

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-06/20-418
)
Appeal of)
)

INTRODUCTION

Petitioner appeals a denial of retroactive termination of a qualified health plan ("QHP"), by decision of the Department of Vermont Health Access ("Department"). The following facts are based upon a hearing held August 20, 2020, a telephone status conference held January 5, 2021, documents submitted by the parties, and arguments of the parties. The primary issue is whether petitioner's request for retroactive termination is timely.

FINDINGS OF FACT

1. Petitioner was enrolled in a QHP in calendar year 2019. He received a federal tax subsidy (Advanced Premium Tax Credit or "APTC") which defrayed the cost of his monthly premium.

2. On November 19, 2019, petitioner logged into his VHC account through the VHC online "portal." Petitioner indicates he did so to terminate his QHP, because he had

started a new job (out-of-state) which gave him access to health insurance beginning January 1, 2020. Petitioner indicates that he successfully submitted a termination request through the VHC portal. VHC's records show that petitioner logged into his account on November 19, 2019, but VHC has no record that petitioner requested termination at that time.

3. Although petitioner moved out-of-state around this time, he did not notify VHC of a change of address. Petitioner indicates that he did not think he needed to do so because his QHP had been terminated and he had no reason to stay in contact with VHC.

4. However, petitioner's QHP remained active and VHC continued to send him invoices at the address they had for him on file. Petitioner indicates that this was a "family" P. O. Box and that none of the invoices would have been sent back to VHC as undeliverable, although he did not personally receive the invoices. Petitioner's premium payments (\$196.80 per month) also continued to be deducted from his bank account although petitioner indicates that he did not notice this for several months.

5. Petitioner does acknowledge, however, that he eventually noticed the automatic payments and returned to the

VHC portal on April 3, 2020 and saw that his insurance remained active.

6. Petitioner contacted VHC on June 10, 2020, to request termination of his insurance. VHC granted his request effective June 30, 2020 but denied his request for termination or cancellation retroactive to January 1, 2020. There is no material evidence of any error or omission by VHC which might have prevented petitioner from contacting VHC in April or May 2020, after he acknowledges discovering his active enrollment status.

7. This appeal followed. At hearing, the hearing officer requested that the parties address whether petitioner's request for retroactive termination was timely, given that his request was made more than 60 days after he acknowledged becoming aware that his QHP was active.

8. Both parties filed briefs. Petitioner's brief included an issue that he had not raised before, alleging that he had been misled by Department counsel at that time (a different assistant attorney general has since assumed responsibility for this appeal) as to the nature of the fair hearing process and their respective roles.

9. Upon reviewing the briefs, the hearing officer scheduled a telephone status conference to discuss

petitioner's allegations. Following the telephone status conference, petitioner submitted email correspondence with the Department in support of his claim that his appeal rights were affected by his communications with Department counsel.

10. In sum, petitioner argues on appeal that he properly terminated his insurance on November 19, 2019; that the 60-day period for requesting retroactive termination should (in effect) be waived in his case; and that he was unfairly prejudiced during the fair hearing process.

11. While it is recognized that petitioner paid premiums and received APTC during a time period that he was covered by other insurance, the determinative issue in his appeal is whether his request for retroactive termination was timely under the rules.

12. Although petitioner's arguments are well-articulated, the record does not establish that petitioner's fair hearing rights were affected or that he was unfairly prejudiced during the process. This is especially the case because the primary issue addressed here, whether petitioner timely requested retroactive termination, was raised by the hearing officer, not the Department.¹

¹Based on a review of the email correspondence between the parties, nothing appears inappropriate or prejudicial to petitioner. If anything,

ORDER

The Department's decision granting termination of petitioner's QHP effective June 30, 2020, 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.

Generally, enrollee-initiated termination requires advance notice to VHC, and the rules presume that at least 14 days' notice is considered "reasonable" to cancel or terminate insurance *prospectively*. See Health Benefits Eligibility and Enrollment ("HBEE") Rules § 76.00. The rules otherwise allow for *retroactive* termination in certain limited situations:

Department counsel attempts to assist petitioner in locating the records he is seeking and offers to forward any records petitioner wishes to the hearing officer. Department counsel clearly states that petitioner could "make his points" to the hearing officer. While petitioner argues that Department counsel should have advised him that he could subpoena records, this information is contained in the fair hearing rules that are included with the Board's notice of hearing. There is no evidence that the Department withheld records from petitioner known to be in its possession; if anything, the Department exercised due diligence in attempting to meet petitioner's request for certain technical records from the VHC system. Ultimately, whether petitioner actually requested termination in November 2019 is immaterial to the outcome here.

(iv) AHS will permit an enrollee to retroactively terminate or cancel their coverage or enrollment in a QHP in the following circumstances:

(A) The enrollee demonstrates to AHS that they attempted to terminate their coverage or enrollment in a QHP and experienced a technical error that did not allow the enrollee to terminate their coverage or enrollment through VHC, and requests retroactive termination *within 60 days after they discovered the technical error.*

(B) The enrollee demonstrates to AHS that their enrollment in a QHP through VHC was unintentional, inadvertent, or erroneous and was the result of the error or misconduct of an officer, employee, or agent of AHS or HHS, its instrumentalities, or a non-Exchange entity providing enrollment assistance or conducting enrollment activities. Such enrollee must request cancellation *within 60 days of discovering the unintentional, inadvertent or erroneous enrollment.* For purposes of this paragraph, misconduct includes the failure to comply with applicable standards under this rule or other applicable federal or state laws, as determined by AHS.

(C) The enrollee demonstrates to AHS that they were enrolled in a QHP without their knowledge or consent by any third party, including third parties who have no connection with AHS, and requests cancellation *within 60 days of discovering of the enrollment.*

HBEE Rules §76.00(b)(1) (emphasis added).

The parties vigorously dispute whether petitioner requested termination on November 19, 2019. The Department credibly represents that there is no record of petitioner requesting termination at that time. Petitioner has, at a minimum, presented credible evidence that he logged into his portal at that time and at least offered testimony that he

recalls an on-screen confirmation of his termination. However, assuming *arguendo* that petitioner correctly recalls terminating his insurance, coupled with the fact that VHC has no record of this and indisputably did not terminate his insurance, these circumstances are ultimately circumscribed by the 60-day time limit of the above rule, governing situations where a request to terminate is thwarted by a technical problem or other error.

The latest possible date that petitioner could *argue* that he became aware of his continued QHP enrollment is April 3, 2020, which is the date that he acknowledges learning that his QHP was still active (putting aside any notice issues with the invoices mailed to his family P. O. box or the deductions from his bank account). Petitioner's request for retroactive termination was made on June 10, 2020, which is more than 60 days after April 3, 2020. Thus, even construing these circumstances in a light most beneficial to petitioner, his request for retroactive termination was not timely under the rules.² This conclusion is clearly consistent with Board

² Petitioner argues that he was never advised of the 60-day time limit for requesting retroactive termination and that he could not locate the email address for VHC on its website to report this problem or call VHC because of the time difference, given that he was in California. However, the HBEE rules are published on-line for the public and this particular rule (as many other HBEE Rules) does not require specific notice to enrollees.

precedent, even if the request for retroactive termination is just a few days after the 60-day time limit. See Fair Hearing No. A-06/19-424. Because petitioner made his request for termination on June 10, 2020, granting termination effective June 30, 2020, is otherwise consistent with the applicable rules. See HBEE Rules § 76.00(d)(2).

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

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There is no evidence that petitioner was prevented from contacting VHC after April 3, 2020, and certainly not through any error or fault of VHC.