STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. Y-03/17-138
	)	
Appeal of	)	
	)	
	)	

INTRODUCTION

Petitioner appeals a decision by Vermont Health Connect (VHC) denying her request for a Special Enrollment Period (SEP) so that she may enroll in a Qualified Health Plan (QHP) outside of the 2017 Annual Open Enrollment Period (2017 AOEP) and have a gap in (and no liability for premium payments for) QHP coverage from November 2016 through April 2017. The issue is whether petitioner is eligible for a SEP.

The following facts are adduced from the testimony of petitioner and a VHC case manager during telephone hearings held on April 4 and May 9, 2017, along with copies of correspondence and records submitted by VHC and petitioner to the Human Services Board.

FINDINGS OF FACT

1. Petitioner was enrolled in a Blue Cross Blue Shield (BCBS) Silver Plan for 2016 through VHC's automatic renewal

process. Her premium was $468.90 per month. Petitioner was not eligible for federal or state subsidies.

2. VHC mailed petitioner timely invoices through October 2016, at which time her coverage was terminated (see paragraph 8, *infra*).

3. VHC's invoices and petitioner's records reflect the following payment history. She did not pay the full premium of $468.90 for January 2016 (increased from the premium of $436.20 per month in 2015) so her subsequent payments did not cover the amount due for each new month. Petitioner eventually caught up by making several payments for coverage through July. However, she fell behind again when she paid less than the full amount due for August, and then she paid the premiums for September and October two weeks late in each of those months.

4. BCBS mailed petitioner grace period notices (on VHC letterhead) in May and from July through October 2016. Each notice advised that VHC had not received petitioner's full premium payment, and that if such payment, including the premium due for the following month, were not received in full, that petitioner's coverage may end. Each notice also stated, "[f]or more information on how grace periods work, please see the graphic on the other side of this notice. You

may also contact Vermont Health Connect for assistance at (855) 899-9600."[1] The graphic explains the one-month grace periods for customers, such as petitioner, who are not eligible for subsidies. It also explains that if coverage is terminated at the end of the grace period, VHC can make a once-per-year exception and reinstate coverage.

5. Prior to October, petitioner either cured each grace period through full payment of the amount due, or VHC and BCBS, apparently in error (but to petitioner's benefit) did not terminate coverage when full payment was not received, effectively giving petitioner extra grace periods.

6. Petitioner did not pay the premium for October by the end of September, so BCBS mailed petitioner a grace period notice on October 3, 2016 advising that she needed to pay the full amount due as reflected on her October invoice ($937.80 for October and November) or her coverage may end.

7. On October 15, 2016, petitioner submitted a payment of only $468.90. She did not submit the full payment due before her grace period expired at the end of the month.

[1] This number appears numerous times on all three pages of the grace period notices.

8. By letter dated November 7, 2016, BCBS informed petitioner that her coverage had been terminated effective October 31, 2016.

9. By letter to BCBS dated November 15, 2016, petitioner requested that her coverage not be terminated and she enclosed two checks with her request.

10. Petitioner did not mail her payment to VHC as instructed on the grace period notices, nor did she call VHC to request reinstatement. However, petitioner's letter effectively requested reinstatement within 30 days after the termination of coverage, which she may do once a year (see footnote 2, *infra*).

11. By letter dated December 8, 2016, BCBS advised petitioner that they had received her premium payment (her two checks) and had forwarded the checks to VHC.

12. VHC did not reinstate petitioner's coverage upon receiving her two checks from BCBS. Instead, VHC processed one check to cover October (VHC apparently had not processed the check she sent on October 15th) and destroyed the other check.

13. There is no record of any correspondence from VHC or BCBS to petitioner after December 8, 2016.

14. Petitioner next called VHC on February 7, 2017 and again requested reinstatement of her coverage. VHC denied her request the same day, as well as during a call on February 13, 2017. Petitioner requested a fair hearing.

15. Petitioner submitted copies of her November 15, 2016 letter and the two checks she mailed to BCBS during the first hearing on April 4, 2017. Based on this information, VHC was asked to consider whether petitioner was eligible for reinstatement of her coverage pursuant to its rule allowing reinstatement once a year.

