

3. On March 7, 1989, a little more than three weeks after his discharge, the hospital began proceedings to collect some \$17,000.00 worth of medical bills from the petitioner. The matter is in litigation and the hospital has placed a lien on his home.

4. After more than 90 days had elapsed and the petitioner had heard nothing on his application for Medicaid, he called DSW for information on the status of his application. He then learned for the first time that the Department had not received a Medicaid application regarding the petitioner.

5. The petitioner immediately filed a new application which was dated June 19, 1989. That application was accompanied by signed statements from the hospital social worker and the patient's psychiatrist which set forth the fact that the hospital discharge planner had indeed undertaken to prepare and file a Medicaid application in February and that due to the discharge planner's subsequent separation from employment with the hospital, the application was delayed and ultimately lost by the medical department.

6. The petitioner's June 19, application was subsequently denied on December 18, 1989 based on a finding of no disability. On April 3, 1990, the denial was reversed because the petitioner was found eligible for Social Security disability benefits which he had applied for after he left the hospital. He was notified that his

eligibility was retroactive to March 1, 1989, which was the date three months prior to the petitioner's June 1989, application.

7. At that time, the petitioner felt he should receive benefits retroactive to November 1988 based on his efforts to apply in February of 1989. However, he did not appeal that decision but instead called the District Director in late April to discuss his eligibility for benefits from December through February. He was told he could file a new application for the disputed period.

8. Subsequently, the petitioner obtained legal representation with regard to the collection lawsuit. (He had been represented by another attorney earlier but was not represented by anyone when he got his Medicaid decision). His attorney began talking with the Department as to what might be done to obtain Medicaid coverage for the December through February period. On November 19, 1990 the District Director met with the petitioner's attorney and advised her to file a new application for the retroactive benefits.

9. An application for retroactive benefits accompanied by an affidavit setting out the facts was filed on November 27, 1990 by the petitioner. No action was taken on that application by the District Director because he erroneously believed that the Department cannot take applications for retroactive benefits. Instead of issuing a decision, the application was forwarded to the Human

Services Board on November 30, 1990. The District Director testified that had the Department made a decision on the request, that the decision would have been to deny it for failure to file a timely application.

10. There is no evidence and the petitioner does not contend that the February 6, 1989, application filled out by him in the hospital was ever mailed to the Department of Social Welfare. The Department presented credible evidence that it never received such an application.

11. It fully appears that the hospital did not mail the petitioner's Medicaid application to the Department in a timely manner.

ORDER

The Department's decision is affirmed.

REASONS

State Medicaid regulations provide that:

Any individual who wants Medicaid must file a Medicaid application with the Department except:

Security An individual who has applied at a Social
 Office for Supplemental Security Income.

If an individual granted SSI/AABD also wants retroactive Medicaid coverage before the start of the cash assistance grant, he/she must file a separate application for retroactive Medicaid coverage and be found eligible based on criteria other than receiving cash assistance.

Filing an application means taking or mailing a signed Medicaid application form to a Department Office, preferable the District Office responsible for the town where the applicant lives. Department offices give Medicaid application forms to any individual who asks for one. Medicaid providers, referring agencies and other locations serving the public may also keep supplies of application forms.

The application form must be signed by the individual applying for Medicaid or his/her authorized representative.

M 9 111

The regulations further provide that:

Medicaid may be granted retroactively for up to three calendar months prior to the month of application, provided that all eligibility criteria were met during the retroactive period to be granted . . .

M 9 113

In this matter, the hospital, as a Medicaid provider, kept supplies of Medicaid application forms and voluntarily undertook to assist patients with filling out and filing these applications with the Department of Social Welfare. The petitioner was assisted in this manner and completed and signed his portion of the application which he then turned over to the hospital for the addition of supporting medical evidence and forwarding to the Department. The petitioner contends that he had taken what he believed to be all necessary steps toward filing an application in February 1989 and should thus, as an equitable matter, be deemed to have filed his application at that time.

The evidence clearly shows that the petitioner was informed by hospital personnel that his application would be filed by them and that it was, in fact, never filed but lost somewhere in the hospital. It can be concluded as well, that the petitioner reasonably relied on those representations to his serious detriment and only learned

the true facts when it was too late to remedy the situation. It is quite possible given these circumstances that a court might find that the hospital acted negligently and thereby harmed the petitioner.

However, it does not follow that the neglectful failure to file an application by a Medicaid provider will result in a finding of a constructive application with the Department of Social Welfare. The Medicaid regulations cited above plainly state that filing is accomplished when the signed application form is taken or mailed to a Department office. M ə 111 Unless the petitioner can at least show that someone tried to bring or mailed the application to the Department, he cannot successfully argue that filing was attempted or should be legally constructed.

The evidence makes it clear that no one at the hospital ever tried to file the application, it was simply lost. Neither can the petitioner succeed in his argument that the Department be equitably estopped from finding no application because the evidence shows that the Department itself was unaware until June of 1987 that the petitioner was trying to file an application and had no contact with him about this matter before that time. Equitable estoppel requires that the party to be estopped, and not a third party, knowingly or negligently give some misinformation to the aggrieved party which he relies on to his detriment. There is no evidence and it cannot be found as a matter of law, that the hospital acted in any way as the Department's

agent in this matter.

The petitioner has, indeed, been placed in an unfortunate position by the hospital's failure to file his application. Had the application been filed in February of 1989, the petitioner would have been granted coverage retroactive to November 1, 1988, if he were found to be otherwise medically and financially eligible. See M ə 113, supra. There is no provision in the state or federal regulations for extending that time line back more than three months preceding the month of actual filing. The result is that the petitioner through no fault of his own has no medical coverage for any of the time that he was in the hospital. As this situation appears to have been directly caused by the error of the hospital itself, it seems particularly unjust and unconscionable that the hospital should be pursuing him now for the cost of his hospital stay, especially as the hospital may be potentially liable for all his medical expenses for November 1988 through February of 1989. However, any remedy the petitioner may have against the hospital is outside the scope of the Board's jurisdiction and will, no doubt, be dealt with by a state court.

The decision of the Department that the petitioner is not eligible for Medicaid for November 1988 through February 1989 because no application was timely filed for that time period is factually and legally correct and so must be affirmed by the Board. 3 V.S.A. ə 3091(d)

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The Department originally moved to dismiss this appeal as untimely contending that the petitioner's remedy was an appeal of the April 3, 1990 notice initially granting benefits retroactive to March 1, 1989. Under the Board's rules, any appeal of that decision should have been filed within 90 days or by July 2, 1990. Fair Hearing Rule No. 1

However, as the District Director advised first the petitioner in June, and then his attorney in November, that the remedy was to file a request for retroactive benefits, and as the regulations specifically provide for a separate application for retroactive benefits, (see M 3 111 above), there is no justification for limiting the petitioner's remedy to an appeal of his original Medicaid award. Therefore, this matter was ruled to be properly before the Board as an appeal (filed November 30) of a denial of petitioner's request for retroactive benefits made November 27, 1990.

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