

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. T-06/21-399
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Appeal of)
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INTRODUCTION

Petitioner appeals the decision by the Department for Of Vermont Health Access (Department) setting the amount of spousal allocation available to his wife under the Medicaid Long-Term Care (LTC) program. The following facts are based upon telephone conferences on July 16th, August 17th and October 18th and December 13, 2021, and documents submitted by the parties at hearing and post-hearing. Petitioner's daughter represented his interests in these proceedings.

FINDINGS OF FACT

1. Since May 2021, petitioner has required a nursing home level of care and has been determined to be Medicaid eligible after payment of a patient share from his income. Petitioner's wife continues to reside in their home. During May 2021 petitioner was living at a nursing home and then moved to the Vermont Veteran's Home in June.

2. When, as here, there is a spouse that is living in a nursing facility and a spouse living in the community (community spouse), the Medicaid rules allow for a "spousal allocation" from the income of the institutionalized spouse. The spousal allocation is then deducted from the income of the institutionalized spouse (along with other deductions) to calculate the "patient share" owed to the facility. Here, petitioner requested an additional amount be added to the spousal allocation as the current amount has not been sufficient to allow his community spouse to continue to keep up with all the maintenance required on their family home.

3. The first step in calculating both the patient share and the spousal allocation is establishing the petitioner's gross income. Here, petitioner's gross income for May was as follows: social security income of \$2,083.50, his Veteran's Administration (VA) benefit of \$992.04, and his equitable IRA distribution of \$840, totaling \$3,915.54. After deduction of a standard personal needs allowance of \$72.66, there remained \$3,842.88. That is the amount of the petitioner's income that is "available to allocate." That figure is then used in the first part of the calculation of the spousal allocation.

4. The calculation of the spousal allocation has several steps. First, the community spouse's gross monthly income is subtracted from the "standard income allocation" set by the federal government. If the resulting "basic potential allocation" is less than the patient's "amount available to allocate" (which, here, is his gross income minus his personal needs allowance) the Department next makes a determination of allowed monthly needs.

5. Petitioner's spouse's gross monthly income (June income for May spousal allocation) was \$2,046.52¹ from a \$796.50 Social Security benefit and a \$1,250.02 annuity. The standard income allocation is \$2,178; therefore, there was a \$131.98 "basic potential allocation" before consideration of deductions. The Department next considered the community spouse's allowed deductions from income.

6. The monthly deductions allowed under the Rules for the costs of the family home were as follows: \$262.94 in property taxes (to include \$190.52 property taxes and \$72.42 Fire District tax), \$117.75 insurance, \$822 fuel and utility standard for a subtotal of \$1,202.69. A shelter standard amount is then subtracted resulting in the excess shelter

¹The Department's worksheet reflects a gross income of \$2,046.02, which is incorrect, but it did not affect the outcome of the spousal allocation amount.

allowance of \$548.69. That amount is then added to the standard income allocation amount of \$2,178 to reach a monthly needs amount of \$2,726.69. The spouse's gross income (\$2,046.02) is then subtracted from the monthly needs amount to determine the spousal allocation, here \$680.67.

7. In June, petitioner began residing at the Vermont Veteran's Home. And petitioner's income increased slightly due to an increase in his withdrawal from his IRA (to \$989.14 from \$840); his gross income increased from \$3,915.43 to \$4,064.68; this change did not affect the amount of the spousal allocation². Petitioner's spouse's income was unchanged. However, the family did submit verification of a small increase in the homeowners' insurance premium on July 25, 2021, increasing from \$117.75/month to \$123.92/month (an increase of \$6.17). Therefore, because of that increased allowed cost, the spousal allocation for the months of June through September was increased to \$686.84.³

8. At hearing, petitioner's spouse and his daughter explained that the actual costs of running and maintaining

² Petitioner increased the IRA withdrawal to be consistent with his life expectancy, which makes the IRA an excluded resource under HBEE Rule § 29.08 (i)(5)(i)(c).

³ During the pendency of this appeal, the Department also issued a revised LTC worksheet dated September 3, 2021, setting the spousal allocation for October 2021 forward as \$739.34. As discussed with the parties at hearing, that change is not addressed in this appeal. However, it may be noted that the calculation of the spousal allocation followed the same formula as outlined above.

the family home should result in a greater spousal allocation. For example, petitioner argued that the cost to maintain the family home in 2020 was approximately \$6,356. In addition, in 2021, the petitioner's wife needed to replace kitchen appliances and continue the house painting schedule. Petitioner asks that an additional \$400/month be allowed as an additional spousal allocation.

