

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 16,002
)
Appeal of)

INTRODUCTION

This case is again before the Board following an Order of remand (dated March 15, 2000) for the taking of additional evidence as to whether the petitioner has good cause under the Medicaid regulations for not pursuing OASDI Social Security benefits paid to his daughter through his ex-wife as representative payee. To the extent relevant, the parties' original Stipulation, which formed the basis of the hearing officer's original Proposed Findings of Fact in this matter (dated February 24, 2000) is incorporated by reference herein. At a hearing held on September 7, 2000, the parties further stipulated to the following facts.

FINDINGS OF FACT

1. The petitioner withdraws all appeals regarding his receipt of Medicaid prior to May 1, 2000.
2. Since at least May 1, 2000 the petitioner's ex-wife has resided in Vermont, and she and the petitioner have followed a 50/50 joint custody arrangement with their daughter. This is

consistent with the operative court order in the parties' divorce.

3. The petitioner's ex-wife remains the representative payee of their daughter's Social Security benefits. The petitioner maintains, and the Department does not dispute that she applies the entire amount of those benefits to meet her household's basic needs. The Department does not dispute that the petitioner's ex-wife has limited income from disability benefits and that she also lives near or below poverty standards.

ORDER

The Department's decision is reversed.

REASONS

As was the case in the Board's earlier consideration of this matter, the issue is whether the Department of PATH can attribute the Social Security benefits of the petitioner's daughter as income to his household in determining his eligibility for Medicaid. (As was the prior case, the petitioner's daughter is separately eligible for Medicaid through the Dr. Dynosaur program.) The Department concedes that as legal matters now stand, the daughter's Social Security

benefits are not "available" to the petitioner to meet his household's needs. However, as set forth in the hearing officer's prior Recommendation, the more specific issue is whether the petitioner has shown "good cause" not to pursue legal actions to obtain control over his daughter's income within the meaning of the pertinent Medicaid regulation.

As noted in the prior Recommendation, Medicaid Manual § M128 provides as follows:

As a condition of eligibility, the Department of Social Welfare requires an applicant or recipient to take all necessary steps to obtain any annuities, pensions, retirement, or disability benefits to which he or she may be entitled, unless he or she can show good cause for not doing so. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensation and pensions, Old-Age survivors, and Disability Insurance (OASDI) benefits, railroad retirement benefits, and unemployment compensation. Application for these benefits, when appropriate, must be verified prior to granting or continuing Medicaid.

The petitioner maintains, and the Department does not dispute, that if he pursues payment of his daughter's Social Security benefits to his household he further impoverishes his ex-wife, who provides an equal amount of the child's care and custody. The Department does not dispute that the present joint custody arrangement is in the child's best interest. The Department also does not dispute the petitioner's representation that reducing the household income of his ex-wife would

constitute a detriment to the well being of his daughter in that it would diminish her mother's ability to provide care and custody for her.

The bottom line in this situation is that the child splits her time equally between two households that live in poverty. The petitioner maintains that it is simply not in his or his daughter's interest to seek income for his household that will diminish the income of the other household by an equal amount. The Board fails to see how M128, supra, can be read to force households into making such a cruel Hobson's choice for their children.

For this reason, it is concluded that the petitioner meets the "good cause" provisions of § M128, supra. In determining the petitioner's eligibility for Medicaid the Department can neither count his daughter's income nor require him to pursue legal action to obtain it. Thus the petitioner is eligible for an allotment of \$250 from this income under section M222 of the regulations.

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