

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. L-11/20-743  
 )  
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 December 17, 2020, and documents submitted by the Department. A preliminary issue is whether petitioner's appeal is untimely.

FINDINGS OF FACT

1. Petitioner was enrolled in a QHP in calendar year 2019. The QHP included her spouse and child as dependents. They received a subsidy (a tax credit provided in advance known as "APTC") which defrayed their monthly premium.

2. On April 23, 2019, petitioner contacted Vermont Health Connect ("VHC") to terminate their QHP, because they were covered through her spouse's employer. VHC granted termination (with the carrier's permission) effective March

31, 2019, which was the earliest date of termination that could be granted under the normal operation of the rules.

3. VHC's records show that a customer service representative outreached petitioner at that time to inform her of the effective date of termination; there is no indication that petitioner objected to VHC's actions at that time.

4. On January 17, 2020, VHC mailed petitioner a 1095-A form for tax purposes which gave information about her 2019 coverage and tax subsidies advanced to the household during that year. This form indicates a "Policy termination date" of March 31, 2019.

5. On October 23, 2020, petitioner contacted VHC concerned about the fact that she could be liable to repay tax credit subsidies she had received while covered by employer-sponsored insurance in January 2019 through March 2019. Apparently, petitioner was unaware that she was enrolled in her spouse's employer health plan during this time.

6. Petitioner further explained that her spouse had left the household permanently in October 2018 and communication with him, in particular obtaining reliable information about his health coverage, was difficult; and

that she called VHC to terminate her insurance at the earliest point that she was actually aware of the coverage through his employer.

7. The Department has denied petitioner further retroactive termination and argues that petitioner's appeal is otherwise untimely.

ORDER

The Department's decision is affirmed; to the extent this may be construed as an appeal of petitioner's termination effective March 31, 2019, it must be dismissed as untimely.

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.

(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).

In addition, in situations where an enrollee requesting termination is eligible for other qualifying insurance (such as through an employer), the rules allow for termination effective the last day of the month *prior to* the month

termination is requested, "subject to the determination" of the enrollee's QHP insurer. See HBEE Rules § 76.00(d)(2). This allowed VHC to terminate petitioner's QHP effective March 31, 2019, based on her April 23, 2019 request. As to petitioner's *current* request for a further retroactive termination, there is no evidence in the record supporting her request under the above-cited rules.

To the extent petitioner appeals the actions undertaken by VHC in April 2019, terminating her insurance effective March 31, 2019, the applicable rules for appealing a QHP-related decision require the appeal to be submitted within 90 days of notice of the decision. See Health Benefits Eligibility and Enrollment ("HBEE") Rules § 80.04(c). Petitioner's appeal was made well beyond this time period.

For the above reasons, the Department's decision is consistent with the rules; to the extent petitioner appeals the April 2019 decision terminating her insurance effective March 31, 2019, such an appeal is untimely and must be dismissed for lack of jurisdiction. See 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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