

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 15,124
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare finding her ineligible for more than four months of Transitional Medicaid (TM) benefits once her ANFC was closed as of August 1, 1997. The issue is whether the petitioner's ANFC was closed solely for reasons other than an increase in her earnings. The following facts are not in dispute, and are taken from the memoranda filed by the parties and the representations of counsel during status conferences with the hearing officer.

FINDINGS OF FACT

1. The petitioner had been receiving ANFC for herself and her two children for several years, having been assigned to Group 3 under the Vermont Welfare Reform Project (WRP). She began receiving child support payments of around \$284 a month in May, 1995, which were collected by the Office of Child Support.

2. In the fall of 1996, the petitioner reached the end of her 30-month time limit under WRP, which required her to find employment. In November, 1996, the petitioner began working at a K-Mart store.

3. In December, 1996, the petitioner made \$1009 in

wages at this job. This made the petitioner ineligible for ANFC in January, 1997. That January, however, the petitioner made only \$575 at her job (presumably because of reduced hours after the Christmas season), and her earnings again decreased to \$411 in February, 1997. Between the months of March and July, 1997, however, the petitioner's earnings steadily increased. Those earnings were as follows: March, \$497; April, \$638; May, \$809; June, \$858; and July, \$931.

4. The petitioner remained eligible for ANFC from February through July, 1997. She reported her earnings to the Department, and the Department adjusted the amounts of her ANFC grant each month on a prospective basis according to the earnings the petitioner had made in the months immediately prior to the date of her reports to the Department. Because of this prospective budgeting, and the fluctuating nature of the petitioner's employment, the amounts of income attributed to the petitioner by the Department in these months never exactly coincided with the amounts the petitioner actually ended up earning, as reflected in paragraph 3, above.

5. The father of the petitioner's children failed to make child support payments for April and May, 1997. Based on the accounting procedures of the Office of Child Support (not at issue here) the Department applies child support payments to a recipient's ANFC grant two months after the

payments are actually made. The non-payment of child support to the petitioner in April resulted in a substantial increase in her ANFC benefits for June, 1997.

6. As noted above however, the petitioner's income from her employment was increasing in those months. She was eligible for ANFC in July (\$64) because no child support payments were applied to the computation of her grant that month.

7. In June, 1997, the non-custodial parent resumed making child support payments (after obtaining a modification order reducing the amount of his monthly obligation). This payment was applied to the calculation of the petitioner's ANFC grant for August, 1997. When this payment was added to the petitioner's income for July the Department determined that the petitioner was ineligible for ANFC as of August 1, 1997, and it closed her grant.

8. The Department determined that the petitioner had become ineligible for ANFC in August, 1997, because of the collection of child support applied to that month. Under the Department's regulations, households that lose their ANFC on the basis of an increase in child support collections are eligible for 4 additional months of Transitional Medicaid (TM).¹ The Department notified the petitioner that she was eligible for TM on this basis

¹See Medicaid Manual § M300(B)(3).

through November, 1997.

9. The petitioner appealed the fact that she had not been granted TM on the basis of increased earnings, which can qualify a household for up to 36 months of TM (see infra).

10. The Department maintains, however, that the resumption of the petitioner's child support payments was the sole reason her ANFC was terminated effective August 1, 1997, not any change in her earnings from the month before.

ORDER

The Department's decision is modified. The petitioner is found eligible for Transitional Medicaid based on her increased earnings from February through July 1997.

REASONS

Medicaid Manual (MM) § 300(B)(2) includes the following provisions:

Families (ANFC assistance groups) terminated from ANFC because of increased earnings, hours of employment, or loss of the \$30 and/or 1/3 earned income disregard continue to be eligible for Medicaid for 6 calendar months beginning with the month which immediately follows the month in which the ANFC assistance group becomes ineligible for an ANFC grant if the following three requirements are met:

Note: If ANFC would close solely for another reason, the family is not eligible for this coverage group.

a. The family (ANFC assistance group) received ANFC in at least three calendar months during the six-

month period immediately preceding the month in which the family becomes ineligible for ANFC; and

- b. The family (Medicaid group) continues to include a child who meets the ANFC age criteria for a child as defined in WAM 2301; and
- c. The family continues to reside in Vermont.

