STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 18,039
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) finding his mother eligible for Medicaid as of January 5, 2002 but not reimbursing him for some of the expenses he incurred for her care between February and April 2002. The issue is whether the Department must reimburse the petitioner for payments he made to non-Medicaid providers for services rendered to his mother between February and April 2003.

The Board initially considered this matter at its meeting on July 23, 2003, based on a Recommendation by this hearing officer dated June 4, 2003. Following its meeting, the Board (by Order dated July 25, 2003) remanded the matter to the hearing officer to resolve apparent confusion regarding the facts and issues in this matter.

FINDINGS OF FACT

1. The petitioner's mother entered a nursing home in Brattleboro, Vermont in May 2002. Prior to May 2002, the

petitioner had applied for Medicaid in his mother's behalf, but those applications had been denied due to his mother being over income. Those decisions by the Department are not in dispute.

2. The petitioner again applied for Medicaid for his mother on May 8, 2002. That application was eventually granted with coverage retroactive to January 5, 2002.

3. The petitioner represents (and the Department does not dispute) that about five months prior to May 2002, when his mother's medical condition had taken a turn for the worse, he spoke with an employee of the Southeastern Council on Aging in Brattleboro and was told that his mother would not be eligible for Medicaid for three years. Based on that information the petitioner did not file an application for Medicaid for her at that time.

4. The petitioner further represents that several months later he consulted with an attorney and was advised that his mother might well be eligible for Medicaid for long–term care. This is what led the petitioner to file the May 8, 2002 application.

5. Once the petitioner had provided verification, the Department eventually covered all his mother's medical bills that were incurred up to three months prior to the May 8, 2002

application for Medicaid, except those for in-home services provided during that period by private duty caretakers who were not registered Medicaid providers.

6. At a phone hearing held on August 25, 2003, the petitioner agreed that the only unresolved issue in the case was whether Medicaid should reimburse him for the payments that he made to the non-Medicaid providers who rendered services to his mother in her home between February and April 2002.

7. The petitioner maintains that the only reason he did not file a more timely application for Medicaid in his mother's behalf was the information given to him by the Southeastern Council on Aging that she would not be eligible for three years, which turned out to have been false. The petitioner claims that had he applied for Medicaid sooner he could have either placed his mother in a nursing home at that time (thus avoiding the period of in-home care) or sought to obtain in-home services from eligible Medicaid providers.

8. The petitioner does not allege that anyone connected with the Department of PATH either withheld information from him or gave him any misinformation regarding his mother's eligibility for Medicaid.

9. The petitioner does not dispute that the Southeastern Council on Aging is an office of the Vermont Department of Aging and Disabilities and is not an agent of the Department of PATH regarding any aspect of financial determinations of Medicaid eligibility.

10. At the hearing on August 25, 2003 the petitioner stated that he was represented by a certain attorney at Vermont Legal Aid. The hearing officer advised the petitioner that he considered the underlying legal issue in the case to be the same as identified in his previous recommendation in the matter. On August 26, 2003 the hearing officer sent this attorney a memo (with a copy to the petitioner and the Department) advising him that he would have until September 12, 2003 to submit a written argument in the petitioner's behalf. By letter dated September 5, 2003, this attorney notified the Board that he was not representing the petitioner in this matter. On September 12, 2003 the petitioner submitted documentation of expenses he incurred between

February and April 2002 for private in-home caregivers for his mother (which the Department has not disputed).

ORDER

The Department's decision is affirmed.

REASONS

Under the Medicaid regulations the maximum period of retroactive coverage is "up to three calendar months prior to the month of application". Medicaid Manual § M113. In this case the petitioner concedes that the Department has provided retroactive coverage for all services rendered to his mother by certified Medicaid providers dating back over four months from the date of her application for Medicaid. The issue is whether the Department must also reimburse him for services rendered during this period by certain caregivers who are not certified to accept Medicaid payments.

The Medicaid regulations are clear that "Medicaid payments are made only to providers meeting established Medicaid standards". See MM § M154. Furthermore, Medicaid providers must be "currently approved to provide medical assistance to a beneficiary pursuant to the Vermont Medicaid Program". See MM § M155.1.

In this case, the petitioner does not dispute that the uncovered expenses in question were for services rendered to his mother by certain individuals who are not Medicaid providers. Therefore, the only legal basis to hold the Department liable for these expenses would be if the Department was somehow "estopped" from applying the coverage limitations in the above regulations due to some act or omission that caused the petitioner not to either file a more timely application for Medicaid in his mother's behalf and/or seek out only qualified Medicaid providers. However, the facts alleged by the petitioner clearly do not establish any such act or omission by the Department of PATH.

The four elements of estoppel adopted by the Vermont Supreme Court are: ”(1) the party to be estopped must know the facts; (2) the party to be estopped must intend that its conduct shall be acted upon or the acts must be such that the party asserting the estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped. Burlington Fire Fighters’ Ass”n. v. City of Burlington, 149 Vt. 293, 299, 543 A2d 686, 690-91 (1988) as cited in Stevens v. Department of Social Welfare, 159 Vt. 408,421 (1992).

In this case the petitioner does not allege that the Department of PATH at any time prior to May 8, 2002 ever knew or should have known about any change in his mother's medical situation or financial status that might have affected her eligibility for Medicaid. The petitioner alleges that he acted (or failed to act) solely on the basis of information given to him by another agency, the Southeastern Council on Aging, which turned out to have been false. Thus, it cannot be found that the first element of the above-cited four-part test of estoppel could lie against the Department of PATH, the "party" in this matter. This is not to say that the petitioner may not have a legal claim against the Southeastern Council of Aging or Vermont Department of Aging and Disabilities. However, such a claim would necessarily involve an award of monetary "damages" against that agency, a form of relief that is clearly beyond the authority of the Human Services Board to consider. Fair Hearing No. 12,080 (affirmed by the Vermont Supreme Court in an unpublished opinion, Scherer v. DSW, Dkt. No. 94-206 [Mar. 24, 1999]); see also In re Buttolph, 147 Vt. 641 (1987), Fair Hearing No. 16,043. The petitioner is still free to consult with an attorney if he wishes to pursue such damages in an appropriate forum.

Inasmuch as the Department of PATH'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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