

received Medicaid as a household of one person, even though he and his wife have been married since the year 2000. At the hearing in this matter, held on January 16, 2004, the Department could not explain this apparent error.

ORDER

The Department's decision is affirmed.

REASONS

The Medicaid regulations require that the resources and incomes of spouses who live together be combined and compared to the resource and income maximum levels for households of two persons. Medicaid Manual (MM) § M222.2. In determining an applicant's eligibility, if net household income over a six-month period exceeds the "protected income level" (PIL) under the regulations he is not eligible for Medicaid until he has incurred (not spent) medical expenses in that six-month period in the amount that his net income exceeds the PIL. MM §§ 420 et seq. This is called the "applied income" or "spenddown" amount. In this case, the Department determined that the petitioner's applied income is \$6,530 for the 6-month period beginning December 1, 2003. As noted above, the petitioner does not dispute the amounts of his and his wife's incomes as determined by the Department. Based on this income the Department's calculation of the petitioner's applied income appears to be correct.

resources.

More serious, however, in terms of the petitioner's eligibility are his wife's resources. As noted above, the petitioner does not dispute that these total over \$7,000, which is well in excess of the program maximum of \$3000. MM § 340. Although it is not clear why the petitioner continued until recently to receive Medicaid after he and his wife were married in 2000, the above regulations are clear that both his and his wife's income and resources must be considered in determining his eligibility. While the sudden loss of his Medicaid will be drastic, it is clear that in the long run the petitioner substantially benefited from the Department's apparent mistake because the Department is unlikely to attempt to recoup the three years of benefits he received after he was married.

At any rate, inasmuch as the Department's decision is in accord with the pertinent regulations, the Board is bound by law to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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