

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. J-12/19-835
)
Appeal of)
)

INTRODUCTION

Petitioner appeals a decision by the Vermont Department of Health Access (DVHA) that she is ineligible for subsidies under a Qualified Health Plan on the Vermont Health Connect Exchange because she has access to Minimum Essential Coverage that has been determined to be "affordable", through an insurance plan offered by her husband's employer.

The following facts are adduced from testimony and representations of the parties during a telephone hearing held on January 30, 2020 and documents submitted by the Department.

FINDINGS OF FACT

1. In December of 2019 Petitioner sought to renew enrollment for herself and her husband in a Qualified Health Plan (QHP) with federal and state subsidies.

2. In response to questions on the Department's application form, petitioner acknowledged that her husband

had changed jobs and was now eligible for Employer Sponsored Insurance (ESI).

3. The cost of ESI for petitioner's husband is \$38.50 per week, which constitutes 5.84% of his salary of \$658.50.

4. The Department reviewed the ESI plan available to petitioner and her husband, as well as the cost of the one-month premium for petitioner's husband and determined that the ESI provided Minimum Essential Coverage (MEC) and met the "affordability" criteria of the Department's rules because it was less than 9.78% of the household's modified adjusted gross income.

5. Petitioner does not challenge either of these determinations.

6. Based on the information provided, the Department notified petitioner that because of the availability of health insurance through the husband's employer that was deemed to be affordable and to provide Minimum Essential Coverage (MEC), she was no longer eligible for an Advance Payment of Premium Tax Credit (APTC), Vermont Premium Assistance (VPA) or Cost Sharing Reductions (CSR) (referred to collectively as "subsidies").

7. At hearing, petitioner stated that while she did not contest the fact that her husband's ESI premium was

affordable, hers was not, as it was almost ten times the amount her husband paid. Specifically, petitioner testified that it would cost her and her husband \$341 per week for both of them to obtain coverage under the husband's ESI.

8. Department representatives testified that the rule governing the 'affordability' determination requires only an analysis of the employee premium and does not consider the premium required for other household members.

9. Petitioner does not contest the Department's interpretation of the rule. Rather, she simply asserts that she cannot afford to pay the spousal premiums for the ESI plan, nor can she afford the cost of the QHP without the subsidies and as a result, currently has no health insurance.

10. Petitioner also asserts that the rule dictating that the determination of affordability for the ESI premium is based on only her husband's premium cost, and not hers, is illogical and unfair.

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, by a

preponderance of the evidence, if terminating or reducing existing benefits; otherwise, the petitioner bears the burden. Fair Hearing Rule 1000.3(O)(4).

Eligibility for subsidies through Vermont's Healthcare Exchange is precluded when an applicant has access to an employer sponsored health plan (ESI) which is deemed affordable and meets the minimum coverage (MEC) requirements of the rules. Health Benefits Eligibility and Enrollment Rules (HBEE) § 23.01(a). For an employer-sponsored plan to qualify as providing MEC, "the plan must be affordable and meet minimum value criteria." HBEE Rule §23.01(a), §§23.02-23.03.

"Affordability" is defined as follows:

. . . an eligible employer-sponsored plan is affordable for an employee if the portion of the annual *premium* the employee must pay, whether by salary reduction or otherwise (required contribution), **for self-only coverage does not exceed the required contribution percentage (as defined in paragraph(c)) of the applicable tax filer's household income for the benefit year.**

HBEE § 23.02(a)(1) (emphasis added).

Under the rules, the determination of affordability for a household is based on the cost of the premium for the employee alone, not the cost of premiums for all household members. HBEE § 23.02(a)(2) and (d)(2) (applying the same

affordability standard to "related individuals" of an employee).

Petitioner's frustration with a rule that determines affordability based on the ESI premium for only one person, the employee, when the premium for the second family member is much higher, and thus unaffordable for the family as a whole, is understandable, but the rule has no flexibility on that issue.

It is indisputable that if petitioner were eligible for subsidies on a QHP plan, she would have a much lower premium than she would for the insurance available through her husband's employer. Therefore, petitioner's vexation at having her options limited to paying the higher premium cost for the ESI is understandable.

Unfortunately, the fact that the QHP Exchange is more generous to a person without available employer-sponsored insurance does not mean that the petitioner can become eligible for subsidies by declining the insurance offered by the employer. The regulations state that "individuals who are 'eligible to enroll' in health coverage that qualifies as MEC . . . are not eligible to receive federal tax credits and cost-sharing if they enroll in a QHP." HBEE § 23.00(a). Thus, while petitioner could have enrolled in a QHP, based on

her household income, she would not have been eligible for subsidies due to the availability of ESI.

The Department correctly applied its regulations when it determined that the petitioner is not eligible for the subsidies available to individuals who purchase coverage through VHC because she is eligible for ESI through her husband's employment and that coverage meets both the affordability and MEC requirements. Therefore, the Board is required to affirm the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

#