

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-02/11-115
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Health Access Eligibility Unit (HAEU), terminating her Catamount Health Premium Assistance Program (CHAP) coverage. The Department determined that the petitioner is over-income for the CHAP program. The issue is whether the Department correctly calculated petitioner's income under the pertinent regulations.

The decision is based upon the evidence adduced at hearing.

FINDINGS OF FACT

1. The petitioner is a household of one and is self-employed as a hair stylist.
2. On or about February 1, 2011, petitioner submitted an application to HAEU regarding her recertification for

health care coverage. As part of her application, petitioner attached her 2009 Federal Income Tax Return.¹

3. In 2009, petitioner had gross receipts of \$52,232 and business expenses of \$17,739 equaling yearly income of \$34,493. HAEU used the annual income of \$34,493 or monthly income of \$2,874.41 in their calculations. HAEU deducted the \$90.00 employment disregard from petitioner's monthly income leaving countable monthly income of \$2,793.41. The maximum Monthly income limit for a household of one is \$2,763.00.

4. On February 7, 2011, the Department issued a Notice of Decision that petitioner was over-income for CHAP and that her benefits would close on February 28, 2011.

5. The petitioner filed an Appeal with the Board on February 25, 2011. A fair hearing was held on March 10, 2011.

ORDER

The Department's decision is affirmed.

REASONS

The Vermont Legislature enacted Act 191 in 2006 to provide more comprehensive health care coverage to

¹ Petitioner's 2010 Federal Income Tax Return was not complete when she sent in her application. Petitioner testified that her 2010 income is higher than her 2009 income.

Vermonters. The CHAP program is one part of Act 191 in that CHAP provides premium assistance to adults who are not eligible for VHAP (Vermont Health Access Program) or are uninsured or do not have access to an approved employer-sponsored health insurance plan and whose income is no more than 300 percent of the federal poverty limits. W.A.M. §§ 5900 and 5913.

The issue in this case is how self-employment income should be calculated under the regulations. CHAP incorporates the VHAP income regulations. W.A.M. § 5916.

Petitioner argues that the Department should use her adjusted gross income figure from her federal tax return. She notes that as a self-employed person she needs to pay in FICA and taxes.

The regulations treat both wage earners and self-employed individuals in the same manner.² The Department looks to the individual's gross income.

Treatment of earned income is found at W.A.M. § 5321, which states, in part:

Earned income includes all wages, salary, commissions or profit from activities in which the individual is engaged as an employee, or a self-employed person. . .

² The regulation leads to an inequitable result for self-employed applicants by not making provision to allow deductions for part of their self-employment taxes and Social Security contributions.

Earned income is defined as income prior to any deductions for income taxes, FICA, insurance or any other deductions voluntary or involuntary except that, in determining earned income for self-employed individuals, business expenses are deducted first.

. . .

The following items are deducted from gross earned income in the sequence listed:

1. Business expenses (self-employment only)
2. Standard employee expense deduction
3. Dependent care expenses

The Department correctly followed the regulations in determining petitioner's countable income. The Department first deducted petitioner's business expenses and then deducted the \$90.00 standard employee expense deduction. The maximum income allowable for a household of one to qualify for CHAP is \$2,763.00. Procedures P-2420B. Unfortunately, petitioner's countable monthly income is slightly above the income guidelines.

Based on the foregoing, the Department's decision to terminate petitioner from CHAP is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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