

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. L-11/20-748
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Appeal of)
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INTRODUCTION

Petitioner appeals a denial of a further retroactive termination of her (and her family's) 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.

FINDINGS OF FACT

1. Petitioner enrolled into a QHP effective July 1, 2020, due to loss of insurance, resulting from a loss of employment, in June 2020. Petitioner applied for insurance on Vermont's health insurance exchange (Vermont Health Connect or "VHC") on June 22, 2020. Petitioner's spouse and two (2) children were included on the application and the entire family was enrolled into a QHP. The household received a subsidy (an Advanced Premium Tax Credit or "APTC")

of \$1,144.62 per month which defrayed the cost of their monthly premium.

2. In a June 22, 2020 phone call to VHC, which led to petitioner's enrollment into a QHP and eligibility for subsidies, petitioner mentioned that she would be starting a new job in August 2020. However, the main focus of her call was whether she would be eligible for assistance of some kind. Petitioner's call was escalated to review her eligibility for subsidies and there was no discussion of termination of her QHP in the future, or for that matter, discussion that she would have insurance through employment beginning in September 2020 or any specified future date.

3. In two separate calls to VHC on June 29, 2020, petitioner inquired about her insurance status, eligibility for subsidies, and how the advance tax credit option worked vis-à-vis any changes in her income.

4. In a call to VHC on July 24, 2020, petitioner initially mentions that she will have health insurance through her (future) employer in September 2020, but quickly changes the topic of the call to questions about how APTC works and whether she will be expected to repay tax credits if she accepts too much in advance during the 2020 tax year. The contents of this call would not have reasonably apprised

VHC that petitioner was seeking to terminate her QHP as of a specific date or timeframe, nor would it have reasonably triggered any obligation (that *may* exist) by VHC to discuss the rules of termination with petitioner.

5. On October 8, 2020, petitioner contacted VHC to terminate the family's QHP, because they were covered under her employer-sponsored insurance. VHC granted termination (with the carrier's permission) effective September 30, 2020, which was the earliest date of termination that could be granted under the normal operation of the rules.

6. Petitioner argues that she gave VHC enough information during the above-described phone calls to apprise the Department that she wished to terminate her QHP effective August 31, 2020. However, petitioner also acknowledges that one of the reasons she believed her QHP would be terminated at the end of August 2020 is that someone in her employer's human resources department informed her the termination would occur automatically because she would be covered by the same carrier (as her QHP) under the employer's insurance plan.

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.

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 having 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 September 30, 2020, based on her October 8, 2020 request. The evidence in the record does not otherwise support her request for termination effective August 31, 2020, under the above-cited rules.

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

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