

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. M-03/17-119
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Appeal of)
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INTRODUCTION

Petitioner appeals a decision by Vermont Health Connect (VHC) denying her request for retroactive termination of her Qualified Health Plan (QHP) coverage effective August 31, 2016. The issues are whether VHC's decision complied with its regulations and whether VHC is collaterally estopped from denying petitioner's request.

The following facts are adduced from the testimony of petitioner and a VHC case manager during a telephone hearing held on April 4, 2017, copies of VHC records received by the Human Services Board on March 21, 2017, and a letter from VHC counsel dated April 5, 2017.

FINDINGS OF FACT

1. Petitioner enrolled in QHP coverage through the VHC Exchange in 2016. Her total monthly premium for BCBS Silver level coverage was \$468.90. She received federal Advanced Premium Tax Credits (APTC) of \$319.62 per month and a Vermont

Premium Subsidy of \$31.85 per month, leaving her with a net premium of \$117.43 per month.

2. During the summer of 2016, petitioner learned that she would be enrolled in Medicare coverage starting on September 1, 2016.

3. Petitioner credibly testified that she consulted with a broker who was assisting her with completing her enrollment in Medicare. She noted that he used to be the broker for her employer, and she believed he was listed as a navigator on VHC's web site.

4. A VHC case manager credibly testified that petitioner's broker is not currently a VHC navigator. VHC counsel subsequently submitted a letter representing that VHC had checked its records and determined that the broker was not a VHC navigator in August 2016. Based on VHC's testimony and representations, it is found that the broker was not a VHC navigator in August 2016, nor is he a navigator now.

5. The VHC case manager further credibly testified that a broker is someone privately retained by an individual to assist with purchasing insurance. Based on this testimony, it

is found that the broker assisting petitioner was a licensed broker as contemplated in VHC's authorizing statute.¹

6. At some point in August the broker told petitioner that she could request termination of her QHP coverage effective August 31st by writing "cancel - starting Medicare September 1st" on the invoice she received that month. Petitioner followed the broker's instructions and mailed the August invoice to VHC without a payment for the September premium.

7. Petitioner does not dispute that the August invoice on which she wrote her request for termination of coverage included the instruction: "Do not write any messages on your coupon; please call 1-855-899-9600 to report any changes." However, she noted that she did not see that instruction when she mailed the August invoice to VHC.

8. VHC did not terminate petitioner's QHP coverage as requested on the August invoice. Instead, VHC mailed petitioner another premium invoice in early September.

9. Following her receipt of the September invoice, petitioner called VHC on September 15th to report that her

¹ Section 1805 of Title 33 authorizes VHC to establish procedures, including standard fee or compensation schedules, "that allow licensed insurance agents and brokers to be appropriately compensated outside the navigator program" for assisting individuals with enrollment in QHPs and applying for subsidies through the Exchange. 33 V.S.A. § 1805(17).

Medicare coverage had started on September 1st and to request termination of her QHP coverage effective August 31st. At that time, a VHC representative told petitioner that September 30th would be the earliest date VHC could terminate her coverage.

10. Petitioner requested a fair hearing in September after she was informed that VHC would not terminate her QHP coverage effective August 31, 2016.²

11. VHC mailed petitioner an Internal Revenue Service (IRS) Form 1095-A dated January 20, 2017 which indicated that BCBS had received an APTC payment on her behalf for September 2016, but that she had not paid her share of the premium.

12. On January 30, 2017, petitioner called VHC to express her concerns that she might have to pay the federal government back for the APTC payment to BCBS in September, and again requested a fair hearing.³

13. Petitioner has filed her federal tax returns for 2016, and as a result of the reconciliation process,⁴ her tax

² There is no record of petitioner's hearing request in September. However, she credibly testified, and VHC does not dispute, that she requested a hearing at that time. It is not clear why petitioner's request was not forwarded to the Board.

³ The Board received petitioner's request from VHC on March 16, 2017. Again, it is not clear from the record why VHC delayed in relaying petitioner's request to the Board until March.

⁴ See 26 CFR § 1.36B-4(a). See also HBEE §§ 55.02(d)(3)(i) and (iii)(C) and 57.00(c)(4)(i)(B) (AHS must verify that qualified individuals have

liability included \$319.62, the amount of APTC paid by the IRS to BCBS for petitioner's coverage in September 2016.⁵

14. To date, BCBS has not attempted to collect the \$117.43 petitioner still owes for coverage in September 2016.

15. There is no dispute that petitioner was enrolled in both QHP and Medicare coverage in September 2016, and that she paid a premium for her Medicare for that month.

