STATE OF VERMONT

HUMAN SERVICES BOARD

In re	) Fair Hearing No. M-09/14-967
	)
Appeal of	)

INTRODUCTION

Petitioner appeals the denial, by the Department for Children and Families ("Department"), of certain medical deductions in the calculation of her income for the purposes of determining her monthly 3SquaresVT benefits. The following facts are adduced from hearings held on October 15, 2014 and November 13, 2014, during which petitioner's husband, R.C., testified on behalf of petitioner, and copies of Department records and documents from petitioner submitted to the Human Services Board ("Board").

FINDINGS OF FACT

1. Petitioner lives with her husband and receives 3SquaresVT benefits on behalf of her household. Petitioner and her husband are both recipients of Social Security Disability Insurance ("SSDI") and receive their health care through Medicare.

2. Petitioner is an individual with a disability due to mental illness.

3. As a person with a disability, petitioner is eligible to claim a medical deduction from her 3SquaresVT income calculation, in excess of the standard amount set forth in the rules.[1]

4. Based on the Department's calculation of petitioner's countable income, derived by subtracting some medical deductions, the standard deduction and a shelter and utility deduction from the household's SSDI payments, the Department mailed petitioner a Notice of Decision dated September 10, 2014 denying eligibility for 3SquaresVT benefits in September, and granting eligibility for a 3SquaresVT benefit of $16 per month starting October 1, 2014. The Department also mailed petitioner a "3SquaresVT and Medicaid Out-of-Pocket Medical Expenses" form ("Medical Expenses form") for her to verify out-of-pocket medical expenses.

5. On the Medical Expenses form, petitioner sought to deduct the costs of maintenance of her dog, including

[1] *See* Food Stamps Rules § 273.9(d)(3).

$1,280.00 for emergency care[2] and $306.26 for a check-up and medications.[3]

6. Petitioner submitted a letter from her treating psychiatrist in support of deducting the maintenance costs for her dog. The letter states in relevant part, "[petitioner] is receiving treatments for debilitating mental illness. Having a service dog which lives in her home is a part of the therapeutic management of her condition."

7. The Department denied petitioner's request to count the maintenance expenses for her dog as deductions.

8. During the hearing on October 15, 2014, R.C. testified that petitioner's dog requires ongoing medication costing approximately $100 per month.[4]

9. In addition, R.C. submitted a second letter from petitioner's treating psychiatrist, which states in relevant part, "[petitioner] is receiving treatments for debilitating mental illness. Having a psychiatric service dog who prevents and interrupts impulsive behavior is part of the

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[2] No documentation of the emergency care expenses, nor the date they were incurred, was provided.

[3] At hearing, R.C. submitted invoices documenting $240.36 in expenses for the dog which were incurred on May 19 and 27, 2014 and August 1, 2014.

[4] R.C.'s testimony was credible, but as petitioner has requested that ongoing expenses for the dog be counted as deductions, the Department may require verification of such expenses. Food Stamps Rules § 273.2(f).

management for her condition. [Petitioner's] dog is not a pet but a working service animal."

10. R.C. testified that, on the advice of one of petitioner's previous psychiatrists, eleven years ago he and petitioner purchased their dog, and he trained the dog to go to petitioner when she began having symptoms of her disability, including shaking and crying that could precede petitioner harming herself. When the dog was a puppy, R.C. trained him to respond in this way by handing a dog treat to petitioner to give to the puppy when she began having symptoms. R.C. trained the puppy this way for approximately one year, and since then the dog has been responding to petitioner's symptoms by going to her without the need for a treat. The dog is now eleven years old, and has been responding to petitioner's symptoms effectively for more than a decade. R.C.'s testimony is found to be credible.

11. The Department agreed to review petitioner's application again and to consider the second letter from petitioner's treating psychiatrist, but concluded that there is insufficient evidence to show that petitioner's dog is "specially trained" to serve a specific need caused by petitioner's disability. In support of its position, the Department submitted a Policy Memo dated July 2, 1990 from

the Food and Nutrition Service of the United State Department of Agriculture ("FNS") with Index Number 90-20 ("FNS Policy Memo"). The FNS Policy Memo provides for interpreting 7 C.F.R. § 273.9(d)(3)(vii) to include "the costs associated with any animal specially trained to serve the needs of disabled Program participants." The FNS Policy Memo does not provide guidance for determining when an animal has been "specially trained."

12. Based on the evidence in the record, it is found that petitioner's dog is a "specially trained" service animal as contemplated in the applicable 3SquaresVT rules, the applicable federal regulations, and the FNS Policy Memo.

