

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-08/16-805
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Appeal of)
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INTRODUCTION

This appeal concerns the start date of petitioner TG's eligibility for Long-Term Care Medicaid as determined by the Vermont Department for Children and Families ("Department"). The following facts are adduced from a hearing held September 14, 2016, documents filed by the Department on September 21, 2016, and a telephone status conference held October 4, 2016. Petitioners were assisted by their son, with power of attorney, during this appeal.

FINDINGS OF FACT

1. Petitioners are married; petitioner TG was admitted into a nursing home in January of 2016. On April 8, 2016, after the exhaustion of Medicare coverage for TG's nursing home care and with the assistance of their son, petitioners filed an application for Long-Term Care ("LTC") Medicaid. The application is 12 pages long and contains numerous

questions as to an applicant's circumstances, including several relating to income and resources.

2. On the application, petitioners listed three sources of retirement income, comprised of their respective Social Security incomes and one private pension. The income from the private pension was listed at \$7,357 per year (apparently from various investment accounts).

3. On May 2, 2016, the Department sent petitioners a request for verification concerning several issues, including as to their pension fund(s). Petitioners responded to the request in a timely manner, by or around May 15, 2016.

4. It is not disputed by petitioners that at the time of their application, the structure of the pension payments resulted in the pension being counted as a disqualifying "resource" for the purposes of LTC Medicaid eligibility. The Department concedes that this issue was not immediately identified and communicated to petitioners after submission of the verification information in May. In the months following, however, this issue was identified by the Department, communicated to petitioners, and ultimately addressed by restructuring the pension payments. As a result, TG was found eligible for LTC Medicaid as of July 1, 2016.

5. Petitioners appealed the onset date of eligibility. During the pendency of the appeal, the Department reviewed the circumstances and determined that the pension issue should have been identified and communicated to petitioners in May, and notified petitioners that TG's eligibility would commence as of May 1, 2016, instead of July 1, 2016.

6. Petitioners seek eligibility for TG as of April 1, 2016.

ORDER

The Department's decision is affirmed.

REASONS

Review of the Department's determination is de novo. An applicant appealing an initial denial, as opposed to a termination of existing benefits, has the burden of establishing eligibility by a preponderance of evidence. See Fair Hearing Rule 1000.3.0(4).

Financial eligibility for LTC Medicaid involves the consideration of several factors relating to household resources. See Health Benefits Eligibility and Enrollment Rules ("HBEE") § 29.00. This includes rules specific to the treatment of pensions and/or individual retirement accounts. HBEE §§ 29.07(b)(7)(vi) and 29.08(i)(5).

Petitioners' central argument is that the specific rules relating to the treatment and potential exclusion of retirement funds should be communicated to applicants on the application itself, rather than within the verification process. They further argue that had they known about this issue at that time, they would have restructured the pension immediately and TG would have been eligible as of April 1, 2016. Petitioners do not allege, nor is there evidence of such, that they were directly misled by the Department during the application process.

The Department responds that the application requests information from an applicant relating to a variety of general areas, and cannot cover every potential issue that may arise in a given situation (while, at the same time, the complete rules of the program are published and available online). The Department explains that TG's eligibility date was adjusted to May 1, 2016 because the month of May was the earliest they could have reasonably known about the pension issue.

There is no dispute that at the time of the application, the pension was countable as a resource which rendered TG ineligible. Nothing in the rules or these circumstances warrant further adjustment of TG's eligibility to April 1,

2016. The Department followed its rules and procedures in requesting verification and ultimately made a determination of eligibility that was effective within 30 days of the application. See HBEE § 61.00(c) (determinations of eligibility will generally be made within 30 days).

As such, the Department's determination is consistent with the rules and must be affirmed. See 33 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4D.

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