

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 19,259
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision of the Department of Children and Families Economic Services (DCF) finding him responsible for a patient share amount of \$242 from his gross income to pay for his home based Medicaid waiver services. The issue is whether the petitioner's wife's income is included in the computation of the petitioner's patient share. The following facts are not in dispute.

FINDINGS OF FACT

1. The petitioner is a recipient of Medicaid waiver services, a home-based form of long-term care. He has income of \$1,348.60 a month.
2. The petitioner's wife is his primary in-home care provider. Prior to May 2004 the petitioner's wife received no remuneration for providing these services. Based on the household's combined income and expenses prior to May 2004 the petitioner did not incur a patient share deduction from his income, and all his income was deemed available to meet his

and his wife's living expenses. All his medical expenses were covered by Medicaid.

3. In May 2004 the petitioner's wife began receiving salaried compensation as the provider of the petitioner's Medicaid waiver services. In June 2004 the Department conducted a routine periodic review of the petitioner's financial eligibility for Medicaid waiver services. Based on his wife's additional income (about \$1,064 a month) as the provider of the petitioner's Medicaid waiver services the Department determined that effective July 1, 2004 the petitioner was responsible for a patient share amount of \$242.29 a month from his income toward these services.¹

ORDER

The decision of the Department is affirmed.

REASONS

Individuals who are found eligible for in-home Medicaid waiver services have their financial eligibility for Medicaid determined in essentially the same manner as a recipient of institutional long-term care. See W.A.M. §§ M200.23(b) and

¹ It appears that the petitioner's wife is paid as a state employee as the provider of the petitioner's in-home care services. It is presumed that Medicaid reimburses the state for all or part of her salary. If the Department's decision in this matter is upheld, it is presumed that the

M401.2. As a general matter, all the income of a recipient of long-term care services after certain specified deductions is considered available to contribute to long-term care expenses. M430. This is called the "patient share" amount. However, under the regulations recipients of long-term care who have a spouse living in the community are allowed to "allocate" a certain portion of their patient share to meet the financial needs of their community spouse. See M432.3 *et seq.* This so-called "spousal allocation" is determined by regulation based on the income and expenses of the recipient and the community spouse. M432.31. Medicaid reimburses providers of long-term care for all covered medical costs over and above the recipient's patient share.

In this case there is no dispute that before the petitioner's wife began receiving payment for providing the petitioner's in-home care, the amount of his allowable deductions and his wife's spousal allocation exceeded his and his wife's combined incomes. Therefore, the petitioner was not assessed a patient share from his income. However, when his wife began receiving salaried payment for her services the

petitioner's wife will receive \$242.29 less per month in salary from the state.

Department calculated a patient share for the petitioner of \$242.29 a month.

Based on worksheets provided by the Department, which are based on information provided by the petitioner and his wife regarding their income and expenses, the petitioner does not dispute that the Department correctly calculated his patient share according to its regulations. There does not appear to be any provision in the regulations allowing special treatment of income of a community spouse that is earned for providing medical care for the recipient spouse. Therefore, inasmuch as the Department's calculations appear to be accurate and in accord with the above regulations, the Board is bound to uphold the decision. 3 V.S.A. 3091(d), Fair Hearing Rule 17.

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