ORDER

The Department's decision is reversed, and the matter is remanded to the Department for a determination of petitioner's eligibility for 3SquaresVT benefits based on the Department's verification of allowable medical deductions for petitioner's dog as of September 1, 2014.

REASONS

The 3SquaresVT program provides financial assistance to eligible individuals and families for the purchase of food. *See* Food Stamps Rules § 273. The benefit level is based on

countable household income minus any applicable deductions. *See* Food Stamps Rules § 273.9(b)-(d).

The Department's regulations provide a limited list of deductions from a household's countable income. One such deduction is, in relevant part,

> That portion of medical expenses in excess of $35 per month, excluding special diets, by any household member who is disabled as defined in 271.2 . . . Allowable medical costs are . . .
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> *****
>
> vii. Securing and maintaining a seeing eye or hearing dog including the cost of dog food and veterinarian bills[.]

Food Stamps Rules § 273.9(d)(3)(vii).[5] FNS has interpreted federal regulations with the same language as the above-referenced rule as follows:

> Question: Is the cost of securing and maintaining these service animals, over and above that covered by an excludable reimbursement, a household expense for which an excess medical deduction is allowed?
>
> Answer: Yes, such expenses, including the cost of food and veterinary care, in excess of $35 per month, constitute an allowable deduction, in accordance with 7 C.F.R. 273.9(d)(3)(vii). Although this provision refers directly only to seeing eye and hearing guide dogs, the Food Stamp Act of 1977, at Section 3, subsection (q), defines "allowable medical expenses" as, among other things, ". . . expenditures for . . . (6) dentures,

[5] The applicable federal regulation contains identical language. 7 C.F.R. § 273.9(d)(3)(vii). There is no dispute that petitioner meets the definition of "disabled member" in Food Stamps Rule § 271.2.

> hearing aids, and prosthetics (including the costs of securing and maintaining a seeing eye dog). . .”[6] Thus 7 C.F.R. 273.9(d)(3)(vii) shall be interpreted to include the costs associated with any animal specially trained to serve the needs of disabled Program participants.

FNS Policy Memo, Index No. 90-20 (July 2, 1990). This explanation clearly shows that FNS intends to allow medical deductions for costs incurred maintaining service animals specially trained to assist disabled individuals.

Further guidance is found in federal regulations implementing the Americans with Disabilities Act of 1990, which define a service animal in relevant part as follows:

> *Service animal* means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a . . . psychiatric, . . . or other mental disability . . . The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, . . . helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

28 C.F.R. § 35.104 (italics in original).

The evidence in the record shows that petitioner’s dog has been “specially trained” to serve her needs as a disabled

[6] This language defining “Allowable medical expenses” is now set forth in 7 U.S.C. § 2012(c).

individual.[7] R.C.'s testimony described training the dog specifically to respond to petitioner's impulsive and destructive behaviors by going to her and preventing or interrupting such behaviors. Nothing in the applicable regulations requires that such training be conducted by a professional trainer or that the dog be certified as "specially trained." Moreover, R.C.'s testimony regarding the purpose and effectiveness of the training is confirmed by the second letter from petitioner's treating psychiatrist explaining that the dog's trained responses play a role in managing petitioner's debilitating mental illness.

Based on the foregoing, the Board concludes that the dog is an animal specially trained to serve the needs of petitioner, and that the costs of maintaining the dog in excess of $35 are deductible from petitioner's countable income for 3SquaresVT. Food Stamps Rules § 273.9(d)(3)(vii). The Department's decision to the contrary is inconsistent with the applicable federal and state regulations and must

[7] Fair Hearing No. B-08/12-510, relied upon by the Department in support of its position, is not controlling precedent for this case. In that case, the Board concluded that expenses for animals prescribed by a doctor as "emotional support" for alleviating general anxiety disorder and post-traumatic stress disorder could not be medical deductions under Food Stamps Rules § 273.9(d)(3)(vii). However, unlike petitioner's dog in this case, the therapeutic benefit provided by the emotional support animals was solely from their companionship, and there was no evidence that they were specially trained to respond to specific behaviors brought on by the general anxiety and post-traumatic stress disorders.

therefore be reversed. The matter also must be remanded to the Department for verification of such expenses, as well as verification of the monthly expenses for dog food, because although R.C. credibly testified that the dog has ongoing medical expenses, no documentation was submitted for expenses or food supplies incurred subsequent to petitioner's application for benefits. Finally, on remand the Department is ordered to account for any allowed medical deductions for the dog documented for September and determine whether petitioner should receive 3SquaresVT benefits for September. 3 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4D.

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