16. By letter dated April 17, 2017, VHC informed the Board that it had offered to reinstate petitioner's coverage effective November 1, 2016 contingent on her paying all premiums due through May. Petitioner did not respond to VHC's offer before the next hearing in May.

17. At hearing on May 9, 2017, VHC noted that the total amount due had increased to account for the June premium. Petitioner indicated that she would submit payment for the total amount due so that her coverage would be reinstated (VHC has since confirmed receipt of her payment). However, she maintains that she should not have to pay premiums for the past six months because, she asserts, errors by VHC were the reason her coverage was not reinstated in November 2016.

Accordingly, petitioner requests that the Board approve her for a SEP so that she may enroll in a QHP now (and cancel the reinstatement of her coverage) rather than be required to pay the premiums for coverage since November 2016.

18. To the extent that VHC made errors when it declined to reinstate petitioner's coverage as she requested prior to hearing, the evidence shows that petitioner's own errors and inaction substantially contributed to the delay in her reinstatement. First, she mailed her written request for reinstatement to BCBS rather than mailing it to VHC or calling VHC as instructed on the grace period notices. Second, although she received no invoices or correspondence regarding her 2017 coverage after October 2016, petitioner did not inquire about her coverage and make a second request for reinstatement (and enrollment for 2017) until February 7, 2017, after the end of the 2017 AOEP.

19. Within two weeks of receiving (at the April 4th hearing) petitioner's letter to BCBS requesting reinstatement, VHC offered reinstatement, effective November 1, 2016 (and enrollment for 2017) contingent on payment of premiums due for coverage since that date.

ORDER

VHC's decision denying petitioner a SEP to enroll in a QHP outside the 2017 AOEP is affirmed.

REASONS

The Board's review of VHC decisions is *de novo*. As petitioner appeals VHC's denial of her request for a SEP, she has the burden of proving by a preponderance of evidence that she is eligible. Fair Hearing Rule 1000.3(O)(4). Based on the Findings of Fact set forth above, and the applicable VHC regulations, it must be concluded that petitioner has not met her burden.

VHC's regulations provide for SEPs which allow for enrollment in a QHP outside of the Annual Open Enrollment Period (which for 2017 ran from November 1, 2016 through January 31, 2017) only under certain clearly-defined circumstances or "triggering events." Health Benefits Eligibility and Enrollment (HBEE) § 71.03(d). These triggering events include:

> The qualified individual's . . . enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of AHS . . . or its instrumentalities as evaluated and determined by AHS. In such cases, AHS may take such action as may be necessary to correct or

> eliminate the effects of such error, misrepresentation, or inaction[.]

HBEE § 71.03(d)(4).

The Board must determine whether VHC's initial inaction and its subsequent denial of petitioner's requests for reinstatement were errors that trigger a SEP under the above-referenced rule. Here, petitioner made her own errors when she submitted her request for reinstatement to BCBS rather than VHC, and then waited until February 2017 to inquire about her coverage and again request reinstatement. This evidence shows that petitioner's errors substantially contributed to VHC's delay in reinstating her coverage. Thus, it cannot be concluded that the delay in her reinstatement resulted from VHC errors that would trigger a SEP.

Moreover, VHC promptly offered to reinstate petitioner's coverage after receiving evidence that petitioner had requested reinstatement of her coverage within 30 days of

termination as allowed under HBEE § 64.06(b)(1)(ii)(B).[2] By doing so, VHC corrected any errors it may have made when it previously declined to reinstate petitioner's coverage.

Based on the foregoing, it must be concluded that VHC's decision to deny the petitioner's request for a SEP is consistent with its regulations. There is no question that petitioner experienced significant frustration while attempting to get her coverage reinstated. However, she has made no showing that she is financially worse off than she would have been if VHC had reinstated her coverage in response to her requests in November 2016 or in February 2017, or that her circumstances at this time are in any way worse than they would have been had no errors ever occurred in her case. Therefore, VHC's decision must be affirmed. 3 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4D.

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[2] HBEE § 64.06(b)(1)(ii)(B) provides:

> If the individual is enrolled in a QHP without APTC, the individual may request reinstatement of coverage after termination for non-payment of premium once per plan year. The individual must request reinstatement within 30 days of termination for non-payment and must pay all invoiced and past-due premiums prior to the last day of the month following the last month of coverage.