002 the petitioner and her interpreter were informed that in the event of a medical emergency with their children they could apply to the Department for General Assistance (GA) at any time such a medical need might arise.

Inasmuch as the Department's decision in this matter is in accord with the pertinent regulations the Board is bound to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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