9. The Department's calculation of petitioner's income and his spouse's income was correct, and the Department provided all the allowable deductions for maintenance of the home. Therefore, the calculation of the spousal allocation was correct.

ORDER

The Department's decision is affirmed.

REASONS

Review of the Department's determination is de novo. The Department has the burden of proof at hearing if terminating or reducing existing benefits; otherwise - when an appeal concerns an initial denial of eligibility - the petitioner bears the burden. See Fair Hearing Rule 1000.3.0.4.

The Health Benefits Eligibility and Enrollment (HBEE) Rules provide that a Medicaid eligible individual's patient share is calculated by taking the individual's gross income less allowable deductions. HBEE Rules §24.04. Authorized deductions include a personal need allowance, home up-keep expenses, allocations to a community spouse, and reasonable medical expenses. HBEE Rules §24.04(b).⁴ The Board has consistently affirmed the limitations on deductions from gross income that are identified in HBEE Rule §24.04. The current personal needs allowance for persons in nursing homes is \$72.66/month. See

<https://dvha.vermont.gov/members/vermont-medicaid-programs/medicaid/medicaid-aged-blind-or-disabled-mabd>.

The CMS State Medicaid Manual provides that the following maintenance needs for a home where the community spouse resides may be considered:

Spousal Monthly Income Allowance: Unless a spousal support order requires support in a greater amount, or a hearings officer has determined that a greater amount is needed because of exceptional circumstances resulting in extreme financial duress, deduct from community spouse's gross monthly income which if otherwise available the following amounts up to the maximum amount allowed:

- A standard maintenance amount.

⁴The rules also authorize other very specific, limited deductions (e.g., reparations) that are not claimed in this case.

- Excess shelter allowances for couples' principal residences when the following expenses exceed 30% of the standard maintenance amount. Except as noted below, excess shelter is calculated on actual expenses for
 - Rent;
 - Mortgage (including interest and principal);
 - Taxes and insurance;
 - Any maintenance charge for a condominium or cooperative; and
 - An amount for utilities, provided they are not part of the maintenance charge computed above. Utility expenses are calculated by using the standard deductions under the Food Stamp program that is appropriate to a couple's particular circumstance (or, at your option, actual utility expenses).

CMS State Medicaid Manual § 3713 Monthly Income Allowances for Community Spouses and Other Family Members.

The current standard income allocation for the spousal allocation is \$2,178, the shelter standard is \$654, and the fuel and utility standard is \$822. See

<https://dvha.vermont.gov/members/vermont-medicaid-programs/medicaid/medicaid-aged-blind-or-disabled-mabd>.

Petitioner's family has argued that petitioner's spouse, in large part, relied on petitioner's income to maintain the upkeep of the family's historical home and that without a

greater spousal allocation, she may need to sell the home. Unfortunately, the Department must follow the formula for calculation of the spousal allocation in the Medicaid rules. See Fair Hearing No. B-05/20-376 ("The cap on the spousal allocation represents federal policy as to what extent the Medicaid program should, in effect, bear the costs of living of a community spouse.") See also Fair Hearing No. A-01/08-24 (Board must follow applicable regulations and policy even in light of petitioner's argument that the allowances do not reflect her actual costs of living in residence).

Exceptional Circumstances

The CMS State Medicaid Manual does provide the Board the authority to grant an additional spousal allocation under the "exceptional circumstances" language cited above. The Board has previously ruled that such an increase would be warranted only if petitioner could show expenses based on needs "which are out of the ordinary." See Fair Hearing No. 12,673. (Where a community spouse had to travel to visit her spouse who had been placed in a nursing facility over 100 miles away (due to financial and medical needs), that cost for those travel expenses would not have been anticipated by the rules and could result in financial duress and such

travel expenses could be added as meeting the exceptional circumstances standard). However, where the community spouse's needs are the same as would be experienced by other homeowners, the standard is not met. *Id.* Unfortunately, the home maintenance needs cited by petitioner do not meet the "exceptional circumstances" standard.

For the reasons stated, the Department's determination was consistent with the rules. As such, the Board must affirm. See 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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