

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. V-10/20-704
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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 November 19, 2020, documents and an audio file submitted by the Department, and the arguments of the parties. 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 his spouse and children as dependents. After application of a federal tax subsidy, petitioner's monthly premium obligation entering June 2019 was \$235.42.

2. On June 17, 2019, petitioner contacted Vermont Health Connect ("VHC") about terminating his QHP because he had recently started a new job with health insurance and was

covered as of June 1, 2019. Petitioner was following up on a previous call he had made to VHC about switching jobs and was concerned about having to pay (or owe) his premium for June 2019 coverage. During the June 17, 2019 call, petitioner was assured by the customer service representative that he would be disenrolled and would not owe that premium.

3. However, petitioner's insurance was never actually terminated. VHC mailed him a notice dated July 8, 2019, that he had a balance forward as well as a payment due for his August 2020 insurance.

4. Petitioner contacted VHC on July 31, 2019, concerned that he was still receiving invoices and again requesting termination of his insurance effective May 31, 2019. After a brief review, VHC determined that the earliest date his QHP could be terminated was June 30, 2019. VHC records submitted at the hearing show that a message was left on petitioner's phone on August 1, 2019, informing him that his termination was effective June 30, 2019 and advising him he was "not eligible" for a May 31, 2019 terminate date.

5. Although petitioner generally disputes whether he was called on August 1, 2019 by VHC, the record of the call made by VHC is clear, specific and deemed credible.

6. On January 23, 2020, VHC mailed petitioner a 1095-A form for tax purposes which gave information about his 2019 coverage and tax subsidies advanced to him during that year. This form indicates a "Policy termination date" of June 30, 2019.

7. On February 20, 2020 VHC mailed petitioner a "corrected" 1095-A which also indicated a "Policy termination date" of June 30, 2019.

8. Petitioner contacted VHC in August 2020 to reenroll in insurance through the exchange because his job had ended along with his employer-sponsored insurance. The arrearage for his June 2019 insurance was still attached to his account and was reflected (indirectly) on his invoices but was not a barrier to his 2020 enrollment.

9. In October 2020 petitioner contacted VHC because he realized that the June 2019 arrearage was still on his account and he was having issues allocating his payments to his 2020 insurance.

10. Petitioner requested that VHC remove the arrearage from his account, on the grounds that he had timely terminated his insurance in June 2019. VHC denied this request, relying on the decision that had been made August 1, 2019, granting retroactive termination effective June 30,

2019. Petitioner requested this fair hearing on October 14, 2020.

11. On appeal, petitioner relies on the June 17, 2019 phone call described above. The Department - while acknowledging that petitioner may have been erroneously assured at that time that his insurance would be terminated and he would not owe a premium for that month - asserts that this appeal is untimely - having been filed more than 14 months after the August 1, 2019 decision was made denying petitioner's request for a May 31, 2019 termination.

12. The Department further indicates that petitioner has no obligation to pay the 2019 arrearage to maintain his current enrollment in insurance through VHC, and that VHC will work with enrollees who are having issues with allocating current payments to current insurance premiums, when there are arrearages on an account that should not affect current enrollment (the arrearages are attached to the account for a period of time, and eventually fall off).

ORDER

Petitioner's appeal is 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.

This appeal presents the threshold question of the Board's jurisdiction. 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 more than 14 months after he requested a May 31, 2019 termination date and was denied, and instead granted a June 30, 2019 termination by VHC.¹ While it is highly unfortunate that petitioner's request for retroactive termination in 2019 may have been erroneously denied, there is no factual or legal basis under these circumstances to depart from the clear requirement of making a timely appeal, which in turn gives the Board jurisdiction to hear the appeal.

¹ VHC does not customarily issue written notices in response to voluntary termination requests, nor does anything in this record establish that VHC was required to do so here. See generally, HBEE Rules § 68.01 (specifying when written notice is required). It is also noted that the two (2) 1095-A forms sent to petitioner in January and February 2020 indicated that his insurance ended effective June 30, 2019.

As such, the Board lacks jurisdiction over petitioner's appeal, which must be dismissed as untimely. See 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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