

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,413
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) establishing the amount of the spend-down that he must incur in order to be eligible for the Medicaid program. The issue is whether the petitioner should get "working-disabled" disregards to determine his countable income.

FINDINGS OF FACT

1. The petitioner has been a Medicaid recipient for some time under "working disabled" rules. This means that he has a total income under 250 percent of the poverty line and is allowed disregards for all of his earned income and \$500 of his Social Security benefits when figuring his countable income. That income is then compared to the income test used for all persons in Medicaid.

2. In January of this year, the petitioner received a small cost of living increase in his Social Security benefits. Based on this income, PATH recalculated his eligibility for

Medicaid and determined that he was \$7.00 over the limit for Medicaid eligibility under the "working disabled" category. The petitioner does not dispute this determination.

3. On March 7, 2003, PATH notified the petitioner that his Medicaid would be terminated after March 31, 2003 based on this increase in income. He was also notified that pursuant to Medicaid rules, he could re-establish his Medicaid eligibility if he incurred a certain amount of medical expenses in the next six months, known as a "spend-down". PATH notified the petitioner that his spend-down amount would be \$4,459.50.¹

4. In calculating his spend-down amount, PATH used a methodology to find his countable income which is employed in the traditional Medicaid category, not in the "working-disabled" category. PATH counted all of the petitioner's Social Security income of \$1,293 minus a \$20 standard unearned income deduction. It also counted his earned income minus certain income deductions used for persons in the traditional

¹ PATH originally notified the petitioner that the amount would be \$4,107.30. On April 3, 2003, the petitioner was notified that the original calculation had been in error because he had received deductions for the payment of Medicare premiums and should not have because he is not a Medicare recipient.

Medicaid program, to reach a countable total of \$236.25 for his earned income. The countable unearned and earned income combined resulted in a total countable monthly income of \$1,509.25. That amount was compared to the monthly protected income limit (PIL) for an individual receiving Medicaid of \$766 per month. The monthly amount by which his countable income exceeded the PIL was determined to be \$743.25. That amount was multiplied by the six-month accounting period to obtain the spend-down figure of \$4,459.50.

5. The petitioner disputes the method of calculation used by PATH. He says that he should receive the "working disabled", not the traditional Medicaid disregards when his spend-down is calculated. If this methodology is employed, \$500 of the petitioner's unearned Social Security income would be disregarded in addition to the \$20 standard deduction for a countable unearned income of \$773. None of his earned income would be counted so \$773 would be the total countable income. The amount by which \$773 exceeds the PIL of \$766 per month is \$7. That amount multiplied by the 6-month period is \$42 which is the amount of spend-down he feels he should have to meet.

RECOMMENDATION²

The decision of PATH is affirmed.

REASONS

PATH has adopted regulations which expand federal mandatory Medicaid coverage into an optional category known as "working disabled" persons. At the time of PATH's original decision in this case, the regulation covering this category was found at M200(16). On August 3, 2003, during the pendency of this appeal, PATH reorganized its regulations and that coverage category is now found at M200.24 and reads as follows³:

The following individuals are eligible for SSI-related Medicaid as categorically needy.

. . .

- (b) Working people with disabilities - Individuals with disabilities who are working and otherwise eligible for SSI-related Medicaid except that their net income:

² The recommendation in this matter was originally provided to the Board in August of 2003. That recommendation was that PATH should be reversed because the regulation that it originally relied on, M402, contained no provision prohibiting the use of earnings and SSDI disregard for spenddown purposes. The matter was never heard by the Board because the parties requested several continuances. In February of 2003, PATH asked for reconsideration, submitting an entirely new argument and the matter was remanded to the hearing officer at that time to consider the new arguments and any response that might be submitted by the petitioner.

³ The new regulations will be used in this recommendation as they came into effect during the petitioner's six month certification period, contain no new provisions (only a reorganization of old ones), and the petitioner has continued to receive benefits pending this appeal far past the period of their enactment.

- (i) is below 250 percent of the federal poverty level associated with the applicable family size; and
- (ii) does not exceed either the Medicaid protected income level for one or the SSI/AABD payment level for two, whichever is higher, after disregarding the earnings and up to \$500 of social security disability insurance benefits (SSDI) of the individual working with disabilities.

Earnings and SSDI shall not be disregarded for applicants with spenddown requirements.⁴ (Emphasis supplied.)

The "spenddown" methodology is a way of allowing persons who no longer meet a category of eligibility, in this case the working disabled category, solely because they have income in excess of the prescribed maximum for eligibility in that category. These persons are called "medically needy" and can be found eligible according to the methodology found in other regulations which provide, in pertinent part,:

The following spenddown . . . provisions apply to individuals requesting SSI-related . . . Medicaid. . . They are calculated using an accounting period of . . . six months.

