

with that from her spouse and United Counseling Services. She stated that her husband drove her to appointments and shopping trips. When asked whether she could care for herself well enough that she did not get lost or hurt herself or someone else, the petitioner replied "not applicable".

3. The petitioner's physician agreed with the petitioner's self-assessment adding that she cannot remember to take her medications and that she needs supervision due to frequent seizures.

4. The petitioner's forty-eight year old husband provided a physician's report to DCF showing that he was not able to work either full-time or part-time due to mental retardation, a poorly controlled seizure disorder, asthma and chronic tendonitis. The petitioner has applied for disability benefits with the Social Security administration but has been denied.

5. Based on this information DCF issued a denial letter to the petitioner on October 8, 2004 saying that she was ineligible for \$216 per month in benefits because the services she required "are those reasonably performed by a spouse." The petitioner appealed that decision.

6. At hearing the petitioner and her husband said that it was a mistake to have checked the box as "not applicable"

that asked if the petitioner needed supervision to keep from hurting herself. Her husband says that he is nearby 24 hours per day, seven days per week, except when he is out gathering cans and bottles, to help her out and that without his supervision she could hurt herself.

7. The petitioner has a case manager at the local counseling service who handles all her funds. The case manager testified that the counseling service tracks and monitors the petitioner's medication through the Medicaid waiver program and can provide any service the petitioner's physician says that she needs at home including continuous supervision due to seizures. Although the case manager speaks with the petitioner every day, she was unaware that her physician had said she needs supervision due to seizures and intended to contact him about that assessment. She did not feel the petitioner's husband was capable of attending to her medical needs. The testimony of the case manager is found to be credible.

ORDER

The decision of DCF is affirmed.

REASONS

An individual like the petitioner's forty-eight-year-old spouse who is living in the household with her and is not eligible himself for SSI nor paid as a caretaker by the state disability agency may qualify for essential person benefits if he shows:

. . .

4. . . . s/he furnishes specific care listed at 2751.1 or services listed at 2751.2 that:
 - a. the applicant/recipient cannot perform and
 - b. would have to be provided even is he were not living in the applicant/recipient's household.

5. . . . meets one of these two criteria:
 - a. S/he provides at least one medically necessary personal care service listed at 2751.1(a). An individual's ability to work outside the home is not considered when one of these services is medically necessary and provided by the essential person.
 - b. S/he provides at least one of the medically necessary personal care services listed at 2751.1(b) and is unable to work outside the home.

An applicant/recipient or spouse who meets either of the criteria below shall be determined unable to work:

 - (1) S/he has a physical or mental condition(s) that precludes work and that has been documented in accordance with department standards. The department will consider an individual unable to work if currently unable to work to work in any type of

employment due to physical or emotional problems that have lasted or presumably will last at least 30 days. The condition must be verified by a signed statement from a physician or licensed practitioner whose services would be covered under Medicaid were the AABD-EP applicant a Medicaid recipient. The department shall pay the reasonable expense of required medical examinations but may require, and pay for, a second opinion.

(2) [Not applicable here.]

(3) [Not applicable here.]

W.A.M. § 2751

Of the medically necessary personal care services listed at 2751.1(a) and (b), the petitioner has two: either (a)(5) or (b)(3) "physical assistance taking medications" several times per day, and (a)(7) "general supervision of physical well-being due to a specific diagnosis of treatment disorder." Under the above regulation, the petitioner's spouse would be eligible for essential person benefits but for the fact that the petitioner's spouse is not the one who furnishes the specific care to her as required by the regulations at W.A.M. § 2751(4) set forth above. All of the medically necessary personal care services are furnished to the petitioner through the local mental health counseling center by the Medicaid waiver program. Therefore, the petitioner is not in need of the services of an essential

person and cannot receive benefits for her spouse under this program.

DCF was correct in denying benefits under its regulation and must be upheld by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17. The petitioner's spouse is advised that if he has no money for his general living expenses, he should apply for General Assistance and also seek assistance through legal aid with appealing his SSI denial as his physician appears to support his disability claim.

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