

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. V-07/17-351
)
Appeal of)
)

INTRODUCTION

Petitioner appeals the denial of a "Special Enrollment Period" by the Department of Vermont Health Access ("Department"). The following facts are adduced from a hearing held August 31, 2017 and documents submitted by the Department.

FINDINGS OF FACT

1. Petitioner lost her health insurance (through her spouse's employer) as of March 31, 2017. Around and following this time, her elderly mother had significant health issues, and petitioner was extensively involved in planning for her care and housing transition, including the need for regular out-of-state travel.

2. Working with a health navigator, petitioner attempted to apply for insurance through Vermont's health exchange on June 1, 2017. Her application was denied because it fell beyond the annual open enrollment period for 2017

(ended January 31, 2017), as well as what would have been her special enrollment period ending 60 days following the loss of her insurance on March 31, 2017 (June 1 being the 62nd day after March 31).

3. Petitioner indicates she had no idea that any special enrollment period would end 60 days following the loss of her insurance, and that she was under a high level of stress and preoccupation with her mother's health issues during this time, and was not thinking about her own health needs - leading her to delay contacting Vermont Health Connect ("VHC"). VHC has no record of contact from petitioner, prior to her attempt to apply in June.¹

ORDER

The Department's decision is affirmed.

REASONS

Review of the Department's determination is de novo. The Department has the burden of proof at hearing if terminating or reducing existing benefits; otherwise the

¹ It is noted that VHC's records appear to suggest that petitioner attempted to apply on June 4, while petitioner insists that occurred June 1 (also noting that June 4 fell on a Sunday). Although petitioner's representation is accepted as true for the purposes of argument, it is immaterial to the issue presented because both dates fall beyond the special enrollment period.

petitioner bears the burden. See Fair Hearing Rule 1000.3.0.4.

The sole issue before the Board is whether the Department's denial of a Special Enrollment Period ("SEP"), beyond that normally allowed, to enroll in a QHP is consistent with the rules. A SEP is appropriate in certain limited situations, which are outlined in Health Benefits Eligibility and Enrollment ("HBEE") Rules, § 71.03. Generally speaking, a SEP is limited to 60 days following the triggering event such as loss of insurance. See HBEE Rules § 71.03(c).² There is no dispute that petitioner *would have* been eligible to enroll, based on a SEP, had she done so within that 60-day period.

The rules also allow for a SEP in "other exceptional circumstances," per HBEE Rule § 71.03(d)(9), with a non-exclusive list of examples of such circumstances not applicable here. See *id.* While not limited to any particular situation, it is reasonable to apply this rule where the circumstances leading to a loss or absence of insurance are (reasonably) out of the person's control, as well as

² It should be noted that there is no allegation or evidence that petitioner failed to enroll in an exchange plan due to an error or misrepresentation of an employee or agent of the Department or VHC.

particularly compelling. Guidance from the federal government indicates that such situations are intended to be significantly limited and "highly exceptional" where it is verifiable that the circumstances "directly impacted" the lack of enrollment. See *Patient Protection and Affordable Care Act: Market Stabilization*, 82 Fed. Reg. 18346, at 18365 (April 18, 2017). Secondary federal guidance provides that this rule applies where the enrollee can show that an issue "like being incapacitated or a victim of a natural disaster" prevented them from enrolling. See *Special Enrollment Period (SEP) Overview for the Federally-Facilitated Marketplaces (FFMs)* at p. 26 (June 28, 2016).

There can be no dispute that petitioner's attempted enrollment occurred outside of the 60-day period normally allowed under the rules for a SEP. The Department's denial of a new SEP under these circumstances - while undoubtedly difficult for petitioner - cannot be said to be contrary to the above-cited rules.

As such, the Department's decision must be affirmed.³
See 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

#

³ Nothing prevents petitioner from enrolling during the next Annual Open Enrollment Period, November 1, 2017 through December 15, 2017, for 2018 coverage.