

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. M-08/17-397  
 )  
Appeal of )  
 )

INTRODUCTION

The petitioner appeals the decision by the Vermont Health Connect denying his and his wife's application for enrollment in a Qualified Health Plan (QHP). The issue is whether the petitioner is eligible for enrollment in a QHP for 2017 outside the Annual Open Enrollment Period (AOEP) that closed in January 2017.

The following facts are based on the representations of the parties and the documents submitted at and pursuant to a telephone hearing held on September 13, 2017.

FINDINGS OF FACT

1. On January 4, 2017, the petitioner contacted VHC by phone for assistance in resetting his online password. At the time he and his wife were receiving Medicaid. VHC informed him that its records indicated that he should only be eligible for QHP with a subsidy. VHC informed the petitioner that it would look into the matter.

2. On February 14, 2017, VHC determined that the petitioner's and his wife's Medicaid should have been closed in August 2016 based on its records of the household's reported income, but that their Medicaid had been continuing in error, with no record of any notice ever having been sent to the petitioner.

3. Upon this discovery, VHC sent the petitioner a notice dated February 14, 2017 that his and his wife's Medicaid coverage was ending February 28, 2017 because "your household income is more than the rules for that program allow". Under a section prominently headed "Getting Health Coverage", the notice advised the petitioner: "You have 60 days from the day coverage ends to enroll in a new plan. Financial help is available to people who qualify." In bold, at the end of that section, was the warning: "If you do not enroll in a plan in the next 60 days, you may not be able to get health coverage until next year." In several places, the notice provided a toll free number to call for assistance. It also included a section with detailed information about appeal rights.

4. On March 21, 2017 the petitioner called VHC to inquire about his Medicaid having been terminated. The VHC worker explained that he and his wife were over the income

maximum for Medicaid eligibility, but were eligible for \$563.58 a month in premium subsidies for a QHP. The petitioner stated that he would check with his wife to pick a QHP plan that best met their needs, and that he would contact VHC once they had made their selection.

5. On March 22, 2017, VHC sent the petitioner and his wife a notice that began: "Thank you for applying for health insurance through Vermont Health Connect (VHC). Although you have completed your application, you do not have health insurance until you select your plan and, if applicable, pay for the first month of coverage." The notice contained toll-free telephone numbers to obtain information regarding "plan choices" offered by VHC's insurance carriers.

6. Thereafter, VHC heard nothing further from the petitioner until August 1, 2017, when he called to report that he was having trouble selecting a QHP plan online. VHC advised him that he was out of his special enrollment period to select a QHP through VHC, and that he should contact the insurance carriers directly to try to obtain insurance.

7. On August 7, 2017, the petitioner called VHC requesting a fair hearing.

8. At the hearing the petitioner did not dispute VHC's determination of his household income or the fact that he had

waited far more than 60 days to undertake the enrollment process for a QHP after the termination of his Medicaid effective February 28, 2017. The petitioner stated that he could not remember the notices VHC had sent on February 14 and March 22, 2017, but he admitted he could not specifically deny that he had received them.

9. There is no claim or indication in the record that the petitioner's failure to have timely enrolled in a QHP for 2017 was due to anything other than his own inadvertence.

ORDER

The Department's decision is affirmed.

REASONS

The Board's review of VHC decisions is de novo. The petitioner has the burden of proving by a preponderance of evidence that he is eligible for health insurance in 2017.

As noted above, the petitioner does not dispute that he is financially ineligible for Medicaid, and he does not dispute VHC's closure of those benefits for him and his wife effective February 28, 2017. See Procedures Manual § P-2420B(1).

As a general matter, enrollment in a QHP can occur only during an Annual Open Enrollment Period (AOEP). Health Benefits Eligibility and Enrollment (HBEE) § 71.02(a)(2). The AOEP for 2017 started in November 2016 and ended on January 31, 2017. HBEE § 71.02(e).

The above notwithstanding, the regulations provide for a Special Enrollment Period (SEP) allowing for enrollment in a QHP outside of the AOEP, but only under certain defined "triggering events". HBEE § 71.03(d). Those events include losing existing health insurance (MEC), which clearly pertained to the petitioner and his wife when their Medicaid coverage was terminated effective February 28, 2017.

However, the regulations pertaining to SEPs also include a provision that "a qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP". HBEE § 71.03(c)(1). That provision specifically includes individuals whose triggering event, like that of the petitioner and his wife, is the loss of previous insurance coverage. HBEE § 71.03(c)(2)(i). Furthermore, the regulations specify: "The date of loss of coverage is the last day the individual would have coverage under their previous plan or coverage". HBEE § 71.03(d)(1)(i). In this case, there can be no dispute that the petitioner knew or

should have known that his and his wife's last day of coverage under Medicaid was February 28, 2017, and that they had 60 days from that date (until the end of April) to enroll in a QHP.

The above regulations also allow for a Special Enrollment Period (SEP) if a failure to timely enroll is due to "error, misrepresentation, misconduct, or inaction" by VHC. However, nothing in the regulations excuses delays or errors due solely to an individual's or a household member's inadvertence. It cannot be concluded that any event occurred in the petitioner's case that would allow for a SEP beyond 60 days after the loss of his and his wife's Medicaid.

If the petitioner suffers a loss or reduction in his income, he can reapply for Medicaid, which does not have a limited enrollment period. However, based on the foregoing, it must be concluded that VHC's decision to deny petitioner's request to enroll in a QHP for 2017 is consistent with the regulations; and the Board is thus bound to affirm. 3 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4D.

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