

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. H-10/20-658  
 )  
Appeal of )  
 )

INTRODUCTION

Petitioner appeals a denial of a 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 October 29, 2020, documents submitted by the Department, an audio file of a phone call between petitioner and Vermont Health Connect (submitted following the hearing, and the arguments of the parties).

FINDINGS OF FACT

1. Petitioner was enrolled in 2020 in a QHP through Vermont's health insurance exchange (Vermont Health Connect or "VHC").

2. On March 13, 2020, petitioner contacted VHC to report a change in income (she had lost her job). With her mother's assistance on the call, petitioner made the income change and was informed by the VHC customer service

representative that she would likely be eligible for Medicaid, although that eligibility would need to be confirmed. At hearing petitioner indicated that she informed VHC during the March 13, 2020, call that she wished to terminate her QHP. However, a review of the call establishes that she chose to wait until receiving confirmation of her Medicaid eligibility to take any action with respect to her QHP.<sup>1</sup>

3. On April 9, 2020, VHC mailed petitioner a notice that she had been determined eligible for Medicaid and ineligible for subsidies to defray the cost of her QHP premium. VHC also continued to send petitioner monthly invoices showing that she remained enrolled in her QHP, although the premium obligation continued to reflect that she was receiving an advance premium tax credit ("APTC") to defray the cost of her premium. Petitioner presented no evidence or claim that she relied on the premium notices in any respect - that is, as to notice of her continued enrollment or the apparent error that she remained eligible for tax subsidies - particularly given that her primary claim

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<sup>1</sup> It is noted that the VHC representative appeared to frame petitioner's options as whether she wished to enroll in a QHP given her likely Medicaid eligibility, rather than whether she wished to terminate her QHP. While it is not clear whether this is a significant distinction vis-à-vis the procedures that VHC follows in these situations, this is ultimately immaterial given other determinative issues in the appeal.

is that she made a request for termination in March 2020. On the other hand, the Department argues that the premium bills notified petitioner that she remained enrolled in a QHP.

4. Petitioner contacted VHC on July 21, 2020, about a problem she was having with billing certain services to Medicaid and the apparent effect of her QHP enrollment on that process. As a result of that contact with VHC, and based on her request, petitioner was disenrolled from her QHP effective July 31, 2020, which was the effective date for her requested termination at that time under the normal operation of the rules. VHC denied petitioner's request for a retroactive termination effective March 31, 2020.

5. Petitioner appealed that decision. However, she ultimately withdrew that appeal, for reasons that are somewhat unclear, although petitioner's authorized representative asserts that petitioner was intimidated by the process and petitioner indicates she was confused about the consequences of withdrawing her appeal.

6. The Board mailed a letter to petitioner on August 14, 2020, that her appeal would be considered withdrawn "unless we hear from you within ten (10) days of the date of this letter." Petitioner did not contact the Board or VHC about her appeal within that 10-day period.

7. There is no evidence that the Department misinformed or misled petitioner in any way during the pendency of her first appeal (requested July 21, 2020).

8. Petitioner filed a second appeal with VHC on September 24, 2020, again requesting a retroactive termination of her QHP.<sup>2</sup>

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 if terminating or reducing existing benefits; otherwise, the petitioner bears the burden. See Fair Hearing Rule 1000.3.0.4.

In the first place, to the extent it is an issue, there is no basis in the record to "reopen" petitioner's prior appeal under the Board's fair hearing rules:

Motions to reopen. Within 30 days of the Board's issuance of any order, a party may move the Board to reopen and reconsider that order. Motions to reopen shall be referred to the hearing officer for recommendation as to disposition in accordance with the

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<sup>2</sup> This was docketed as a new appeal by the Board. Whether construed as a new appeal or request to reinstate her prior appeal is immaterial to the outcome here.

above rules. Such motions shall be granted only upon a showing of good cause by the moving party.

Fair Hearing Rule 1000.4.K.

Assuming *arguendo* that this rule applies to situations where an appeal has been withdrawn, petitioner's renewed request for a retroactive termination did not occur within 30 days of her withdrawal or 30 days of discovery of any "good cause" reason for reopening the appeal. Nor, for that matter, is there any evidence in the record establishing "good cause" for reopening her appeal. Thus, petitioner's renewed request for retroactive termination must be treated as made on September 24, 2020.<sup>3</sup>

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:

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<sup>3</sup> The Department also argues that petitioner is effectively barred from renewing her request for retroactive termination on the principle of *res judicata*, due to the withdrawal of her first appeal. Given the fact that petitioner's September 24, 2020, request was still within the 90-day period for VHC appeals (from the July 21, 2020 decision), which complicates the analysis, the issue of *res judicata* need not be reached in this case because the outcome is based on other grounds.

(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 latest possible date that petitioner could argue that she became aware of her continued QHP enrollment is July 21, 2020, when she contacted VHC about problems with her provider billing Medicaid for services. Petitioner's renewed request for retroactive termination was made on September 24, 2020, which is more than 60 days after her July 21, 2020,

call to VHC. Thus, even construing these circumstances in a light most beneficial to petitioner, her request for retroactive termination was not timely under the rules. There is, in any event, no persuasive evidence that VHC made any error which resulted in petitioner's continued enrollment. Because petitioner made her initial request for termination on July 21, 2020, granting termination effective July 31, 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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