. . .

Families (ANFC assistance group) are eligible for an additional 6 calendar months of Medicaid coverage if the following six requirements are met.

. . .

Families in Group 2 or Group 3 of the ANFC Welfare Restructuring Project who qualify for the second six months of Medicaid coverage may be eligible for an additional 24 months of Medicaid coverage if they continue to meet the requirements listed in a through f above.

In a month in which there is both an increase in earned income and another unrelated change in circumstances that would adversely affect the amount of the household's ANFC grant the Department determines whether the other change (in this case, the resumption of child support payments) would have in and of itself (i.e., notwithstanding the increase in earnings) caused the household to lose its ANFC. If (as the Department determined was the case here) the answer is yes, then the household is ineligible for TM under the above provision-- i.e., it is determined that ANFC was closed "solely for another reason". (As noted above, in this case the petitioner was at least found eligible for a more limited period of TM based on another provision in the TM

regulations concerning increases in child support.)

This aspect of the Department's decision in this case is consistent with M300(B)(2)--provided that one looks at only the two most recent months of earnings. However, the regulation is silent as to the time period in which to consider whether "increased earnings" have caused the termination of ANFC.² The Department considers only the most recent month compared only to the month that immediately preceded it. Under this interpretation an individual, like the petitioner, loses her Medicaid due to an unrelated event even though her earnings have increased significantly and consistently over a period of many months. Depending on the amount of those increases, this strikes the Board as contrary to the stated goal of WRP to "enable more ANFC families to achieve self-sufficiency by . . .rewarding work. . . ." See W.A.M. § 2208.1.

More significantly, it also appears contrary to the provision in § M300(B)(2), itself, that provides for a "lookback period" of six months during which the assistance group must have received ANFC for at least three months in order to qualify for TM under § M300(B)(2). The reasonable extension of this provision, and one which renders the

² The federal statute upon which the Vermont provisions are based, 42 U.S.C. § 1396r-6(a), is also silent as to the time period in which to consider whether a recipient's earnings have increased.

regulation consistent with the goals of WRP, is that the Department must consider the household's earnings over those same past six months to determine if the change in circumstance that caused the household to lose ANFC would have had the same effect if the household's income had not increased over that entire six-month period.

In this case the uncontroverted evidence establishes that in the six months prior to August, 1997, the petitioner consistently increased her earnings from \$411 in February to more than double that (\$931) in July, 1997. It is also uncontroverted that if the petitioner had not had these increased earnings over this period of time, the fact that her child support payments resumed would not, in and of itself, have resulted in the petitioner losing her ANFC at that time.

It is also clear that if the non-custodial parent had paid his child support obligation in a timely manner there would be no question that the only reason the petitioner would have become ineligible for ANFC would have been the increase in her earnings (although, if the child support had been timely, this probably would have occurred a month or two prior to August, 1997).

The record in this matter reflects that the petitioner steadily and consistently increased her earnings and reduced her dependence on ANFC during this time. Had she known that her increased earnings would cause her to lose

her Medicaid if her child support was interrupted and then resumed, she might well have been better off (and might not have been penalized for) reducing or limiting her working to a level that kept her eligible for ANFC. The Department's interpretation of 9 M300(B)(2) retroactively removes the incentive under WRP for the petitioner to have increased her working during these months. Nothing in the language of the regulation supports such a harsh result, and the goals of WRP dictate that it not be countenanced.

Therefore, it must be concluded that the petitioner was terminated from ANFC "because of increased earnings" within the meaning of 9 M300(B)(2), supra. The Department's decision denying her Transitional Medicaid on this basis is reversed.

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