

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-09/19-591
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Appeal of)
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INTRODUCTION

Petitioner appeals the decrease in her Advance Premium Tax Credit (APTC) by the Department of Vermont Health Access (Department) and requests a one-month retroactive termination of coverage. The following facts are adduced from a telephone hearing held December 19, 2019, documents submitted by the Department, and information submitted by the parties post-hearing.

FINDINGS OF FACT

1. Petitioner was enrolled into a Qualified Health Plan (QHP) for 2018, which included a federal APTC subsidy to defray the cost of her premium. According to the Department's records, in November 2018 petitioner reported that her income beginning in June 2017 was \$800/week, or approximately \$41,000/year. However, the Department reports that on July 13, 2018, petitioner processed an income change in the Vermont Health Connect portal reporting her annual income for 2018 as \$22,400; her subsidies for the remainder

of 2018 and the first half of 2019 were computed based on that reported income. Then, by phone on July 15, 2019, petitioner reported an income change, effective June 1, 2019, of \$920/week or approximately \$45,382/year. During this customer service call on July 15th, petitioner specially asked if either her plan or her premium amount would change as a result of this income report; it is undisputed that the customer service representative told petitioner that both her plan and her premium would stay the same. Petitioner credibly testified that she relied on that representation.

2. However, in contrast to the information supplied by the customer service representative, as a result of the July 15, 2019 report of income change, the Department sent a Notice of Decision dated July 24, 2019, stating that petitioner's APTC and Vermont Premium Assistance (VPA) would both be reduced effective August 1, 2019; APTC was reduced from \$513.47 to \$248.84 and VPA was reduced from \$28 to \$0. The Notice also stated

Your allowable APTC amount has decreased. The monthly APTC amount shown above does not calculate any APTC you have already used this year. If you have already used APTC this year, you may not be able to use the full amount listed above.

The Notice cited the Health Benefit Eligibility and Enrollment (HBEE) Rules regarding the application of APTC and

VPA to coverage costs based on income. The Notice also stated that VHC could not cancel coverage without the individual's permission and that if the individual could not afford the QHP without the previous level of subsidies, the individual should call VHC. Finally, the Notice advised petitioner that she might be eligible for a 60-day Special Enrollment Period (SEP) to make changes to her current QHP.

3. However, to add to the confusion, the invoice for August 2019 coverage was issued on July 8th; prior to the July 24th Notice. The August invoice was for the previous coverage amount of \$103.87. However, after that invoice was issued, the Department recalculated the subsidies to which petitioner was now entitled for 2019, a calculation referred to as "exhaustion," and determined that petitioner had used all APTC to which she was entitled and removed all subsidies from the account for the remainder of 2019. The Department's calculation showed that petitioner was now eligible for \$2,986.08 in total APTC for 2019 but had received \$3,594.29 in APTC to date. Therefore, the invoice issued on August 7th for September 2019 coverage showed an arrearage of \$645.34, the full cost of the plan, for August 2019 coverage and \$645.34 due for September 2019 coverage, for a total of \$1,186.81 (minus the \$103.87 paid by petitioner for August).

4. The case notes from the Department's call records show that petitioner repeatedly called the Department (there were problems with dropped calls) on September 3rd to report that her bill had dramatically increased, that she could not afford to pay the \$645.34 coverage amount, and that she had been given misinformation by the customer service representative (that her premium would not change) when she called on July 15th. In addition, petitioner now reports that when she made the calls to VHC on September 3rd to protest the new invoice amount, the customer service representative(s) told her simply not to pay the bill and let her coverage lapse; that statement is not reflected in the case notes provided by the Department. Rather, the notes reflect the staff member from the appeals unit describing the process of exhaustion and that since petitioner had been provided coverage for August 2019 (as explained below), the Department could not offer retroactive cancellation for that month.

5. Petitioner did not pay the September coverage invoice and was terminated, after a one-month grace period, by the insurer retroactive to August 31st. Both in her internal appeal and at the fair hearing, petitioner - based on the erroneous information supplied to her during the July 15th phone call - asked to have coverage retroactively

cancelled to 7/31/19 so that she is not responsible for the August 2019 coverage invoice. While conceding erroneous information was given to petitioner, the Department maintains that any error was cured by the Notice that was issued on July 24, 2019, the subsequent invoices, and the requirement that it apply exhaustion in the calculation of APTC for 2019.

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.

Calculation of APTC through Vermont's healthcare exchange is based upon annual household income. See Health Benefits Eligibility and Enrollment ("HBEE") Rules § 2.04(b). Generally, the "benefit year" is identical to the "taxable" or calendar year. See HBEE § 3.00. Any APTC applied during the calendar year must ultimately be "reconciled" when an enrollee files their tax return for that year. See HBEE Rules § 12.05. When VHC redetermines eligibility during a

calendar year, it must allocate APTC so that “. . .the recalculated APTC is projected to result in total advance payments for the benefit year that correspond to the tax filer’s total projected premium tax credit for the benefit year. . .” HBEE Rules § 73.07. See FH V-04/18-244.

Based on the evidence presented, the Department correctly used petitioner’s July 15, 2019 report of her income of \$45,382 (as of June 2019) in calculating her APTC amount for the remainder of 2019 as required by the rules. See Health Benefits Eligibility and Enrollment (“HBEE”) Rules §28.05(c); §60.00; §73.01.

Petitioner credibly argues that the customer service’s representative statement on July 15th that her premium would not change was misleading to her. However, the Department did subsequently issue the July 24th Notice of Decision explaining that APTC would now be decreased and VPA eliminated and also noted (while not using the word itself) that “exhaustion” of APTC might apply if she had received more APTC than she was now eligible for. See B-09/19-645 (Department’s subsequent notice regarding removal of subsidies corrected erroneous information supplied during telephone call). Further, the invoice for September coverage noting the removal of APTC was issued on August 7, 2019;

petitioner did not call the Department to contest the invoice until September 3rd, which was after the conclusion of the August 2019 coverage.

However, it must be noted that while the Department is entitled to rely on its notices to correct previously provided information, petitioner was credible in her argument that the Department's initial error caused her to incur the expense of a month of coverage (without APTC defraying the cost) - a bill that she reports she is unable to pay. The fact that the Department is required to account for exhaustion compels the result in this case - but the impact on petitioner is highly regrettable.

As the Department's decision is consistent with the rules, it must be affirmed. See 3 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4D.

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