

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. M-08/17-409
)
Appeal of)
)

INTRODUCTION

Petitioner appeals the denial of enrollment into a Qualified Health Plan ("QHP") by the Department of Vermont Health Access ("Department"). The following facts are adduced from a hearing held November 8, 2017, a status conference held May 4, 2018 and documents submitted by the Department.¹

FINDINGS OF FACT

1. Petitioner lost his employer-sponsored health insurance at the end of March 2017. Petitioner had been on medical leave from his employer and had failed to pay premiums during his leave, leading to the termination of his insurance.

2. Petitioner subsequently applied for health insurance through Vermont's healthcare exchange (Vermont

¹ Petitioner's case was previously assigned to a different hearing officer who retired while the case was pending, and as a result consideration of petitioner's appeal was inadvertently delayed (albeit without prejudice to either party).

Health Connect or "VHC") on August 8, 2017. He was ultimately found ineligible for a QHP with federal and state subsidies, for the reason that he was able to access affordable insurance through his employer. By the time of hearing, the Department also indicated that petitioner was ineligible altogether for a QHP (with or without subsidies) because he was beyond the 60-day period, following the loss of his employer insurance, for enrolling under a "Special Enrollment Period."

3. Petitioner does not dispute that he lost his employer insurance for non-payment of premiums at the end of March of 2017. He claims that he mailed a healthcare application to VHC sometime in February or March of 2017, when he became concerned about the status of his insurance. At the request of the hearing officer, the Department reviewed all potential records of any contact by petitioner in 2017, and the first contact shown in any record was with respect to petitioner's August 8, 2017 application.

4. Although petitioner's assertion that he mailed a paper application to VHC is not supported by the record, he acknowledges in any event that he waited until August 2017 to contact VHC, following the loss of his insurance, because up to that point he had been "doing pretty well" in terms of his

health - but around August started having concerns about his health.

5. There is no 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.

6. Petitioner does not dispute that he had access to insurance through his employer at the time of his August 2017 application, but indicates he could not afford to reenroll because his employer was insisting that he also repay his unpaid premiums from earlier in the year.

7. Petitioner currently has insurance but is seeking retroactive coverage from August through December of 2017 due to significant health events (and attendant costs) that he suffered in November and December of 2017.

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

petitioner bears the burden. See Fair Hearing Rule 1000.3.0.4.

The threshold issue before the Board is whether the Department's denial of petitioner's enrollment in a QHP (with or without subsidies) is consistent with the rules. A Special Enrollment Period ("SEP") to enroll outside of the normal open enrollment period is appropriate in certain specified situations, which are outlined in Health Benefits Eligibility and Enrollment ("HBEE") Rules, §§ 71.03 and 71.04. Generally speaking, a SEP is limited to 60 days following the triggering event such as loss of insurance. See HBEE Rules § 71.03(c).

The record does not support any claim that petitioner enrolled or attempted to enroll within the 60-day period following the loss of his insurance at the end of March 2017 (or prior to this period, in anticipation of losing his insurance). Even so, assuming that petitioner mailed an application in February or March of last year, there is no evidence that *the Department* made any error which would prevent imposition of the 60-day time limit for enrollment. If anything, petitioner delayed contacting VHC because he

effectively did not wish to have insurance, as he acknowledges, because he perceived his health as good.²

Therefore, the record establishes that petitioner's attempted enrollment occurred outside the 60-day period normally allowed under the rules for a SEP, and without any other basis for QHP eligibility or a new SEP, the Department's denial of enrollment to petitioner is consistent with the applicable rules.

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

#

² It should be noted that petitioner's substantive eligibility for a SEP is unclear at best, given that his employer insurance was terminated for non-payment of premiums. See HBEE § 7104(e)(1)(i) (excepting a "loss of coverage" from SEP eligibility when it results from non-payment of premiums). Moreover, because petitioner may not avail himself of a SEP to enroll in the first instance, there is no need to reach whether VHC's determination of the affordability of his employer-sponsored insurance should, or should not have, taken into consideration the requirement that he pay his premium arrearage.