

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,394
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying his application for payment of his Medicare premiums through its "Medicare Buy-In" program.

FINDINGS OF FACT

1. The petitioner and his wife are disabled individuals. They receive Social Security disability benefits totaling \$1,340.70 per month. The wife also has income from employment of \$580.50 per month. They live with a minor child who receives \$303 per month in Social Security dependent's benefits.

2. The petitioner receives Medicaid through an extended category for working disabled persons. In February of this year he applied for payment of his Medicare premium through a Medicaid-funded PATH program. He was denied for being over-income and appealed.

3. The petitioner's income was calculated by using traditional Medicaid income counting rules. PATH used all of the Social Security income minus a \$20 disregard and minus a \$26 allocation to his dependent child. His wife's earned income was subjected to a \$65 disregard, a \$34.40 expense deduction and a further deduction of half the remainder. The final total, \$1,534.05 was used as the family's "countable income." That income was compared to the maximum amounts in the program and was found to be in excess.

4. The petitioner believes that PATH used the wrong method to calculate his eligibility for this program. He receives Medicaid under a "working disabled" category that allows more generous disregards than the traditional Medicaid category when calculating "countable income". Those disregards comprise \$500 of his Social Security benefits and all of his wife's earnings. He believes that the same methodology should be used to calculate his eligibility for the Medicare buy-in program as well.

ORDER

The decision of PATH is affirmed.

REASONS

PATH has adopted a regulation that will pay some or all of the premiums, deductibles and coinsurance associated with Medicare for persons who meet various levels of financial eligibility. See M200, attached as Exhibit No. One. The regulation requires that a recipient's "countable income" cannot exceed whichever income test is being applied. "Countable income" is not specifically defined in this regulation. However, PATH argues that the definition of "countable income" in that regulation should be the same as "net income" used in the general Medicaid program found at M243.1.

The regulations at M243.1 allow a \$20 deduction from unearned Social Security disability income and several deductions from earned income, including a \$65 standard amount, work expenses and one half of the income remaining after those deductions. M243.1(1)(2)(5)(7)(8) and (9). PATH followed those rules in calculating the amount of income to count in this case. The regulation also allows an allocation of \$277 per month for a dependent child in the household minus any amounts which the child already receives in Social Security benefits. M243.1 (3). Under these rules, PATH should not have deducted anything from the petitioner's income

since the child receives more than \$277 in benefits from the Social Security Administration. The actual countable amount under these rules should be \$1,562.45, not \$1,536.45.

Under either amount, the petitioner is far in excess of any of the maximum financial tests for a two person household¹ except for a "Qualified Disabled and Working Individual." See the chart at P-2420B (2) attached as Exhibit No. Two.

However, the petitioner is precluded from receiving the buy-in benefit under that latter program because he receives Medicaid benefits. See M200(2) attached. If PATH correctly used the methodology found in M243.1 for determining "countable income", it is correct that the petitioner does not meet the eligibility requirements.

The petitioner argues that "countable income" used to determine his eligibility in the "Medicare Buy-In Program" ought to be the same as that used to determine his eligibility for the medical assistance category for the working disabled which he receives through Medicaid. That program entitles him to completely disregard his wife's earned income and \$500 of their combined Social Security income in addition to any deductions in the regular Medicaid program because his gross

¹ The Medicaid buy-in household consists of only the petitioner and his wife.

income is under 250 percent of the federal poverty limit. M200 (C)(16). If those disregards were used in the "Medicare Buy-In Program", his countable income would be \$820.70, an amount which is well under the income limit (\$1,010) for full payment of his Medicare expenses.

The working disabled regulations referred to by the petitioner were adopted by PATH at the specific direction of the legislature to expand participation in the medical coverage programs of Medicaid to working disabled persons. See Fair Hearing No. 18,413. The language of the legislation speaks specifically of extending "Medicaid eligibility to disabled workers", meaning the medical coverage program. Public Act 62, Session Laws of 1999, Section 121(h). There is nothing in the legislative bill that indicates that this expansion was to apply to the "Medicare Buy-In Program". The petitioner has not produced any evidence that the legislature or PATH intended to extend "Medicare Buy-In" benefits to households in special categories using special calculation methods above and beyond the traditional method of calculating program eligibility. Absent a definition of that term in the regulation or any statutory support for expanding the methodology, deference should be given to PATH's reasonable interpretation of "countable income" for this program as

referring to the methodology generally used to determine net income for Medicaid programs.²

As PATH has reasonably interpreted "countable income" to arise from the methodology at M241.1 and has correctly used that methodology to determine that the petitioner is over income for the "Medicare Buy-In Program", its decision in this regard must be upheld. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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² Compare Fair Hearing No. 18,413, where the legislature and PATH had clearly expanded the medical program by adding special disregards for working disabled persons and had defined "countable income" in the companion spend-down program as including all disregards.