STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. J-10/19-648
	)	
Appeal of	)	
	)	

INTRODUCTION

Petitioner appeals the termination of her Medicaid eligibility by the Department of Vermont Health Access (Department) and the denial of a Special Enrollment Period to purchase coverage under a Qualified Health Plan for the second half of 2019 and ultimately seeks the right to verify her income during that Special Enrollment Period so that her eligibility for an Advance Premium Tax Credit may be determined. The following facts are adduced from a multi session telephone hearing, and telephone status conferences held between November 22, 2019 and January 31, 2020 along with documents introduced by the Department and responses to Hearing Officer questions.

FINDINGS OF FACT

1. Entering 2019, petitioner was enrolled in the Dr. Dynasaur program under Medicaid. Her eligibility was based on her pregnancy, with her coverage due to end three months

after the birth of her child. In June of 2019 petitioner received notice from the Department that it was time to renew her Medicaid. This notice was issued because petitioner was reaching the end of her post-partum coverage pursuant to Dr. Dynasaur.

2. The Department reviewed the information they had on file for petitioner who lives with her two children and constituted a household of three individuals (HH3). On July 3, 2019 petitioner was advised by a written Notice of Decision that her Medicaid would not be renewed because she was over the newly applicable (to her) income eligibility limits[1] for Medicaid for Children and Adults (MCA) and that her Medicaid would terminate on July 31, 2019.

3. Petitioner was further advised in the July 3, 2019 notice that she was entitled to a 60-day Special Enrollment Period (SEP) following her July 31, 2019 termination, during which she would be eligible to purchase health insurance through the Department. That 60-day SEP would end on September 29, 2019.

[1] After petitioner's pregnancy related eligibility ended, she was subject to different eligibility criteria that were strictly related to her income. The income limit for pregnant women under Dr. Dynasaur is higher, at 208 per cent of the Federal Poverty Level, instead of the 133 per cent FPL eligibility limit that would otherwise be the applicable ceiling.

4. Petitioner contacted and called the Department several times to try and obtain insurance coverage following the termination of her Medicaid on July 31, 2019.

5. On July 18, 2019 petitioner reapplied for Medicaid and in response on July 25, 2019 was informed that her application was pending. Petitioner testified during the hearing that she did not understand that her initial Medicaid eligibility was through the Dr. Dynasaur program and based on a different income eligibility analysis due to her pregnancy. Consequently, she was confused about why she received a notice of termination for being over income when she knew that her income had remained unchanged. She explained that this was why she had filed a new application in July. At that time, she believed that the Department's termination error had simply been an error.

6. Petitioner indicated that she was informed that if she was determined eligible for Medicaid that it would be retroactive to August 1, 2109 and as she was unaware of the change in income eligibility criteria applicable to her, she was confident that she would be afforded retroactive coverage.

7. Petitioner does not contest the Department's calculation that she currently makes $3,000 per month and is therefore over income for Medicaid (MCA).

8. On August 1, 2019 the Department requested income verification from petitioner in conjunction with her Medicaid application.

9. The parties dispute whether petitioner provided complete current information to the Department following the August 1, 2019 request for verification. Petitioner asserts she sent the verification to the Department in August, to which the Department responds that they never received it. Upon being informed of the Department's claim that they did not get the information, petitioner she sent it again and this is not disputed by the Department.

10. It is undisputed that by September 6, 2019, the Department had received several paycheck stubs from petitioner. Thus, on each occasion that the Department told petitioner that she had failed to verify her income information, petitioner believed this to be inaccurate.

11. As it turns out, the income verification sent by petitioner in September of 2018 was incomplete, because a single paycheck stub for one of the middle weeks during the prior month was missing. This specific problem was never

clearly articulated to the petitioner. She was just told that she had failed to send in verification, which she knew she had. That the Department gave a general explanation 'failure to provide income verification' as the reason for denying her eligibility, instead of specifically telling her that one paycheck stub was missing, was the direct cause for confusion on this subject.

12. On September 13, 2019 the Department issued a Denial Notice on petitioner's application indicating she had failed to provide income information and informing her she could be screened for Medicaid again at any time. A Notice of Decision containing essentially the same information was issued on September 18, 2019.

