STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. B-11/20-757
	)	
Appeal of	)	
	)	

INTRODUCTION

Petitioner appeals a denial of retroactive termination of her qualified health plan ("QHP"), by decision of the Department of Vermont Health Access ("Department"). The following facts are based upon a hearing held December 17, 2020, and documents submitted by the parties, with the record closing January 13, 2021. The primary issue in the case is whether petitioner was "aggrieved" by the Department's actions or otherwise entitled to relief under the applicable rules.

FINDINGS OF FACT

1. Petitioner was enrolled in a QHP in 2020 through Vermont's health insurance exchange (Vermont Health Connect or "VHC"). She received state and federal subsidies, based on her income, to defray the cost of her monthly premium. Petitioner's enrollment commenced on February 1, 2020.

2. On August 11, 2020, petitioner contacted VHC to request information about how an income change would affect

her insurance payments. Petitioner was starting a new job in September 2020 which was going to increase her income. A VHC representative gave petitioner information about how the costs of her plan would be affected, based on this change.

3. Unfortunately, the information given to petitioner during the August 11, 2020 call did not take into account APTC (Advanced Premium Tax Credit) "exhaustion." Exhaustion typically occurs with reported increases in income, which lessens the annual amount of APTC allowed to an enrollee; if an enrollee has received tax credits based on a lesser reported income up to that point, this will likely reduce the monthly amount of APTC available to them for the remainder of the year. In petitioner's case, she had been receiving just over $600 per month in APTC until her income change; following the change, which appeared to have been made effective November 1, 2020, she was entitled to $536 per month (for the *entire* year, beginning with her February 2020 enrollment). Due to the application of exhaustion, however, petitioner was only entitled to receive (approximately) under $200 per month in APTC for the last two (2) months of the year. Although APTC eligibility is fixed by IRS rules and reconciled through the tax filing process each year, exhaustion significantly increased petitioner's premium

obligation for the remainder of 2020 because (in retrospect) she had been overpaid in the months prior to her income change.

4. Petitioner reported her income change on September 24, 2020. VHC sent petitioner an invoice dated September 29, 2020, with a premium amount due (for November coverage) of $437.38, based on an APTC of $175.46. VHC subsequently issued a notice of decision dated October 12, 2020, showing that petitioner's APTC had been decreased from just over $600 per month to $523.40 per month (this was later adjusted to $526.28). In a nod to exhaustion, however, the notice specified that:

> Your allowable APTC has decreased. The monthly APTC amount shown above does not calculate any APTC you have already used this year. If you have already used APTC this year, you may not be able to use the full amount listed above.

5. Petitioner did not actually become aware of her significantly reduced APTC until sometime in October 2020. She contacted VHC on October 27, 2020, with questions about her bill. After further review by VHC, they determined that APTC exhaustion had caused petitioner's payment obligation to increase, not any error in calculating her APTC eligibility.

6. This appeal followed. Petitioner indicates that, had she known about exhaustion when she called VHC in August

to obtain information, she would have chosen to enroll in her partner's health plan through his employer, which she asserts was an option because of her job change. Petitioner further indicates that by the time she became aware of the exhaustion issue, it was too late to enroll in his plan.

7. Petitioner generally agrees that she would have enrolled in insurance at the time, no matter what, because her job is in a higher-risk field with respect to Covid-19 exposure. However, she argues that because she declined the (now lost) opportunity to enroll in another plan, she is entitled to a termination of her exchange insurance from October-December 2020 (she had no health claims during this period). At the crux of petitioner's argument is that she is aggrieved as a result of incomplete or incorrect information given to her by VHC in August 2020 and would have made a different choice (now lost) had she been given the correct or complete information.

