

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. M-10/20-684  
 )  
Appeal of )  
 )

INTRODUCTION

Petitioner appeals the denial by the Department of Vermont Health Access ("Department") of his request for a special enrollment period ("SEP"). The following facts are based upon a hearing held November 19, 2020 and documents submitted by the Department.

FINDINGS OF FACT

1. Petitioner was laid off from his employment - which included health insurance - in March 2020, at the outset of the Covid-19 pandemic. At that time, his employer continued paying for his insurance; petitioner indicates that there was some expectation that he might be called back to work and in this respect, he remained "employed" by his employer.

2. Petitioner experienced significant health issues in June 2020 and had additional health needs in the months following. In August 2020, petitioner received a letter from his short-term disability and accident insurer that his

coverage in these areas (which had been through his employer) would be ending in September 2020. Petitioner acknowledges that he did not open this letter up until September 2020; at that point, when he did open up the letter, he realized that his employment had been terminated. When he subsequently contacted his employer, he was informed that his employment had terminated as of June 30, 2020.

3. Petitioner indicates that this was the first notice he had received that his employment (and, therefore, insurance) had ended. Petitioner subsequently applied for insurance through Vermont Health Connect on October 2, 2020. However, this was well past the 60-day period normally allowed to enroll following the loss of employer-sponsored insurance.

4. There is nothing preventing petitioner from enrolling in 2021 insurance during VHC's annual open enrollment period (ending December 15, 2020). However, he would need a special enrollment period to enroll for any period of 2020. Petitioner has existing unpaid health costs as well as ongoing healthcare needs and is seeking to enroll in insurance retroactively.

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.

Enrollment in coverage through VHC outside of the normal annual open enrollment period is only available during special enrollment periods, based on specified circumstances in the rules. See Health Benefits Eligibility and Enrollment ("HBEE") Rules § 71.03. This includes factors such as loss of insurance, marriage, a new household member, and error or misrepresentation by VHC, among other reasons. See *Id.* Although petitioner lost his employer-sponsored insurance, any SEP he would have been entitled to would have ended 60 days after June 30, 2020. As a result, any SEP he was entitled to had expired by the time he applied to VHC on October 2, 2020.

Petitioner's primary argument is that he was never notified by his employer that his employment (and insurance)

had ended, therefore causing him to miss the SEP deadline. Of note, the rules also allow for a SEP in "other exceptional circumstances," per HBEE Rule 71.03(d)(9). The Department has published the following guidance on this topic:

The Department of Vermont Health Access (DVHA) interprets "other exceptional circumstances" as applying to certain *classes* of similarly situated individuals. When applying HBEE § 71.03(d)(9), DVHA looks to federal guidance to help identify those classes of similarly situated individuals whose circumstances qualify them for a SEP for "other exceptional circumstances." *Federal guidance specifies that "other exceptional circumstances" include instances when an individual is prevented during AOEP or another SEP from enrolling in or changing a QHP due to "a serious medical condition or natural disaster."* Additionally, the federal government provides a SEP for situations in which an individual is unable to enroll in or change a QHP due to a technical error, and Vermont classifies such a situation as an example of "other exceptional circumstances" under HBEE § 71.03(d)(9).

This document will be updated when appropriate and serve as publicly available guidance on the situations qualifying an individual for the SEP found at HBEE § 71.03(d)(9). This list will include national events, which affect both Vermont and the applicant, that have been flagged by the federal government as qualifying for the "other exceptional circumstances" SEP as well as regional and/or state events, which affect the applicant, that are analogous to the types of events flagged by the federal government as qualifying for the "other exceptional circumstances."

See <https://info.healthconnect.vermont.gov/sites/hcexchange/files/Exceptional%20Circumstance%20SEP%20Guidance%20Final%20Apr%202019.pdf> (underlined emphasis added).

At hearing, the Department indicated that a situation where an employer fails to adequately inform an employee of a termination of insurance does not fit into their interpretation of "exceptional circumstances." In effect, an employer's failure to (potentially) follow any requirements around notification is not the same as a natural disaster or a serious medical condition which affects a "class" of similarly situated people, rather than an individual situation where a specific employer *may* have failed to properly meet its obligations. The Department's interpretation of the rules under the circumstances of this case is not unreasonable. There is otherwise no basis in the factual record or the rules to grant petitioner a SEP for 2020 enrollment.

As such, 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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