13. Petitioner called the Department on more than one occasion to try to better understand the denial. Of importance is a call that took place between petitioner and the Department on September 25, 2019. In that call, which lasted almost an hour, a Department representative informed petitioner that her Medicaid application was denied for failure to verify income. While the representative did state that there was 'a gap in income information', and actually gave the start and end dates of the gap (which were two dates, a week apart in August), but petitioner still did not

understand from what was said that one paycheck stub was missing. When petitioner insisted that she had sent in the income verification, the representative conjectured that perhaps it was self-employment information that needed verification and so the opportunity for petitioner to understand that a single paycheck stub was missing, was lost.

14. During the call the representative offered the petitioner the opportunity to appeal the Medicaid eligibility decision several times and the notion of retroactive benefits was mentioned. However, petitioner insisted that she no longer believed that she was financially eligible for Medicaid and repeatedly inquired about other available coverage. Reading from correspondence she had received from the Department, she asked about enrolling in a Qualified Health Plan.

15. In response the Department representative told her that in order to enroll in a QHP she needed to have a SEP and referring to the file, incorrectly told her twice that her SEP had ended on September 1, 2019. Petitioner corrected him after the first time and said she believed that it would not end until the end of September and the representative told her a second time that it had ended and so she could not enroll in a QHP. On the day of this call, petitioner still

had four more days of her SEP and was in fact eligible to enroll in a QHP.

16. The Department concedes this was an error and, on that basis, during the appeal, offered to allow the petitioner to retroactively enroll in a QHP commencing in August of 2019. However, the Department asserts that petitioner is not eligible for an APTC to defray the costs of her QHP premium, because she had failed to verify her income as of September 25, 2019, the date of the phone call described above.

17. Petitioner required emergency health care in September of 2019, a month during which she had no coverage, and incurred a large bill that she is unable to pay.

18. On September 25, 2019 petitioner filed this appeal.

ORDER

The Department's decision is affirmed as to the Medicaid denial but reversed as to the petitioner's right to have the Department determine the amount of APTC to be afforded to her if she elects to retroactively enroll in a QHP for the last five months of 2019.

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 2019 eligibility threshold for MCA for a household of three is $2,453.90 per month. *See* HBEE §28.04(a); https://info.healthconnect.vermont.gov/sites/hcexchange/files/2019%20FPL%20full%20chart.pdf Petitioner's monthly income of $3,000 exceeds that eligibility standard.

However, while the Department initially properly notified petitioner of her 60-day SEP following the termination of her Medicaid coverage, the erroneous information given by the Department's telephone representative about when her SEP expired was the direct cause of her failure to enroll in a QHP. Pursuant to Rule 73.01(d)(4) an error by a VHC representative is indeed grounds for a SEP. Given that the Department has conceded petitioner's eligibility for a SEP it is not necessary to further examine the circumstances regarding the verification. However, on this record it is clear that the petitioner did make a good faith effort to comply with the request and under

different circumstances that alone may have entitled her to the relief she seeks.

While the Department concedes their error, their decision to extend a SEP to petitioner was not accompanied by an offer to determine petitioner's eligibility for an APTC. The Department's argument was that petitioner did not provide full verification of her income until late October and therefore would not be entitled to an APTC until December 1, 2019.

In explaining this position the Department argued that until verified income information was provided, the Department was required to use the last verified information that they had in their files to determine the APTC and that income information, which they knew was outdated, was from when petitioner was eligible for Medicaid. A person who is eligible for Medicaid is not entitled to an APTC. The Department did not and can not provide legal authority for this position.

Even more telling was the Department's response to a hypothetical posed by the Hearing Officer at the final session of the hearing. When asked whether petitioner would have been eligible for an APTC to defray her QHP premium if she had provided income verification before September 29,

2019, the Department replied in the affirmative. What prevented her from doing so, was the Department's provision of incorrect information about her SEP. Where the Department agrees that petitioner's non enrollment in a QHP is due to their error, and that the appropriate remedy under the rules is a SEP, they can not restrict the opportunity that any applicant would have had during a SEP to verify their income for the purpose of determining the APTC. In fact, the Department is directed by the HBEE rules to determine APTC eligibility consistent with the effective date of the petitioner's enrollment in a QHP. See Rules 71.03(b)(4) and 73.06(e).

As such, the Medicaid eligibility determination of Department's decision is consistent with the applicable rules and must be affirmed, but the determination that petitioner is not eligible for the APTC is inconsistent with those rules and must be reversed. The matter must remanded to the Department to allow petitioner the opportunity to retroactively enroll in a QHP for August 2019 through December 2019, after a determination of the amount of APTC to which she is entitled. *See* 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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