

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-02/13-166
)
Appeal of)

INTRODUCTION

Petitioner appeals a determination by the Vermont Department for Children and Families ("Department"), through its Health Access Eligibility Unit, that he and his spouse are not eligible for Vermont Health Access Plan ("VHAP") coverage. The main issue is consideration of potential deductions from petitioner's self-employment income. The following facts are from representations of the parties and documents submitted during hearings held March 14 and July 11, 2013 and several telephone status conferences held between these hearing dates.¹

FINDINGS OF FACT

1. Petitioner lives with his spouse, daughter, and adult son. Petitioner's daughter, who recently turned eighteen, is disabled and receives SSI.

¹ Considerable effort was made by the parties to resolve this matter, resulting in this series of status conferences.

2. Petitioner is self-employed. Petitioner's spouse receives income through the Choices for Care program as a paid caregiver for her mother.

3. When petitioner's daughter turned eighteen and began receiving SSI, she was no longer considered a household member for purposes of VHAP eligibility. This resulted in petitioner and his spouse being determined ineligible for VHAP, but eligible for Catamount Health Premium Assistance (CHAP).

4. The relevant period for household income at issue here is 2011, since that is the most recent tax return supplied by petitioner.²

5. Petitioner and his spouse incur expenses of \$400-500 per month outside of the school year to pay for child care for their daughter. Although petitioner did not submit specific evidence of his yearly childcare expenses, the analysis here assumes the family could establish at least \$175 per month in childcare expenses, the maximum deduction allowed under the rules.

² The Department represents that it is willing to accept petitioner's 2012 tax return or a statement of income and costs for 2013 thus far, but at the time of hearing petitioner was not prepared to provide this information. Petitioner also stated that his spouse's income will be reduced and was given until August 15 to verify that, but only communicated that the reduction has not occurred as of yet. Independent of the outcome here, petitioner will have the option of submitting more recent information in the future.

6. Petitioner deducts a variety of expenses on his tax return from the revenue he receives from his business.

7. Petitioner uses part of his home as an office and storage space to run his business, but did not take any deductions for this use on his 2011 tax return because of the impact, as he understood, it would have on his Vermont property tax adjustment.

8. Although petitioner does not take these deductions, he submitted a summary of costs that could potentially be eligible for a home office deduction on one's tax return. This includes the costs of utilities and property taxes on his home, multiplied by the percentage of space in his home allocated for business use, for a total yearly cost of \$3,803.

9. Petitioner also submitted evidence of the costs of interest in 2011 for two loans for equipment related to his business. This potential business expense under the Department's rules, which is not taken on his 2011 tax return, totals \$1,364 for the year.

10. The Department calculated petitioner's income using his 2011 tax return, recognizing many of his costs as business expenses, the most significant exception being depreciation. The Department will not accept the home office

costs as business expenses because they are not reflected on petitioner's tax return.

11. The Department's determination was that petitioner's household has a total monthly income of \$2,689.92. The threshold for VHAP coverage for a household of two is \$2,392. Even after taking into account the potential deductions for childcare expenses and interest on business loans, petitioner's countable household income still falls short of VHAP coverage.

12. If petitioner were allowed to deduct the home office costs, he and his spouse would be eligible for VHAP. Otherwise, they are not eligible for VHAP, but are eligible for CHAP.

ORDER

The Department's decision is affirmed.

REASONS

Vermont Health Access Plan income eligibility is generally based on income counted under VHAP Rules 5321-5323. A deduction for "business expenses" is allowed for self-employment income:

D. Business Expenses

Items such as personal business and entertainment expenses, personal transportation, purchase of capital

equipment, depreciation, and payment on the principal of loans for capital assets or durable goods are not allowable business expenses.

Business expenses, which are deducted from gross receipts to determine adjusted gross earned income, are limited to operating costs necessary to produce cash receipts, such as:

1. Office or shop rental; taxes on farm or business property;
2. Hired help;
3. Interest on business loans; and
4. Cost of materials, stock, and inventory, livestock for resale required for the production of this income. Tax returns and business records are considered appropriate sources of accurate figures for farm and business receipts and expenses.

VHAP Rule 5321(D).

The sole issue here is whether petitioner's expenses that would typically be deductible for the use of a home office must be recognized by the Department in the absence of a tax return taking such deductions.³ By their nature, these expenses would appear to be eligible for deduction under the rules. Because "office or shop rental" is a deductible expense for the purposes of VHAP eligibility, there would

³ As referenced in the factual findings, this analysis assumes petitioner would be eligible to deduct the maximum childcare expenses of \$175 per month. It also assumes that the interest petitioner paid on business-related loans, which is specifically referenced in the VHAP rule cited above, would be a deductible business expense. Even with these deductions, petitioner and his spouse are not eligible for VHAP. They would be eligible if taking into account the home office deductions.

appear to be no rational basis for excluding costs of a home office.

However, this does not answer the question of how such costs must be documented and verified. A deduction for home office expenses is a creature of the tax code. Eligibility for the deduction and calculation of the amount that may be deducted is governed by IRS rules and regulations. Moreover, the Department's rules contemplate the use of tax returns to document eligible business expenses. See VHAP Rule 5321(D), *supra*. While the rules do not *require* a tax return to document every business expense, in this case it is reasonable for the Department to require such, given that this particular deduction is primarily related to an IRS rule.

The Department's decision is therefore consistent with the applicable regulations and the Board is required to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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