When a Medicaid group's total countable income or resources exceed the applicable income or resource

⁴ The final requirement in bold was not contained in the original M200(16) which was superseded by this regulation. However, that same requirement was found in another regulation in effect at that time, M240, which provided that "[I]n determining eligibility for an assistance group with a working disabled member, earnings and SSDI shall not be disregarded when the group must meet a spenddown requirement." That regulation was also superseded on August 1, 2003 but the quoted restriction was folded into the current cited regulation above.

standard for eligibility after allocations are made, and exclusions and disregards are applied, a person requesting Medicaid may use spenddown provisions to attain financial eligibility. . .

M400

Individuals who pass all nonfinancial eligibility tests may qualify for Medicaid coverage by spending down the income or resources in excess of applicable maximums. . .

Spending down is the process by which a Medicaid group incurs allowable expenses to be deducted from its income or spends resources to meet financial eligibility requirements. . .

M410

An income spenddown is the amount of qualifying medical expenses a Medicaid group must incur to reduce its income to the maximum applicable to their Medicaid coverage category. The department determines that a person requesting Medicaid with excess income has passed the income test upon proof that the Medicaid group has paid or incurred medical expenses . . . at least equal to the difference between its countable income and the applicable income maximum for the accounting period.

M412

The petitioner in this matter is a working disabled person with gross income under 250 percent of the poverty level. He does not dispute, however, that when his entire earnings and \$500 of his Social Security income is disregarded he still has income of \$773 which is \$7 above the SSI

protected income level which during 2003 was \$766 per month.⁵ He agrees that under PATH's rules at M200.24 (see above) he is no longer categorically eligible for Medicaid as a working disabled person.

The petitioner's argues, however, that his countable income for the medically needy spenddown program should have been calculated using the deductions found in the working disabled program, namely, the exclusion of all of his earnings and \$500 of his Social Security income. In that way, his countable income under the spenddown program would be \$7 per month, making the total medical expenses he would have to incur over a six month period \$42 in order to be placed back on the program as opposed to \$4,459.50 if those deductions are not used. PATH counters that using those deductions is expressly forbidden by the last line (found in bold above) of M200.24. The petitioner argues that PATH is forbidden by the legislature from adopting that line prohibiting the use of those deductions in the spenddown program.

⁵ The PIL for one person went up on January 1, 2004 to \$783 per month. If the petitioner's income has remained the same, he may be categorically eligible for Medicaid as of that date.

The petitioner relies on the language found in the appropriations act setting aside the money for the working disabled program:

(h) Of the above special funds, \$46,000 shall be used to extend Medicaid eligibility to disabled workers in families whose income is less than 250 percent of the federal poverty level and who would be considered to be receiving supplemental security income (SSI) except for earnings in excess of SSI income limits that are attributable to savings from earnings. In addition, up to \$500 per month of the disabled worker's Social Security disability insurance payments shall be disregarded in the Medicaid eligibility determination. The commissioner shall have the authority to establish program premiums and other cost-sharing charges by rules for such coverage. These funds shall be matched with available federal funds.

Omnibus Appropriation, Public Act 62,
Section 121 (H.554), 1999

The petitioner argues that the plain language in the above appropriations act means that his earnings and \$500 from his Social Security payments must be disregarded from every kind of Medicaid eligibility determination, including a determination of his eligibility under the medically needy spenddown program.

PATH, relying on a decision of the federal court of appeals in DeJesus v. Perales, 770 F.2d 316, 326 (2nd. Cir. 1985), argues that the spenddown calculation is not part of the basic standard to be employed in Medicaid eligibility but rather a method by which persons who do "not meet the standard

can nonetheless bring its excess income down to the level required for inclusion in the Medicaid program." Thus, the term "Medicaid eligibility determination" in the above legislative directive means only Medicaid eligibility under a categorical program, and not the methodology used to find persons eligible as medically needy who do not meet the categorical standards.

PATH further relies on language in the code of federal regulations at 42 C.F.R. § 435.811(a) which requires that "to determine the eligibility of medically needy individuals, a Medicaid agency must use a single income standard" as a justification for not employing special deductions for working individuals who are seeking to meet requirements through a spenddown which it does not use for other SSI-related individuals. Furthermore, the code of federal regulations specifically requires that "the agency must deduct the following amounts from income to determine the individual's countable income [for medically needy programs] . . . [f]or aged blind or disabled individuals in States covering all SSI recipients, the agency must deduct amounts that would be deducted in determining eligibility under SSI." 42 C.F.R. § 435.831. These regulations seem to require that SSI disabled and SSI disabled working persons be subject to the same

deductions when they try to meet Medicaid standards through the spenddown.

The petitioner in his written arguments does not discuss any of these justifications offered by PATH for excluding the working disabled deductions from the medically needy spenddown program. As PATH has shown both that it has reason to interpret the state legislative directive as including deductions only in the categorically needy program and that it has reason under the federal regulations to believe that it cannot use different methodologies with regard to SSI-related persons, working or not, in calculating spenddowns, it must be found that its regulation excluding working deductions in the spenddown program is valid. Thus, the Board must affirm its decision to establish the petitioner's spenddown without the use of deductions available in the categorical working disabled program.

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