8. The evidence, however, does not establish two (2) material elements of petitioner's claim. While petitioner submitted credible evidence that her partner made an inquiry, on November 10, 2020, to his employer about switching petitioner to his plan, and that his employer responded on November 12, 2020, that the window of opportunity to enroll

had passed, there is no specific evidence that petitioner *would have* had this opportunity nor *when* it might have been available to her. This is a key issue, given that petitioner was notified of the increase in her premium in late September and again in October; the lack of specific evidence as to the availability and timeframe of her opportunity to enroll makes it impossible to conclude that she, in fact, lost that opportunity.

9. Secondly, and independently, the evidence does not establish at this point that petitioner is aggrieved, vis-à-vis her APTC and premium payments, as a result of the information given to her during the August 11, 2020 call. This is because, by the time petitioner had started her new job (September 2020), she had already been allowed eight (8) months of a higher level of APTC than the amount she was actually eligible for, taking into account her increased annual income. Even if she had terminated her QHP effective September 30, 2020 (as she has requested), she would have remained liable for any overpayment of APTC when filing her taxes for the 2020 calendar year. The application of exhaustion solely affected the timing of repayment of APTC in her case, as the APTC she had already received was subtracted from the APTC allowed to her for the remainder of the year *so*

long as she remained in her QHP.[1] At the same time, had she enrolled in her partner's plan, petitioner would have been obligated to make premium payments for that coverage, but would, it appears, still have been liable for overpayment of APTC for her February-September coverage in her QHP. In fact, based on the information provided by petitioner of the increased premium costs involved with her partner's plan, it is possible that petitioner may have benefited from remaining in her exchange QHP, despite the "up front" costs of paying for her increased QHP premium – accounting for the overpayment of APTC that might have otherwise been collected by the IRS when she filed her taxes - from October through December of 2020.

10. Based on this, the evidence does not establish that petitioner has been harmed, at this point (particularly with the 2020 tax year concluded), by any incorrect or incomplete information given to her in the August 11, 2020 phone call with VHC.[2]

[1] Enrollees are only eligible for APTC during the months they are enrolled in a QHP through an insurance exchange.

[2] It is recognized that one of the values of the health exchange system is that tax credits are paid "in advance." Thus, not receiving tax credits in advance could be an adverse action to an enrollee, particularly during the benefit year. That is not an issue here.

ORDER

The Department's decision is affirmed; alternatively, petitioner's appeal is dismissed for lack of a cognizable grievance.

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.

Health Benefits Eligibility and Enrollment ("HBEE") Rules allow for a retroactive termination or cancellation where an enrollment is based on "error" of a VHC representative (HBEE Rules § 76.00(b)(1)) and also allow for a retroactive special enrollment period when an enrollment is based upon "error" or "misrepresentation" of a VHC representative (HBEE Rules 71.03(d)(4)). The Board's jurisdictional statute also more broadly allows the Board to order "appropriate relief" that is "consistent" with the statute. 3 V.S.A. § 3091.

However, whether petitioner's claim falls under any of these legal frameworks as a matter of law, her assertion that she lost an opportunity to enroll in her partner's employer

plan is not supported by the evidence. Nor has it been shown that she has suffered harm, at this point, due to any Department/VHC actions.[3] To the extent petitioner states a claim of damages against the Department, it is well settled that the Board does not have jurisdiction over such claims. *See, e.g.*, Fair Hearing No. B-03/08-104, *citing Scherer v. DSW*, Unreported, (Dkt. No. 94-206, Mar. 24, 1999) and *In re Buttolph*, 147 Vt. 641 (1987).

For the above reasons, the Department's denial of petitioner's request is consistent with the applicable rules and must be affirmed; petitioner's claim must otherwise be dismissed for lack of jurisdiction. *See* 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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[3] It is not entirely clear whether this raises an issue of "standing" or "mootness" in petitioner's case, because her appeal was filed in November 2020, during the benefit/tax year at issue. Under either principle, however, this implicates whether the Board has jurisdiction over petitioner's appeal since there is insufficient evidence that she is (or potentially ever was) "aggrieved" by any Department action. *See* 3 V.S.A. § 3091 (a).