

to provide a copy of his most recent tax filing for 2004 no later than May 15, 2005. The purpose of this request was to determine whether the petitioner was still income eligible.

3. When the petitioner had failed to respond by May 4, 2005, a "second reminder notice" was sent to the petitioner telling him that DCF had not received a response to its request for information made "a few weeks ago". The petitioner was told if he failed to provide the information by May 15, 2005, DCF could not determine if he was still eligible and his health care coverage would end on May 31, 2005. He was also informed in the letter that he could call to ask for help if he had any "problems" completing the application. He was advised to continue to pay his premium bills while his review was pending.

4. The petitioner did not respond to the first or second request letters and did not provide the requested verifications by May 15, 2005. On May 19, 2005, DCF mailed a "health care closure notice" to the petitioner. That notice told him that his coverage would end on May 31, 2005 because he had not given them financial information needed to review his eligibility. He was told in the notice that he could both reapply for coverage and request a fair hearing if he

was dissatisfied with the decision and was given information on how to do both.

5. On May 23, 2005, after receiving the above notice, the petitioner called the VHAP office. The petitioner's regular caseworker was on vacation but another caseworker took the phone call. The petitioner asked for an extension of time to supply the information because his tax preparer was on a two-week vacation and would not return until "next week." He promised to submit the verification "next week" and asked that his health insurance not be allowed to "run out". The caseworker informed the petitioner that the six month certification period could not be extended and would be stopped on May 31, 2005 as stated in the notice but that his benefits could be "reinstated" as soon as the petitioner provided the tax forms. Since the review period was over, he would also have to fill out a new application.

6. The worker sent the petitioner a written note confirming the conversation which provided as follows:

D., I can not extend your review period. Once your application and taxes are received I will process. Thank you.

7. The petitioner did not supply his tax forms or file a new application during the next week. His certification ran out on May 31, 2005. On June 1, 2005, the petitioner

needed treatment in an emergency room due to a chicken bone stuck in his throat. The hospital and attending doctor have waived their fee because of the petitioner's uninsured status. However, the petitioner still owes \$24 to the radiologist and \$500 for the ambulance.

8. The petitioner did not submit a new application form and a copy of his income taxes until June 21, 2005. DCF determined he was eligible again two days later on June 23, 2005.

9. The petitioner did not formally appeal the original May 19 closure letter until August 30, 2005², after he received his medical bills. The petitioner asks that this bill be covered during the gap period because his failure to respond was not purposeful but rather inadvertent and he did ask for an extension. He had no specific explanation for turning in his tax forms almost a month after his call on May 23. In his words, "he does things at the last minute" and "tends to put things off" due to depression and pain which make it difficult for him to concentrate and meet deadlines.

² Although there is more than ninety days between May 19, the date the adverse decision was mailed, and August 30, 2005, DCF did not object to the appeal as untimely because the petitioner apparently believed that his grievance arose on May 31, 2005, the date his VHAP benefits were to have closed. The fair hearing transmission showed that the petitioner understood August 30, 2005 to be the last day he could file an appeal of the original closure decision.

However, the petitioner did not put forth any medical evidence that indicated he was unable to function during the period at issue and the evidence shows that he was able to contact DCF, apparently in response to its closure letter, to discuss his situation.

ORDER

The decision of DCF is affirmed.

REASONS

The VHAP regulations require applicants for assistance to provide information about their situation to the extent that it is "relevant to the tests for eligibility." VHAP 4002.1. There is no question that an applicant's income is an essential "test for eligibility". VHAP 4001.84. Although the petitioner was a current VHAP recipient under a six month certification period at the time of this decision, he was an applicant for a new certification period to begin on June 1, 2005.

The regulations attempt to re-determine a recipient's eligibility before the current certification period runs out in an effort to prevent a gap in coverage:

A review of eligibility will be completed prior to the end of each certification period to assure uninterrupted coverage if the individual remains eligible and complies

in a timely manner with review requirements and the payment of any required premium. An individual who fails to comply timely with review requirements and the payment of any required premium shall receive a termination notice mailed at least 11 days before the termination date. A failure to comply timely may result in a gap in coverage.

VHAP 4002.31

The regulations specifically provide that when services are to be terminated, a written notice must be sent informing a recipient of his or her right to appeal. VHAP 4002.31 and 4002.6. Furthermore, "an individual who has been dropped from the VHAP program must file a new application for the program before eligibility can be re-established." VHAP 4002.31. DCF must make a decision within thirty days of receipt of the new application (VHAP 4002.2.), but in practice can and does make decisions more quickly as is evidenced by the two day turn around in this case once the application was actually filed.

There is no doubt that obtaining paperwork can be a difficult process for a person experiencing depression or pain. The evidence in this matter, however, shows that DCF had to have the petitioner's new tax filings by May 15 to guarantee the re-calculation of his eligibility for the next certification period without a gap. The petitioner was given several weeks to get the information in and was told

repeatedly in writing that May 15 was the deadline to avoid a gap between certification periods. The letter of May 4 even advised him to call in if he was having "any problem" completing the application. When there was no response to that letter, DCF, following its regulations, sent the petitioner a written notice more than eleven days before the closure was to take place which contained a full discussion of his appeal rights.

The petitioner's first response to all of this correspondence was a call to the office more than a week after the deadline passed to say he would get the information sometime the following week and to ask for "an extension." The worker correctly told him at that point that the current certification period could not be extended and would be closed on May 31, 2005.³ However, she also correctly and helpfully informed him that he should reapply to start a new certification period as soon as he got the needed income verification. What she could no longer guarantee was that DCF could do the review in time to prevent a gap between certification periods, although it was clear that she was

³ If the petitioner had actually provided the information within "the next week" as he had said he would, this case might have come out differently as DCF may have still had time to either complete the "review" of his case or to take a new application and re-determine his eligibility before the old certification period ran out.

willing to process a new application and try to avoid that problem.

Although the petitioner apparently understood this information, he did not bring in the tax verification the next week as he said he would but rather waited almost a month to submit it and to file a new application. Although it is quite unfortunate that the petitioner did not submit the tax forms and new application (which ultimately showed he was, indeed, financially eligible) in time to avoid the gap, the blame for this gap, nevertheless, rests with the petitioner. The petitioner clearly understood his obligations to verify his income but neglected to provide this information without good cause and despite DCF's repeated prompting to do so. DCF needed the financial information to determine eligibility and gave the petitioner ample notice and repeated opportunities to avoid a gap in coverage consistent with its regulations. For that reason, the Board is constrained to uphold the result regardless of the hardship it may now cause to the petitioner. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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