16. Petitioner requests that VHC retroactively terminate her QHP coverage effective August 31, 2016 so she will not be responsible for the \$117.43 still due for BCBS coverage in September, and so she may refile her 2016 federal tax return and obtain a refund of the \$319.62 she had to pay to the IRS for reconciliation of the September APTC.

17. Petitioner argues that she is entitled to relief because her broker gave her incorrect instructions for requesting that VHC terminate her QHP coverage.

attested "that they understand that any APTC paid on their behalf is subject to reconciliation."); HBEE §§ 77.00(c) and 78.00 (AHS must report APTC payments to the IRS and the tax filer for reconciliation of such payments).

⁵ VHC indicated that petitioner was required to pay back the APTC for September coverage because she has not paid her share (\$117.43) of the premium. However, the IRS may have required reconciliation because of petitioner's ineligibility for APTC due to having Minimum Essential Coverage through Medicare in September 2016. See HBEE § 23.01(a) and (b).

ORDER

VHC's decision to deny petitioner's request for retroactive termination of her QHP coverage is affirmed.

REASONS

The Board's review of VHC decisions is de novo. As petitioner is appealing VHC's denial of her request for retroactive termination of her QHP coverage, she has the burden of proving by a preponderance of evidence that VHC's rules authorize such relief. Fair Hearing Rule 1000.3(O)(4). Based on the evidence in the Findings of Fact, *supra*, the Board concludes that petitioner has not met her burden.

VHC's regulations require QHP enrollees requesting termination of coverage to provide "reasonable notice" of "at least fourteen days from the effective date of termination." HBEE § 76.00(d)(1)(i). In this case, petitioner did not provide reasonable notice when she wrote a note on her August invoice, contrary to instructions on the invoice, requesting termination of her QHP effective August 31st. However, she did provide reasonable notice when she called VHC to request termination of her coverage on September 15th. As such, it must be concluded that VHC's decision to terminate

petitioner's coverage effective September 30, 2016 was consistent with its rules.

Petitioner now argues that VHC should be ordered to terminate her QHP coverage effective August 31, 2016 because she received incorrect instructions from her broker, whom she believed was acting as a navigator on behalf of VHC. Her argument is essentially a claim that the doctrine of equitable estoppel should preclude application of the above-referenced regulation to her situation. The preliminary question, for the purpose of determining whether equitable estoppel applies here, is whether the broker was acting as an agent for VHC. *My Sister's Place v. City of Burlington*, 139 Vt. 602, 609, 433 A.2d 275, 279 (1981) (citations omitted) ("when a government agent acts within his authority, the government can be estopped by his actions").

While there is no doubt petitioner had a genuine belief that her broker was a navigator acting on behalf of VHC, the testimony and representations from VHC establish that he was not.⁶ Instead, he was acting only on behalf of petitioner as an independent broker. Thus, where the broker was not an authorized agent of VHC, petitioner does not have a legitimate

⁶ Because petitioner's broker was not a VHC navigator, it is not necessary to decide whether navigators act as authorized agents for VHC.

claim that his statements preclude VHC from requiring reasonable notice of requests for termination of coverage. *Compare id.* at 608, 279 (city estopped from denying liability for deputy fire warden's representations where he was an authorized agent of the city).

Moreover, petitioner acknowledged that VHC's invoices instruct enrollees to call VHC to report changes rather than write messages on the invoices. Therefore, even if the broker had been an authorized agent of VHC, petitioner's claim would not succeed because she could not satisfy the third element of equitable estoppel (the party asserting estoppel must be ignorant of the true facts).⁷

If petitioner still feels aggrieved about having to pay \$319.62 to the IRS to reconcile the APTC overpayment for her September coverage, she should contact the Office of Health Care Advocate to ask whether there may be any other legal remedies for her situation.

⁷ The four elements of equitable estoppel are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that his conduct shall be acted upon or the acts must be such that the party asserting estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped. *Stevens v. Dept. of Social Welfare*, 159 Vt. 408, 421, 620 A.2d 737, 744 (1992).

However, based on the foregoing, VHC's decision to deny petitioner's request for retroactive termination of her QHP coverage effective August 31, 2016 must be affirmed. 3 V.S.A. § 3091(d); Fair Hearing Rule 1000.4D.

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