

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2008-176

OCTOBER TERM, 2008

In re Harold Thompson	}	APPEALED FROM:
	}	
	}	
	}	Human Services Board
	}	
	}	
	}	FAIR HEARING NO. A-01/08-24

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

Claimant appeals the Human Services Board’s decision increasing the amount of his patient share for long-term care benefits under Medicaid. Claimant argues that his expenses exceed his income, and he is unable to meet the calculated patient share. We conclude that the Board properly calculated claimant’s patient share and affirm.

Claimant is a recipient of Medicaid long-term care benefits. In January 2008, the Department for Children and Families (DCF) notified claimant that it was increasing his patient share to \$402.25 per month. He appealed to the Human Services Board. Before the Board, the following undisputed facts were presented. Claimant has a monthly income of \$1519.40. DCF calculated claimant’s patient share by subtracting from his income his allowable deductions: \$96.40 for health insurance, \$950 for a community maintenance allowance, and \$70.75 for noncovered medical expenses. Claimant argued that the community maintenance allowance was inadequate, and the calculated patient share was unrealistic given his monthly expenses for necessities, which he testified were \$2165. He urged the Board to consider his circumstances and to decrease his patient share. The Board concluded that DCF’s decision was consistent with its regulations and affirmed.

On appeal, claimant renews his argument that his community maintenance allowance is insufficient to cover his expenses and should take into account his particular circumstances. “This Court will set aside the clearly erroneous findings of an administrative board, but where the record contains any credible evidence to fairly and reasonably support the findings, the board’s decision will stand.” Hall v. Dep’t of Soc. Welfare, 153 Vt. 479, 486-87 (1990).

In this case, the Board’s decision that DCF’s patient share calculation was in compliance with applicable law is supported by the findings. The amount of patient share for long-term care Medicaid recipients is calculated based on DCF’s Medicaid Rules. Under the Medicaid Rules,

patient share is calculated by subtracting allowable deductions from an individual's gross income. Medicaid Manual § M431.2, 5 Code of Vermont Rules 13 170 008-98. Applicable deductions include, among other things, a community maintenance allowance and reasonable medical expenses. *Id.* § M432. The community maintenance allowance is a standard deduction "to provide a reasonable amount for food, shelter, and clothing to meet [a claimant's] personal needs." *Id.* § M432.1. Although claimant asserts that this allowance is insufficient because his reasonable expenses far exceed this amount, the Board correctly determined that it did not have authority to amend DCF's decision for that reason. In reviewing a decision on benefits, the Board does not have authority to "reverse or modify agency decisions which are determined to be in compliance with applicable law, even though the [B]oard may disagree with the results effected by those decisions." 3 V.S.A. § 3091(d). Thus, the evidence supports the Board's decision that DCF's calculation was in compliance with the law, and it must stand.

Affirmed.

BY THE COURT:

---

Paul L. Reiber, Chief Justice

---

John A. Dooley, Associate Justice

---

Denise R. Johnson, Associate Justice