

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. R-01/20-11
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Appeal of)
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INTRODUCTION

Petitioner ostensibly appeals a termination or reduction of services through the Choices for Care program as administered by the Department of Disabilities, Aging and Independent Living ("Department" or "DAIL"). The following facts are adduced from a telephone status conference held February 3, 2020 and written submissions and arguments of the parties. The primary issue is Board jurisdiction over the appeal.

FINDINGS OF FACT

1. Petitioner has received personal care services through Vermont's Choices for Care ("CFC") program -falling under Vermont's Medicaid waiver - for several years. Recently, petitioner's need for services under the CFC program was subject to an annual review, as contemplated and required by CFC rules.

2. For reasons that are (at this point) unclear and immaterial, petitioner's review did not take place as scheduled. Petitioner contacted the Board to file an appeal, asserting that his services were going to be terminated and requesting continuing benefits. Petitioner also requested an "emergency" or "expedited" appeal.

3. After the appeal was docketed by the Board, the Department responded that petitioner's services were not (at that point) subject to termination, because no notice had been issued - but, in any event, petitioner's case concerned an "adverse benefit determination" under state regulations, not a termination of his Medicaid eligibility. As such, the Department asserted that his appeal was subject to an internal appeal process (also known as a "Commissioner's Review") which needed to be initiated and completed before any appeal to the Board could be made. The Department also indicated that petitioner's request for an expedited hearing had been denied because he was still receiving benefits.

4. Petitioner then wrote an email to the Board and Department counsel formally requesting a Commissioner's Review.

5. During the subsequent telephone status conference in this matter, Department indicated that petitioner's

Commissioner's Review hearing had been scheduled (although petitioner had requested a continuance), that the annual evaluation of petitioner's level of need for services had not yet taken place, and that petitioner was receiving continuing benefits.¹

6. Despite petitioner's request for a Commissioner's Review, the pending evaluation of his level of need for services, and his continuing benefits, petitioner wishes to maintain his Board appeal - arguing, in part, that he is aggrieved by the Vermont Department of Labor's refusal to recognize him as an "employer" under their rules (petitioner has chosen to self-manage his benefits, meaning he is responsible for hiring and managing his own personal care workers).²

ORDER

Petitioner's appeal is dismissed, without prejudice to any future appeal following exhaustion of DAIL's internal appeal process.

¹ Although petitioner alleges issues with arranging for his annual evaluation regarding his need and/or level of need for CFC services, any dispute about this is premature - the Department indicates that arrangements for the evaluation are ongoing. Petitioner is free to raise those issues during the Commissioner's Review process.

² While it is not entirely clear how Department of Labor rules or policies affect petitioner, this is immaterial to the outcome here.

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.

Petitioner's appeal presents a threshold question of "ripeness" for Board review. There is no dispute about petitioner's eligibility for Medicaid. Petitioner's dispute - to the extent an actual dispute exists - is regarding his eligibility for a level and type of *services* available through the CFC program. CFC services are authorized under Vermont's federal (Section 1115(a)) Medicaid waiver. Medicaid "covered services" appeals to the Board are subject to a requirement that the available internal appeal process be exhausted before any Board appeal:

In the case of an appeal of a Medicaid covered service decision made by the Department of Vermont Health Access or any entity with which the Department of Vermont Health Access enters into an agreement to perform service authorizations that may result in an adverse benefit determination, the right to a fair hearing granted by subsection (a) of this section shall be available to an aggrieved beneficiary only after that individual has exhausted, or is deemed to have exhausted, the Department of Vermont Health Access's internal appeals process and has received a notice that the adverse benefit determination was upheld.

3 V.S.A. § 3091(i).³

In addition, under Vermont's administrative rules, any "adverse *benefit* determination" is subject to an exhaustion requirement before any Board appeal may be filed. See Health Care Administrative Rules ("HCAR") § 8.100.4. Conversely, Medicaid eligibility generally falls under Vermont's Health Benefits Eligibility and Enrollment ("HBEE") rules. See HBEE § 3.00 (including the CFC program as "long-term care" services).

As this case concerns an adverse benefit determination regarding a Medicaid covered service (not Medicaid eligibility), petitioner must avail himself of the internal appeal process, and exhaust that process, before any Board appeal may be made. And, while petitioner states a more general grievance against the Vermont Department of Labor, that Department does not fall under the Board's jurisdiction. See 3 V.S.A. § 3091. Finally, the Board will only consider an expedited appeal that has been determined to meet expedited criteria by the Department in the first place, meaning that determination is solely in the Department's

³ The Department of Vermont Health Access - ultimately responsible for administration of Vermont's Medicaid programs - has designated DAIL (by agreement) to manage the CFC program. See *Global Commitment to Health Waiver*, Attachment K, Section B (January 28, 2020 - most recent version) at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/vt/vt-global-commitment-to-health-ca.pdf>.

discretion under state rules; the decision as *whether* an appeal should be expedited is not itself appealable under the rules. See HCAR § 8.100.4(p).

For the above reasons, the Board must dismiss petitioner's appeal for lack of jurisdiction. See 3 V.S.A. § 3091(d).; Fair Hearing Rule No. 1000.4D.

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