

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,009
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department of Prevention, Assistance, Transition, and Health Access (PATH) establishing a Medicaid patient share for her long-term nursing costs which does not deduct guardianship fees she has incurred while in the facility.

FINDINGS OF FACT

1. The petitioner is an elderly woman who was placed under a guardianship by the probate court some years ago. Her guardian is an attorney who has handled her finances and has assessed her a guardianship fee of from \$250 to \$300 per month. The petitioner appears to have had some assets in the past but since at least October of 2001 has had only Social Security benefits. Those benefits were \$837 per month in 2001 and rose to \$859 per month in 2002.

2. The petitioner entered a long-term care facility sometime within the last year. On December 31, 2001, the guardian applied for Medicaid benefits on behalf of the

petitioner. After a review of her situation, PATH determined in May of 2002 that she met the eligibility requirements for Medicaid retroactive to October 1, 2001.

3. Medicaid determined that the petitioner's share of her health care was the entire sum of her Social Security payment minus \$47.66 for personal needs.¹ Medicaid paid the balance to the nursing home retroactive to October of 2001.

4. Although the petitioner's guardian had been holding her Social Security checks pending a decision on the Medicaid eligibility, he continued to pay himself some \$2,000 in fees during this time. The guardian apparently had no discussion with PATH regarding the deductibility of these fees and he does not allege that he was misled in any way by PATH with regard to its regulations on deductions. He assumed that he would be allowed to deduct all of the petitioner's legitimate expenses while he was holding her Social Security checks. No one has suggested that the guardian did not earn these fees as he did considerable work documenting her Medicaid eligibility.

¹ For the months of October, November and December 2001, the petitioner also received a home upkeep deduction. The amount and duration of this deduction is not at issue in this case.

He has since ceased charging her for his services and is handling her affairs on a pro bono basis.

5. Because of the guardianship fee deduction, the petitioner fell about \$2,000 short with regard to the amount Medicaid determined she owed the nursing home from October 1, 2001 to the present.

6. Representatives of the nursing home appeared at the hearing. They stated that they have fiscal officers and social workers who handle Social Security checks and Medicaid applications for residents without charge and that there was no reason for the petitioner to have incurred legal fees for these services. They have asked the attorney-guardian to refund his fees to cover the petitioner's care to no avail. The guardian has responded that he felt an obligation to the petitioner to continue to assist her even when she had only a small monthly income since he was appointed by the probate court to do so.

ORDER

The decision of PATH is affirmed.

REASONS

A person who lives in a long-term health care facility who is found eligible for Medicaid is charged some amount of his "applied income" as a "patient share" each month to be paid to the facility.² Medicaid Manual (M) Section 415. "Applied income" includes Social Security benefits minus medical expenses allowed at M414 (1)-(3). M415. The regulations list three allowable deductions from this "applied income" for persons in a long-term nursing facility: a Personal Needs Allowance which is currently set by regulation at \$47.66 per month (P-2520D); a home upkeep deduction for persons expected to return to their homes; and a deduction for the maintenance needs of a spouse or other dependents living in the community. The only one of these deductions for which the petitioner is eligible at present is the first.

The regulations do not allow for the deduction of any other items from "applied income", even if those items are legitimate expenses. As the Board said in Fair Hearing No. 17,208 in which an attorney acting for the Medicaid recipient

² According to the Department's procedures manual, the average monthly cost to a private patient of nursing facility services is \$4,726 per month.

had also paid his own bill (as well as others) out of the patient share due to nursing home:

"the regulation evidences a policy of allowing the indigent (and presumably judgment-proof) individuals on Medicaid the opportunity to keep money for personal needs and medical expenses only. The payment of other creditors is not considered essential to the health and well being of these individuals to the extent that the state is willing to subsidize those payments. It cannot be said that this policy is an unreasonable one in light of Medicaid's policy "to assist Vermont's eligible low-income individuals to gain access to needed medical services". M § 100.

Although there is no question that the guardian was acting in good faith as he saw necessary for his ward, the fact nevertheless remains that he was using almost one-third of his client's monthly income—an income that is about \$80 above the official poverty level in Vermont (see P2420)--to handle her estate without regard to her potential need for that money to pay her basic living expenses. It would seem that it was incumbent upon the guardian to inquire with both the probate court and the PATH office as to whether this was a permissible course for him to take. If he had looked at PATH's regulations he could have clearly seen that these items were not going to be deducted from the patient share. It also appears that the nursing home, and perhaps other entities, would have been willing to undertake handling the petitioner's finances and Medicaid application at no cost to her.

It is not the Board's province to determine what remedy the nursing home or petitioner might have in these circumstances. It is the Board's province to declare that PATH has correctly calculated the petitioner's patient share for the period at issue and that no other deductions are available under the Medicaid regulations. As PATH's decision was correctly made, the Board is bound to uphold the decision. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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