STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. B-08/20-518
	)	
Appeal of	)	
	)	

INTRODUCTION

Petitioner appeals a denial of retroactive start date for a BCBS catastrophic qualified health plan (QHP) by decision of the Department of Vermont Health Access (Department). The following facts are based upon a hearing held September 10, 2020, 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. On April 1, 2020, petitioner called Vermont Health Connect (VHC) and asked to cancel his existing coverage and enroll in a BCBS catastrophic plan[1]. Petitioner requested an April 1st start date.

2. A VHC representative called petitioner to provide updates on the status of his application (and the termination

[1] Petitioner has access to employer sponsored insurance that is deemed affordable under the HBEE Rules and therefore, while he is eligible to enroll in a qualified health plan (QHP), he is not eligible for any subsidies to lower the cost of the monthly premium.

of his prior plan) on April 8th and again on April 10th and left voice mail messages for petitioner. In the call on April 10th, the representative told petitioner the amount that would be due (noting that the next invoice showing the amount due would be incorrect because of the change that was just made). Then on April 16th, a representative called petitioner and left a voice message that the plan was approved for an April 1st start date and provided petitioner with his member ID number.

3. The Department mailed petitioner an invoice for coverage dated April 7, 2020 for May 2020 coverage. Petitioner did not make a payment on this invoice. However, due to an apparent error, the carrier effectuated coverage for the new plan. The Department continued to send petitioner a monthly invoice for the new plan in May, June, July, August, and September. Petitioner did not make payment on these invoices. The Department sent additional notices that payment was past due on May 4, 2020, and June 3, 2020. Neither these notices of non-payment or the invoices were ever returned to the Department or the carrier as undeliverable by the U.S. Postal Service. While petitioner never made payment, the carrier has not terminated coverage

for individuals (due to non-payment) during the pandemic, so petitioner's coverage was never terminated by the carrier.

4. On July 22nd, petitioner called VHC and asked if he could retroactively change the start date of his plan. The Department consulted with the carrier who declined the request because it had paid a claim that was submitted by a hospital in June 2020. Petitioner told BCBS that he did not realize that he had coverage and had intended to pay the hospital bill himself (although that did not occur).

5. At hearing, petitioner again stated that he did not realize that he had coverage in July.[2] He said that he did not receive any of the correspondence from the Department until he received an invoice stating that he owed over $1,000. The June 7, 2020, invoice for July coverage reflected the monthly premium of $266.82 plus an arrearage of over $800 for a total due of $1,022.68; all the invoices, from April 7th forward, reflected the monthly premium amount and an arrearage because petitioner never paid any of the invoices. All the invoices and the late-payment notices went

[2] At the time of the hearing, petitioner had not affirmatively asked the Department to terminate his catastrophic plan (though he concedes that he knew from July onward that it was active) but understood that if the Department's decision were upheld that the arrearage would continue to accrue until he requested that the plan be terminated; petitioner indicated that he wanted additional time to consider whether he would request termination.

to petitioner's correct home address and none were returned to the Department or carrier.

6. While the initial effectuation of petitioner's coverage was apparently done in error, given the phone calls to him on April 10th and 16th and the invoices and late payment notices that were mailed to him, petitioner was on notice that his QHP was in effect. He did not contact the Department to request a retroactive start date or termination until July 22nd; more than 60 days after the April 16th telephone call and the April 7th invoice.

ORDER

The Department's decision denying a retroactive start date or termination date 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:

> (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.*
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> (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).

While petitioner maintains that he was unaware that his catastrophic QHP plan had gone into effect and while the

effectuation of his coverage was an error (since petitioner never made payment), if petitioner bases his request that the QHP be terminated on that error, he must request cancellation within 60 days of "discovering" that erroneous enrollment. The April 16th telephone call from the Department, the monthly invoices (dated April 7th, May 7th, etc.), and the late payment notices all placed petitioner on notice that his QHP plan was active. However, petitioner did not call the Department to request a retroactive cancellation of his plan until July 22nd (where he asked to change his start date). Therefore, his request for a retroactive start date (or cancellation) was not made within 60-days and is untimely under the rules. *See* Fair Hearing No. A-06/19-424. *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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