

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 19,327
)
Appeal of)

INTRODUCTION

The petitioners appeal a decision by the Department for Children and Families, Economic Services Division, (DCF) finding that they are not eligible for the Vermont Health Assistance Program (VHAP) because they had other insurance during the twelve months prior to their application. The issue is whether the petitioners lost their health insurance due to loss of employment.

FINDINGS OF FACT

1. The petitioners are a husband and wife who live with their infant son and are residents of Vermont.

2. The husband has worked as a paraprofessional educator (teacher/counselor) in a special needs school for some six years. He negotiates a contract annually for his employment for the coming school year.

3. During the 2003 to 2004 school year (and several years before that as well), the petitioner worked a thirty to forty hour week. His employer provides health insurance for

employees who work twenty-eight hours per week or more. During this school year (2003-2004), the petitioner and his family were covered by his employer's health insurance.

4. During the spring of 2004, the husband began to explore obtaining his master's degree in counseling which would help him to advance in his profession. The master's degree would require him not only to attend classroom meetings but also to participate at an internship at a public school for two days per week. If he participated in the program, he could only contract for working three days, or twenty-four hours, per week with his present employer. If he could only work twenty-four hours, he would lose his employer provided health insurance. The graduate school he was planning to attend does not provide health insurance for students.

5. The husband did not want to spend the coming year without health insurance, particularly because he and his wife were expecting a baby in August of 2004. In May of 2004, he called DCF to ask about his eligibility for VHAP. He gave the DCF worker complete information about his present and proposed situation, including his household composition, income and resources. He was advised by the DCF worker that

he would be eligible for VHAP if he reduced his hours in the next year's contract.

6. Before making a final decision to work only three days per week during the next school year, the petitioner called DCF again some days later and gave them the same information.¹ He was given the same advice, that he would be eligible. The petitioner would not have chosen to take the three day a week contract with his school and go to graduate school if he had known he would not have been insured. He could have completed the program over the course of two years, instead of one, and worked for four days with his employer if he had realized that he would have had no insurance by doing the year long course.

7. Based on the information he got from DCF that his family would be covered by the VHAP program, the husband enrolled in the master's program and committed to do the two day per week internship. He entered into a three day per week contract for the 2004-2005 school year with his employer.

¹ Records of DCF show that the husband called on April 19, 2004, May 10, 2004, May 17, 2004 and August 18, 2004. Although tapes are made of phone calls, no records of the content of these calls could be made available by DCF.

8. The petitioners' health insurance under the 2003-2004 school contract ended on July 30, 2004. The wife had previously applied for and had been granted Medicaid as a pregnant mother. The petitioners applied for VHAP benefits on September 23, 2004 after the birth of their son in August.

9. On September 28, 2004, DCF found the petitioners' child eligible for the Dr. Dynasaur program but found the husband and wife ineligible for VHAP benefits. They were determined to be ineligible because they had other insurance during the twelve months prior to the date of application which ended for some other reason than "loss of employment."

10. DCF took the position that the petitioners do not fall under the exception to the regulation for those who lost their health insurance due to "loss of employment." That regulation, in DCF's view, applies to those who either voluntarily or involuntarily totally lose the employment which provided health insurance to them. It does not, in its view, apply to those who only lose part of their employment, even if that partial loss results in a loss of health insurance.

ORDER

The decision of DCF is reversed.

REASONS

The VHAP program was instituted by the legislature "for the purpose of providing expanded access to health care benefits for uninsured low-income Vermonters." DCF has adopted regulations which define who those uninsured persons are for purposes of the program:

Uninsured or underinsured

Individuals meet this requirement if they do not qualify for Medicare and have no other insurance that includes both hospital and physician services, and did not have such insurance within the 12 months prior to the month of application unless they meet one of the following exceptions specified below.

- (a) Exceptions related to loss of employer-sponsored coverage

Individuals who had coverage under another health insurance plan within the 12 months prior to the month of application meet this requirement if their employer-sponsored coverage ended because of:

- loss of employment;
- death of the principal insurance policyholder;
- divorce or dissolution of a civil union;
- no longer qualifying as a dependent under the plan of a parent or caretaker relative; or
- no longer qualifying for COBRA, VIPER or other state continuation coverage.

. . .

VHAP 4001.2

The above regulation sets up a presumption that persons who dropped their health insurance during the twelve months

before application for VHAP, did so to become eligible for VHAP benefits and are not, therefore, truly in need. The regulation contains a specific exception for persons who receive health insurance benefits through their employers. This exception recognizes that employers and employees make decisions about work needs (and should be free to make those decisions) that incidentally impact the provision of health insurance. DCF agrees that "loss of employment" in the above regulation means both involuntarily loss caused by the employer and voluntarily loss caused by the employee. DCF does not argue that someone is required under the above regulation to keep a job in order to maintain health insurance.

In this matter, the husband had an employment contract for the 2003-2004 school year which provided him with health insurance. That contract ended on July 30, 2004 at which time the petitioner "lost" that employment. The petitioner lost the health insurance which went along with that contract at the same time. Therefore, when the petitioner applied for VHAP in September of 2004, he was without insurance because he had "lost" the employment which gave him the insurance. As such, the petitioner should not have been denied VHAP benefits as he met the exception for "loss of employment"

found in the above regulation. DCF did not follow its own regulation in this matter and thus its decision is reversed.

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