

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 19,002
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) terminating Medicaid coverage for her two children under the Dr. Dynasaur program due to excess family income. The issue is whether the active-duty military pay of the petitioner's husband can be excluded from household income in determining eligibility.

FINDINGS OF FACT

1. Prior to March 2004 the petitioner's children were eligible for Medicaid under the Dr. Dynasaur program based on the petitioner's husband's income being below the maximum for that program.

2. On an application dated March 16, 2004 the petitioner indicated that her husband's gross earned income had increased to \$5,300 a month due to his National Guard unit being called to active duty and his being deployed in Iraq. Based on its

regulations governing allowable deductions the Department determined the family's net monthly income to be \$5,221.91.

3. In a notice dated March 23, 2004 the Department notified the petitioner that Dr. Dynasaur coverage would end for her two children due to excess income. The petitioner does not dispute either the Department's calculations of her family's net income or that this income is in excess of the program maximum of \$4,713 a month.

4. The petitioner also does not dispute that her children have medical coverage as a benefit of her husband's military service. However, the petitioner maintains that one of her children requires special medical services that are provided by a doctor who is not covered under her husband's federal military managed care plan network.

ORDER

The Department's decision is affirmed.

REASONS

Under the federal and state regulations governing the Department's Dr. Dynasaur program all household income must be considered in determining the eligibility of any child within that household. W.A.M. § 3001.32, 42 C.F.R. § 435.601(b). Although the Department operates the Dr. Dynasaur program

under a waiver from the federal government, currently there are no provisions in the regulations specifying the separate treatment of military pay.¹ Currently, the maximum income allowable for a family of four is \$4,713 a month. The petitioner's family income of \$5,221.91 is well in excess of this amount.

Although there may be a sympathetic *policy* argument to allow coverage based on the petitioner's particular circumstances, inasmuch as the Department's decision in this matter is clearly in accord with the regulations currently in effect, the Board is bound by law to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

#

¹ Based on the household's income, each child was given a "spenddown" amount of \$6,233.82 for the six-month period beginning May 1, 2004. This means that each child could become eligible for Medicaid if she incurs medical expenses in excess of this amount during the six-month period. Any non-covered medical expenses incurred by either child during that time can be applied to this amount.