

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,664
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying his application for Dr. Dynasaur benefits for his children because he is not their primary caretaker.

FINDINGS OF FACT

1. The petitioner is the father of three minor children. By an order of the Windsor Family Court in a divorce action dated July 1, 1997, the petitioner is required to "provide health insurance for the minor children through his employment", to pay deductibles and to share the cost of uninsured medical, dental and similar expenses with his ex-wife. For purposes of the computation of child support, the petitioner is deemed by the Court to have "contact time" of 30 percent with the children, while his ex-wife has "contact time" of 70 percent. The petitioner was awarded the tax exemptions for the three children based on his greater income and their greater worth to him even though he is described as

the "non-custodial parent." According to the Court order the "children have resided primarily with the [ex-wife] and they do so at the present time." The petitioner does not dispute that the situation described in the Court decree is still the current situation.

2. The petitioner lost his job on February 13, 2001 and with it his employer-sponsored health insurance. He is presently receiving unemployment compensation. He applied for Dr. Dynasaur (Medicaid) benefits for his children shortly after losing his employment in order to carry out what he views as his responsibilities under the court order to provide health insurance for his children. The petitioner was denied benefits because he is not the primary caretaker of his children. He appealed that decision on March 15, 2002. The Department concedes that if the petitioner were the primary caretaker the family would be income eligible for the program.

ORDER

The decision of the Department is affirmed.

REASONS

The petitioner applied for benefits for his two children under the Medicaid program (Dr. Dynasaur) which covers children under 18 in certain circumstances:

Children under age 18 who would be eligible for ANFC-related Medicaid 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). There is no resource test under this provision. . .

Medicaid Manual (M) 302.26

In order to be eligible for ANFC-related Medicaid, applicants would have to meet the non-financial eligibility criteria of the ANFC (now called Reach Up) program. M301.

Under the Reach Up regulations, an assistance group must include the parent who "lives in the same household with one or more biological, step or adopted children." W.A.M. § 2242.2. When parents are divorced, they both live in the same household with the children from time to time. Since ANFC can only be paid to one household (42 U.S.C. § 609(a), 45 C.F.R. § 233.90(c)(2)), the Board has adopted a standard of paying only the parent who is "either 'living with' the child or serving as the primary provider of the child's care and control—or both. Fair Hearing Nos. 10,999, 13,567 and 13,568.

This question often arises in the context of a joint custody decree where neither parent has been designated as a physical custodian and a factual determination must be made as to which home the child spends more time in. Fair Hearing Nos. 5553, 9521, and 11,182. In this case, however, the Court

has made it clear that the petitioner's ex-wife is the custodial parent, that the children primarily live with her and that 70 percent of the children's time is spent in her care. The fact that the petitioner may have been awarded tax deductions as the person who provided the primary support for the children does not mean that the children can be found to be "living" with him against the great weight of other evidence in the court order.

Since the petitioner's children do not live with him but rather with their mother, the petitioner does not meet the requirements under ANFC (now RUFA)-related criteria for eligibility. Since he does not meet these eligibility requirements, he cannot apply for or receive Dr. Dynasaur benefits on behalf of his children. The petitioner should be aware that the income maximum for a three-person household in this program is \$3,768 per month for a household of three. (Procedures Manual 2420-B(1)). If his wife should meet that income criteria, she should be encouraged (as the custodial parent) to apply for coverage for the children. PATH's decision that the petitioner is himself not eligible to apply because he is not the custodian should be upheld. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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