

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 19,864
)
Appeal of)

INTRODUCTION

The petitioners appeal a decision of the Department for Children and Families, Economic Services finding them no longer eligible for Vermont Health Access Program (VHAP) benefits. The issues are whether the petitioners' household income exceeds the program maximum and whether the petitioners should have received continuing benefits pending this appeal.

FINDINGS OF FACT

1. The Department notified the petitioners in June 2005 that their continuing eligibility for VHAP was subject to periodic review. On June 21, 2005 the petitioners submitted a review application, which did not include current information about their income.

2. On June 28, 2005 the Department sent the petitioners a request for verification of their income. The notice stated that if the petitioners did not submit the requested

information by July 12, 2005, their eligibility for VHAP would close.

3. When the Department did not receive the requested information by July 12, on July 13, 2005 it sent the petitioners a notice stating that their VHAP would end on July 31, 2005 due to their failure to provide verification of their income.

4. On July 27, 2005, four days before the noticed date of closure, the Department received another application from the petitioners that included complete information about their income.

5. On August 1, 2005, the Department sent the petitioners a notice informing them that their application for VHAP was denied due to excess income. The petitioners filed the instant appeal on August 5, 2005, and requested that their VHAP eligibility be continued pending the outcome of this hearing.

6. A hearing was held by phone on August 25, 2005. At that hearing the petitioners did not dispute the Department's determination that their combined income from wages and unemployment benefits was \$2,165 a month, which is well in excess of the VHAP maximum of \$1,604 for a two-person household.

7. However, the Department represented that it had not continued the petitioners' benefits after July 30, 2005 because the petitioners had not provided the verification of their income prior to July 12, as requested.

8. At the hearing the petitioners stated that their earned income was subject to fluctuation. They were advised to reapply for VHAP if their income falls below the program maximum.

ORDER

The actions of the Department is modified. The decision dated August 1, 2005 that the petitioners were ineligible due to excess income is affirmed. However, the July 13, 2005 decision closing the petitioner's VHAP effective July 31 due to failure to provide verification is reversed. This will result in the petitioners being found eligible to have received continuing benefits pending their appeal of both of the Department's decisions in this matter.

REASONS

Under the VHAP regulations, spouses living together are considered as a household, and all income of eligible household members is included as countable income for each household member's eligibility. W.A.M. 4001.81(c). For

employees, the only deduction allowed is a \$90 standard deduction. It appears the petitioners were allowed this deduction.

There is no dispute that the petitioners have countable income in excess of the maximum for eligibility under the VHAP program for a two-person family, which is \$1,604 a month. P-2420 B. If applicants have income above this amount, they cannot be found eligible for that program. W.A.M. 4001.83 and 4001.84. Thus, the Department's decision finding the petitioners ineligible for VHAP based on their July 27, 2005 application must be affirmed.

However, the Department should not have terminated the petitioners' eligibility for VHAP pending their appeal of the Department's decisions. W.A.M. § 4002.31 states in part:

A review of eligibility will be completed before the end of each certification period to assure uninterrupted coverage if the individual remains eligible (and) complies in a timely manner with review requirements. . . An individual who fails to comply timely with review requirements . . . shall receive a termination notice at least 11 days before the termination date. A failure to comply may result in a gap in coverage.

In this case, the Department concedes that the petitioners provided all required information regarding their income four days prior to the date their benefits were to close due to their failure to provide requested verification.

Even though this may not have given the Department sufficient time to immediately (i.e., within those four days) render a new eligibility decision based on that information, there is no reason the Department could not have immediately rescinded its decision to close the petitioners' VHAP based on failure to provide verification as soon as it received this information. The Department admits that when the petitioners filed their new application on July 27, 2005, they had effectively purged the pending basis of their closure that was not to take effect until four days later. Until August 1, 2005, the Department had not determined if the petitioners would ultimately remain eligible for the program. In light of this, the Department's decision to close the petitioners' grant *after* the petitioners had admittedly furnished the requested information appears to be based on an unnecessarily harsh and wooden application of § 4002.31, *supra*.

Whatever one's reading of § 4002.31, however, the Board's Fair Hearing Rules require the Department to "respond to any clear indication (oral or written) that a person wishes to present his or her case to a higher authority by helping that person to submit a request for hearing. . . ." (Id. Rule No. 1.) In this case there can be no question that the petitioners, by filing an application that included all

the requested verification prior to the date of closure, were in effect also intending to appeal any termination of their benefits that might have been pending on that date. Had the petitioners known that the Department would still close their benefits even *after* they had provided the requested verification, they surely would have filed a formal appeal before the effective date of termination, which would have been sufficient to continue their eligibility pending that appeal. Regardless of the Department's application of § 4002.31, *supra*, the Board need not interpret its own rules to allow the Department to play "gotcha" in resolving a question of timeliness regarding any petitioner's right to continuing benefits pending appeal. It must be concluded that the petitioners herein filed an effective appeal of the Department's July 12, 2005 decision on July 27, 2005. Thus, the Department must allow the petitioners VHAP coverage of any covered medical expenses they incurred prior to the date of the Board's order in this matter.

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