

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,422
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying his eligibility for payment of his Medicare premium under its Medicaid "buy-in" program due to excess income.

FINDINGS OF FACT

1. The petitioner receives retirement benefits through the Social Security Administration of \$939.70 per month. He has \$58.70 per month deducted from that benefit for payment of his Medicare Part B benefits. The petitioner applied in February of this year for payment of his Medicare premium by PATH pursuant to its Medicare "buy-in" program.

2. The petitioner was notified on March 12, 2003 that his income was in excess of program maximums. His eligibility was calculated by disregarding \$20 from his unearned gross Social Security Income and comparing the result, \$919.70, to the program maximums for an individual in both the Specified Low Income Beneficiary (SLMB) and Qualified Medicaid

Beneficiary (QMB) programs. PATH determined that his income was in excess of the maximums for both programs which are \$898 and \$749 respectively.

3. The petitioner appealed that decision. He disagrees with PATH's decision for two reasons. The first is he believes that his net income after the Part B Medicare payments is deducted, or \$881, should have been used, not his gross income. The second is he believes that his income should have been compared to the income for a couple, not an individual. He lives with his "significant other" in Guatemala who is a citizen of that country, and is not aged or disabled. She has never been to Vermont. He believes his financial situation should be considered that of a couple, even though they are not married because they are a "family unit".

ORDER

The Department's decision is affirmed.

REASONS

"Couple" is defined in the Medicaid regulations as follows:

A Couple: an individual and his/her spouse who are both applying for assistance and have lived together within the previous six months. Each member of the couple must

pass the tests or relationship to SSI/AABD¹, citizenship and Vermont residence independent of each other. If both members of a couple apply but only one passes all of these tests, that member's application will be processed as an individual Medicaid assistance unit. . . .

M200.1

The petitioner and his significant other are not married so they are not spouses. The petitioner has argued that Vermont civil union laws would prevent discrimination against unmarried couples. That, however is a wrongful view of that law which allows same gender couples to form civil unions and be treated equally with married couples. 15 V.S.A. 1204. Unmarried same gender partners would not be considered a "couple" under the above regulation because they have not been through a civil union. PATH was correct in determining that the petitioner and his Guatemalan partner are not a "couple" within the meaning of the above regulation because they are unmarried.

The petitioner indicated at the hearing that he was considering marriage with his partner and might reapply at that time. The petitioner should be aware, however, that under the above regulation, he can only apply as a "couple" if his spouse is also aged, disabled or blind, is a United States citizen and is a resident of Vermont. These are all

¹ This means that the person must be either aged, blind or disabled.

considerable obstacles for the petitioner as his prospective spouse is a young woman who is neither a United States citizen nor a resident of Vermont. In that event, marriage alone would not allow the petitioner to be considered a "couple" under the Medicaid regulations because both members of the couple have to meet eligibility requirements. In that event, he would still be processed as an individual.

PATH correctly considered the petitioner an individual for purposes of his application. PATH also correctly used the petitioner's "gross income" as its regulations require the use of the "gross payment from unearned income unless a deduction is made for an expense(s) incurred as a prerequisite for receiving the income." M242. The petitioner's deduction from his income is not a prerequisite to his receiving the income but is rather a deduction to pay for his medical insurance. His medical insurance payment is not deducted from his income under the regulation and should not be as the petitioner is asking PATH to make that same payment on his behalf. In that case the money he now pays out would be available to meet his other expenses. PATH did allow the petitioner a \$20 standard disregard from his unearned income, for a countable amount of \$919.70 per month. M243.1. There are no other disregards for which he petitioner is eligible.

Under the Medicaid program, a person who is eligible for Medicare Part A may have his Part A and Part B premiums, deductibles and co-insurance paid through its "Qualified Medicare Beneficiary" (QMB) "buy-in" program if that person's income is below the maximum income amount. M200 p. 7. The maximum income for an individual in that program is \$749 (for a couple it is \$1,010). P2420B(2). A person who has income above that limit can have only his Part B premiums paid through the Medicaid "Specified Low-Income Medicare Beneficiary" (SLMB) "buy-in" program if that person's income is below that program's maximum amount. M200 p.7. The maximum income for an individual in that program is \$898 (\$1,212) for a couple. The petitioner's countable income of \$919.70 per month is in excess of the amounts for an individual in both of these programs. PATH was thus correct in determining that the petitioner is not eligible for the Medicaid "buy-in" program and its decision must be upheld by the Board. 3 V.S.A. § 3091(d) and Fair Hearing Rule 17.

#