

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 19,197  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision by the Department of Children and Families Economic Services (DCF) that he is not eligible to receive Dr. Dynasaur benefits on behalf of his son because they are already paid to his son's mother. The petitioner's ex-wife was joined in this matter and the facts are undisputed.

FINDINGS OF FACT

1. The petitioner is the father of two children, T.C. and R.C. He and his ex-wife have joint custody and equal visitation with the two children by court decree. By court decree, the petitioner is required to provide health insurance for R.C. and his ex-wife is responsible for the health insurance of T.C.

2. Some time ago, the petitioner's ex-wife applied for Dr. Dynasaur benefits for the two boys. The petitioner's ex-wife is able to obtain eligibility for T.C. only if she includes R.C. in the group as well because of increased income

limits for a family of three. She does not have to pay a premium for her insurance and does not charge her ex-husband anything for R.C.'s coverage under Dr. Dynasaur. She also has private insurance through her work for both boys for which the petitioner pays R.C.'s share.

3. The petitioner applied for Dr. Dynasaur for R.C. under his own name. Although he understands that R.C. is eligible under either parent and gets the same benefits no matter who applies for them, he wants the Dr. Dynasaur benefits in his name so he will not run afoul of the court order. DCF says that it properly put R.C. under the mother's name because she applied first and was eligible but leaves it to the Board to decide whether the coverage should be switched to the petitioner's name.

4. The petitioner's ex-wife agreed at hearing that she does not consider the petitioner to be in violation of the court order on insurance both because he has contributed to the payment for R.C. under her private policy and because R.C. is covered without cost to her under the Dr. Dynasaur provisions. She opposes splitting up the boys for eligibility purposes because it may make T.C. ineligible. She stated that she considers her ex-husband to have lived up to his obligations under the court order regarding insurance because

he was willing to apply for Dr. Dynasaur. She also stated that if she ever wishes her ex-husband to take over the Dr. Dynasaur benefits, she will notify him in writing of that desire.

ORDER

The decision of DCF to keep the Dr. Dynasaur benefits under the petitioner's ex-wife's name is affirmed.

REASONS

Because the petitioner and his ex-wife have joint custody of their children and they live equally in both households, either parent may apply for Dr. Dynasaur benefits for his/her children. W.A.M. § 3001.31. However, a child may not be insured twice and when a dispute arises between two parents with equal rights, DCF and the Board must find that one parent has a paramount right based on some factor. See Fair Hearings No. 5,553 and 11,182. In this case, the fact that the petitioner has been ordered to keep insurance on his son R.C. would militate in favor of his being the parent with a paramount right to apply for these benefits. However, because the program is structured so that larger households have higher eligibility limits, (see W.A.M. § 3001.3, P-2420(B)),

it makes sense to keep both the children in the same unit in order to maximize their eligibility for benefits.<sup>1</sup>

The petitioner does not disagree with this concept but is fearful that he may be found in contempt of court if the benefits are not in his name. His ex-wife has agreed that she would not ask to find him in contempt because of this situation. The parties were urged to memorialize this situation in writing and to discuss with their attorneys whether it is necessary to notify the court as to how they have decided to carry out its order. As it stands, DCF's award of the Dr. Dynasaur benefits to the petitioner's ex-wife appears to be in the best interests of both the children and to satisfy the parties' and the court's concern that the children be covered by health insurance.

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<sup>1</sup> For example, a family of three can make almost \$800 per month more than a family of two under the eligibility guidelines. See P2420(B).