

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 19,625
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Economic Services denying the petitioner's husband a spousal allocation from the family's income in determining the amount of her husband's patient share of his payments for long term care under Medicaid. The issue is whether the Department correctly determined the petitioner's income according to the pertinent regulations. The following facts are not in dispute.

FINDINGS OF FACT

1. The petitioner lives in her home in the community and is employed. Her husband resides in a nursing home.
2. The petitioner's gross income from employment is about \$2,700 a month.
3. The current guideline to qualify for a community spouse allocation from patient share is 150 percent of federal and state poverty guidelines, which is presently \$1,598 for a two-person family.

ORDER

The Department's decision is affirmed.

REASONS

The Medicaid regulations regarding the determination of a long-term care resident's patient share amount require that the income of both the resident and his spouse be included. W.A.M. § M243.51. When the resident's spouse lives in the community, the amount of the family's income that is payable to the nursing home as the resident's "patient share" is determined based on the combined gross incomes of the resident and his community spouse. § M431.2. Currently such a family qualifies for a "community spouse deduction" from gross income only if that income is below 150 percent of federal poverty level. § M432.31. That level is currently \$1,598 for a family of two persons. § P-2420B. As noted above, the petitioner does not dispute that her gross income is well in excess of this level.

Unfortunately, the regulations do not allow the Department to consider the needs and expenses of the community spouse in determining the family's countable income and deductions. Inasmuch as the Department's decision in this matter is in accord with the applicable regulations, the

Board is bound by law to affirm. 3 V.S.A. § 3091(d), Fair
Hearing Rule No. 17.

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