

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,852
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) terminating her family's Vermont Health Access Plan benefits (VHAP) due to excess income. The issue is whether PATH should have deducted depreciation expenses from the family's self-employment income.

FINDINGS OF FACT

1. The petitioner is employed as a child care worker and earns about \$752.50 per month. She also receives \$259 per month in child support income. The petitioner's husband is self-employed and has gross income of \$52,182.47 per year or \$4,348.54 per month based on his tax return of last year. That return also showed that the petitioner had business expenses of \$10,120 per year of which \$1,000 were depreciation expenses.

2. The petitioner lives with her husband and her two children. Her husband also has two children who live with him

half the time. Neither her husband nor his ex-wife has been designated as the primary caretaker of the children by the divorce decree. They have joint and equal custody of the children.

3. The petitioner, her husband, and the petitioner's two children have received VHAP benefits as a four-person household over the past two years. PATH does not include the petitioner's husband's two children in the household group because they are not considered to "live" with the family since he is not the designated primary caretaker.

4. On a review of the family's income in June of this year, PATH subjected the petitioner's income (\$752.50 monthly) to a \$90 employment expense disregard. Her children's child support was counted less a \$50 pass through amount. Finally, PATH took the husband's gross income based on his last year's tax return and allowed all business expenses claimed for IRS purposes except for depreciation. This resulted in a monthly income for the husband of \$3,588.04 that was also subjected to a \$90 disregard. The total family income was determined to be \$4,069.54 per month.

5. Based on that calculation, PATH notified the petitioner that her two children were eligible for the Dr.

Dynasaur program but that no one in the family would be eligible for VHAP benefits due to excess income.

ORDER

The decision of the Department is affirmed.

REASONS

The regulations employed by PATH in the VHAP program require that earned income be counted subject to a \$90 disregard and that child support income be counted subject to a \$50 exclusion. VHAP 4001.81(b)(c) and (e), 4001.82(23). In the case of income earned from self-employment, the regulations allow the deduction of business expenses as follows:

Business expenses, which are deducted from gross receipts to determine adjusted gross earned income, are limited to operating costs necessary to produce cash receipts, such as:

1. Office or shop rental; taxes on farm or business property;
2. Hired help;
3. Interest on business loans; and
4. Cost of materials, stock, and inventory, livestock for resale required for the production of this income.

Items such as personal business and entertainment expenses, personal transportation, purchase of capital equipment, depreciation, and payment on the principal of loans for capital assets or durable goods are not allowable business expenses.

VHAP 4001.81(d)

The Department was correct under its regulation to exclude depreciation claimed by the petitioner on his tax returns. Therefore, it was correct in calculating the husband's income as \$3,498.04 per month. When added to the adjusted income of his wife and children, the family's countable income is \$4,069.54 per month.

The regulations provide that no individual can be eligible for VHAP unless he or she is "a member of a VHAP group with countable income under the applicable income test." VHAP 4001.8. The applicable income test for caretakers of dependents in a four-person household is \$2,799 per month. P2420B(1). The applicable income test for children in a four-person household is \$2,269 per month. The petitioner's family's countable income is far in excess of these maximum amounts for a four-person household.

The question remains whether PATH should have considered theirs a six-person family based on the half-time presence of the husband's two children in the household. The regulations used by PATH require it to include in the assistance group a

husband and wife and their children under age twenty-one who are "living in the same home." VHAP 4001.8. When children live in the households of two parents, the Board has determined that for purposes of this definition the children "live" with the parent who has custody. When the parents have joint custody, the Board has determined that the parents or the family court must designate one household as the "primary caretaker" for purposes of public assistance benefits. This methodology has been affirmed by the Vermont Supreme Court. Munro Dorsey v. Department of Social Welfare, 144 VT 614 (1984). This designation is necessary in order to avoid the obligation to pay grants to more than one household, an occurrence which is prohibited in the regulations.

The petitioner's husband and his ex-wife have no such agreement between them designating a primary household. Until they do, PATH is correct in not including the husband's two children in the household. It is important to point out that even if the petitioner and his ex-wife do designate his as the primary residence for assistance purposes, the family is still presently over-income. Caretaker relatives in six person households cannot have income that exceeds \$3,748 per month. P 2420B(1). Individual children cannot be eligible if they are in a six-person household with more than \$3,039 per month.

P-2420B(1). The petitioner's family income is still in excess of VHAP limits. As PATH's decision that this family is ineligible for VHAP is consistent with its regulation, its decision must be upheld by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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