

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-02/17-68
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Appeal of)
)

INTRODUCTION

The petitioner appeals a decision by Vermont Health Connect (VHC) that he owes unpaid premiums for the months of November and December 2016 to Blue Cross/Blue Shield (BC/BS). The issue is whether these payments can and should be waived by DVHA despite the provision of insurance coverage during those months by BC/BS.

The following facts are based on the representations of the parties at hearings held on February 21 and September 13, 2017,¹ and on the parties' written submissions following those hearings.

FINDINGS OF FACT

1. The petitioner enrolled in a BCBS Silver Plan through Vermont Health Connect (VHC) on July 1, 2016 and was found eligible for subsidies based on his income. His part of the premium payment was \$232.78 per month.

¹Several continuances were granted at the petitioner's request.

2. On September 16, 2016, the petitioner called VHC to report a salary increase which made him ineligible for further subsidies. VHC determined that as of November 1, 2016, he would be required to pay premiums of \$465.16 per month.

3. The petitioner was sent an invoice on October 6, 2016 for November 1, 2016, which because of a processing lag did not contain the new correct amount, using instead the old amount of \$232.78 per month. The petitioner paid \$232.78, on October 25, 2016.

4. On November 8, 2016, VHC sent the petitioner an invoice showing that he now owed \$465.16 for the coming month of December 2016 and, in addition, owed an arrearage of \$232.38 for the actual amount that should have been billed in October for his coverage in November 2016. The total of the invoice was \$697.54.

5. On December 9, 2016, the petitioner called VHC to ask why he owed an arrearage for November of 2016. The customer-service representative erroneously told the petitioner that he was current on his payments. There is no claim or evidence that the petitioner attempted to resolve, or have explained, the discrepancy between that statement and the invoice he had received.

6. The petitioner alleges that on December 10, 2016, he bought \$500 worth of jewelry, which was not returnable, to give as Christmas gifts. He says he did this believing he did not owe health insurance premiums based on the December 9, 2016 phone call.

7. The petitioner called VHC again a few days later and was advised by another customer service representative that the prior information given to him on December 9 had been erroneous, and that the correct outstanding premium balance for November and December of 2016, as had been stated in the written invoice, was \$697.54. The petitioner did not offer an explanation why he called VHC again a few days after December 9, and he did not respond to the Department's argument that the second call should be considered evidence that he had doubts about the accuracy of what he had been told on December 9.

8. At any rate, the petitioner refused to make any further payments to VHC, claiming that following the phone call on December 9, 2016, he had purchased \$500 worth of jewelry as a Christmas gift that he was unable to return. He maintains that he made this purchase because he believed he owed no further premiums for 2016.

9. The petitioner does not allege that the benefits of his health insurance coverage were not fully available to him through the end of 2016, despite his non-payment of part of November's and all of December's premiums.

10. There is no indication in the record what, if any, steps BC/BS has taken against the petitioner to try to collect the outstanding arrearage for his insurance coverage in 2016.

ORDER

The decision of Vermont Health Connect is affirmed.

REASONS

The petitioner does not dispute the following: that VHC correctly calculated the new amount of his premium based on his reported income increase in September of 2016, that his increased income made him ineligible for subsidies, that the effective date of the new premium amount was November 1, 2016,² and that he owed the increased premium amounts for the

²November 1, is the effective date because a report of an income change made after the 15th of the month (his was on the 16th of September) results in an effective change date of the first day of the second month following the date of the report (November 1, in this case). HBEE Sec. 73.06. Thus, the petitioner avoided by one day having the subsidy decrease and consequent increase in his premium amount go into effect for October of 2016.

last two billing cycles of the year, i.e. for November and December of 2016.

The above notwithstanding, and despite having had insurance coverage for November and December, the petitioner has never paid the full amount he owes to the insurer for November or anything toward the amount owing for December. He argues that the misinformation he received from VHC on December 9, 2016, should relieve him of any responsibility for making those payments.

The Board has consistently held that nothing in the VHC rules authorizes a waiver, reduction, or payment of claims for arrearages resulting from unpaid premiums, even when mistakes and/or delays on the part of VHC may have caused or contributed to those arrearages. See, e.g., Fair Hearing No. L-04/17-149. The petitioner does not claim that there is any basis in the regulations to waive his insurance payments for any months he received insurance coverage. Instead, he maintains that the doctrine of equitable estoppel should be applied in this case to release him from the obligation of paying the bill to BlueCross/BlueShield for the insurance coverage he received in the last two months of 2016.

In effect, the petitioner is asking the state of Vermont, through VHC, to pay his overdue insurance bills for

those months. This is essentially a claim for monetary damages: he wants VHC to indemnify him for the unpaid premium amounts he owes to the insurer. The Board has consistently held, and the Vermont Supreme Court has affirmed, that the Board does not have jurisdiction to hear such claims. See, e.g., Fair Hearing No. B-03/08-104, *citing Scherer v. DSW*, Unreported, (Dkt. No. 94-206, Mar. 24, 1999) and *In re Buttolph*, 147 Vt. 641 (1987). Therefore, the Board is bound to affirm VHC's decision.³ 3 V.S.A. § 3091(d), Fair Hearing Rule 1000.4D.

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³Even if it could be concluded that the Board does have jurisdiction to hear such a claim, the petitioner's argument would fail. One of the four elements of equitable estoppel is that a party asserting estoppel must be "ignorant of the true facts". *Stevens v. Dept. of Social Welfare*, 159 Vt. 408 (1992); see also *Burlington Fire Fighter's Assn. v. City of Burlington*, 149 Vt. 293 (1988). In this case, the petitioner knew, or should have known, that premium payments are expected for each and every month of insurance coverage. Prior to December 2016, he had previously been required to pay a premium for each and every *other* month of coverage he had received (even when he was making less money). He had received timely and accurate written invoices of the amounts that he, in fact, owed for November and December 2016. In light of this, the petitioner *should have had* reason to (and there is evidence that he, indeed, *did*) suspect that that the oral information he was given was incorrect. Inasmuch as there is no claim or indication that the petitioner asked VHC for any explanation for this what-should-have-been-obvious discrepancy before doing his Christmas shopping, his subsequent claim of "ignorance" seems barely sincere, much less compelling.