

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-01/16-66
)
Appeal of)

INTRODUCTION

Petitioner appeals the closure of her 3SquaresVT benefits by the Vermont Department for Children and Families ("Department") as of December 31, 2015. Because petitioner reapplied for benefits after closure and was found eligible, this appeal concerns a discrete period of closure from January 1 to January 14, 2016. The following facts are adduced from a hearing held March 10, 2016.¹

FINDINGS OF FACT

1. Petitioner was a recipient of 3SquaresVT benefits in November of 2015, during which month the Department mailed her a notification that her benefits were scheduled for review and she needed to submit an enclosed application form. The notice contained a warning that the form needed to be returned by December 1 and that if she failed to complete and return the form, her benefits would end as of December 31,

¹ Petitioner's initial hearing was rescheduled to March 10, and by phone, at her request.

2015. Department records establish the notice and form was mailed on November 7.

2. Petitioner did not return the form, and was subsequently mailed a Notice of Decision dated December 18, 2015, that her benefits would end on December 31, and advising her to contact the customer service center "immediately" to avoid closure.

3. Petitioner did not contact the Department prior to the closure of her 3SquaresVT benefits, but subsequently filed an application received by the Department on January 14, 2016. This application was signed and dated by petitioner on January 1, 2016.

4. Petitioner is disabled and uses a wheelchair for ambulation outside her home. She also receives services from a care attendant in her home through the Medicaid Choices for Care program.²

5. Although stating that she does not have physical access to her mailbox, and asserting that she relies on someone to bring in her mail once per week, petitioner does not dispute that the Department sent her the above notices.

² Petitioner's continued eligibility for CFC benefits is also under appeal to the Board in Fair Hearing No. B-08/15-931.

6. Instead, petitioner asserts that she has numerous medical conditions and is in substantial pain, requiring medication that she did not have access to during the fall of 2015 and early 2016, because she was transitioning from one medical provider to another. Stating that she was in "excruciating pain, day in and day out, and all night," she asserts that her lack of access to treatment rendered her unable to attend to her needs and affairs during this period.

7. Petitioner further states that these circumstances existed until February 26, 2016, when she was first able to meet with her new doctor. Her doctor also wrote a letter on petitioner's behalf, stating that "[d]uring [petitioner's] transition of care, she was unable to obtain certain medications which exacerbated her chronic conditions and limited her ability to fully manage her ADL's including missed paperwork." The letter is dated February 26, 2016, without indicating the period of time it covers.

8. When asked about her ability to respond in a timely and appropriate manner to Board notices and to fill out and file the January 2016 3SquaresVT application - actions falling within the period leading up to February 27 - petitioner stated that she had "some days" when she could

function better than "other days" when she "couldn't do anything" during this period of medical transition.

9. Petitioner's assertions about her ability to respond to the Department's notices and paperwork is found to be not credible. Her testimony about her condition during this period is contradictory and inconsistent with the facts. Even assuming she had some days when she could not attend to her needs and affairs, this would not have prevented her from responding to the Department's notices. Petitioner's medical evidence is given little, if any, weight, as it does not indicate the time period covered and is from a provider not treating her during the time at issue, nor otherwise indicating the basis for the provider's opinion.

10. Petitioner seeks retroactive benefits from the time of her closure to when her eligibility was reestablished, on or about January 14, 2016.

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 the

petitioner bears the burden. See Fair Hearing Rule 1000.3.0.4.

Under the 3SquaresVT program, the Department must periodically review the continuing eligibility of recipients and/or request that a recipient household certify eligibility with a new application. See Food Stamps ("FS") Rules § 2713.14 (Recertification); FS Rules § 273.10(f); 3SquaresVT Interpretive Memo Re: Rule 273.10(f) (April 5, 2013); FS Rules § 273.12. This is the reason for the form that petitioner was mailed and requested to complete and return.

Petitioner admittedly failed to return the form, which is a basis for closure of her benefits, absence the existence of good cause for such failure. See FS Rules § 2713.14 (Recertification); 3SquaresVT Interpretive Memo Re: Rule 273.10(f) (April 5, 2013) ("Failure without good cause to submit a required interim status report will result in case closure and loss of ongoing benefits."); Fair Hearing No. B-01/15-97 (failure to comply with interim review process); Fair Hearing No. M-09/13-706 (closure for failure to participate in recertification process). Petitioner has not established any basis for failing to respond to the Department's clear and timely notices.

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

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