

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-424

MARCH TERM, 2007

In re Appeal of Terry Varga	}	APPEALED FROM:
	}	
	}	Human Services Board
	}	
	}	FAIR HEARING NO. 20,472

In the above-entitled cause, the Clerk will enter:

Petitioner appeals pro se from the Human Services Board's denial of her application for retroactive health insurance coverage. We reverse and remand.

The record indicates the following. On April 12, 2006, petitioner applied for state-sponsored insurance under the Vermont Health Access Plan (VHAP). She reported \$1880.06 in monthly earned income and \$1200 in unearned maintenance income. The Department for Children and Families, Health Access Eligibility Unit, denied her application on April 13, 2006 because petitioner's total income exceeded the VHAP maximum of \$1232 for a single-person household. Petitioner reapplied for benefits in June 2006, and her application was approved.

On August 11, 2006, petitioner requested an administrative fair hearing on the denial of her April 2006 application for benefits. Petitioner did not dispute the Department's determination that at the time of her April application, her earned income was \$1880.06 per month. Instead, she argued that the Department should not have treated her maintenance payment as unearned income. She explained that her former husband made this payment directly to her mortgage company, and thus it should not be attributable to her. At the time of petitioner's April application, the Department was not aware that petitioner did not directly receive this money.¹ Nonetheless, the hearing officer concluded, even if this unearned income were excluded, petitioner's earned income still exceeded the maximum for eligibility for the VHAP program for a one-person household. Thus, it recommended that the Department's decision be affirmed. The Human Services Board adopted the hearing officer's findings, and affirmed the Department's decision. This appeal followed.

It is difficult to discern petitioner's arguments on appeal. She explains her circumstances, generally, but she fails to provide any argument as to how the Board erred in reaching its conclusion. See Hall v. Dep't of Soc. Welfare, 153 Vt. 479, 486-87 (1990) (Court will uphold Board's decision "where the record contains any credible evidence to fairly and reasonably support" its findings). Nonetheless, the Board may have erred in disposing of petitioner's claim. First, it is unclear if the

¹ The Department did, however, exclude this income in determining that petitioner was eligible in June.

Board had jurisdiction over the case because claimant’s request for a hearing appears untimely. See Vermont Health Access Plan Rules, 5 Code of Vermont Rules 13 170 015-24 (“A request for a fair hearing must be made within 90 days of the date the notice of the decision being appealed was mailed.”). Relying on this rule, the State points out that the petition was denied on April 13, but not appealed until August 11, 2006– some 119 days after decision. Because the record does not reflect the date that the Department mailed her its denial notice, we cannot resolve this question on appeal. If the Board did have jurisdiction, another problem arises: the State concedes that petitioner’s daughter resided with her when she applied for benefits in April 2006. Though petitioner was not applying for VHAP benefits for her daughter because she was covered by a health insurance policy held by petitioner’s ex-husband, the daughter’s presence in the home appears to increase the maximum income limit to \$2043, not \$1232. See Vermont Health Access Plan Rules, 5 Code of Vermont Rules 13 170 015-17 (describing income test used to determine eligibility). Because claimant’s earned income was less than \$2043, the Board needed to resolve the question of household size and, if necessary, how claimant’s mortgage-payments-in-lieu-of-maintenance should be treated in reaching its conclusion. We therefore reverse and remand the Board’s decision for a new hearing or for dismissal in the event that jurisdiction is found lacking.

Reversed and remanded.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Brian L. Burgess, Associate Justice