

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. H-10/21-628
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Appeal of)
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INTRODUCTION

Petitioner appeals the proposed decrease in his Advance Premium Tax Credits (APTC) by the Department of Vermont Health Access (Department) for November and December 2021. The following facts are adduced from a telephone hearing held November 12, 2021, and documents submitted by the Department.

FINDINGS OF FACT

1. Petitioner was enrolled into a Qualified Health Plan (QHP) for 2020, which included the federal APTC and Vermont Premium Assistance (VPA) subsidies to defray the cost of his premium. The Department mailed petitioner a "Time to renew" Notice dated September 28, 2020, and a subsequent Notice of Renewal dated November 1, 2020. The Renewal Notice noted petitioner's reported income of \$36,696.43. On the basis of that income, the Department applied APTC of \$380.08 and Vermont Premium Assistance of \$45.88 per month.

2. Next, by Notice dated June 16, 2021, the Department notified petitioner that he was eligible for higher subsidies under the federal American Rescue Plan (ARP). Petitioner contacted the Department about his APTC eligibility on June 23rd and June 28th. On September 7, 2021, the Department issued an invoice for October 2021 coverage awarding increased APTC of \$642.80 and VPA of \$45.88 resulting in a premium of \$54.12. Subsequently, on September 27th, the Department issued a Notice of Renewal for 2022; that Notice reminded petitioner to report any changes in status, including income. On October 7, 2021, the Department issued the invoice for November 2021 coverage listing the same amounts as the October coverage invoice.

3. On October 13, petitioner contacted the Department to inquire about his 2022 premiums. At that time, he reported updated 2021 income information of \$45,000/year, \$43,846.43 after deductions, or \$3,653.87/month.

4. Based on that newly reported income information, the Department recalculated petitioner's new monthly APTC as \$410.32/month, or \$4,923.84/year. However, as petitioner had already received \$4,588.66 in APTC (based on 7 months of APTC of \$380.08 per month and 3 months of the increased APTC with application of the ARPA subsidy), only \$335.18 in total APTC

remained available for November and December 2021, or \$167.59/month for each of those two months. Therefore, petitioner's premium cost would have increased to \$575.36.

5. Petitioner appealed the reduction of his APTC and requested continuing benefits. As a result, petitioner's APTC for November and December was not reduced and his premium was not increased.

6. At hearing, petitioner testified that he believed he had reported the higher 2021 income earlier in the year. However, he acknowledged that after speaking with a Department representative in October, that the report may not have happened; he did not dispute the accuracy of the Department's calculations. In any event, because of the recalculation of APTC late in the year, along with the timing of the fair hearing process, the recalculation will have no impact on petitioner in 2020 because he received continuing benefits. Normally, there would have been an impact on petitioner for receiving higher APTC for November and December 2021 because he would have either paid a higher premium or he would have owed the difference in APTC for these two months to the Internal Revenue Service (IRS) when he reconciled his 2021 taxes. However, at hearing the Department reported that, due to the pandemic, the IRS did

not require individuals to repay overpayments of APTC for 2020 and it is possible (even likely) that that IRS ruling will also occur for the 2021 tax year. Therefore, there is likely to be no impact on petitioner for having received continuing benefits for November and December 2021. In that event, the case would be moot. However, as the reconciliation process for 2021 has not yet occurred, the evidence warrants a finding that the Department correctly recalculated petitioner's APTC in October and that petitioner was entitled to less APTC, as outlined above, for November and December 2021.

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.

Petitioner's appeal challenged the Department's recalculation of his November and December 2021 APTC.

First, after receiving the updated income, the Department correctly re-calculated the APTC that petitioner was eligible for in 2021 based on that income as outlined in the *2021 Advance Payments of Premium tax Credit (APTC) Worksheet*, dated 10/18/21. See Health Benefits Eligibility and Enrollment (HBEE) Rules § 60.04 [Federal premium-assistance amount].

Next, the Department was required to compare the APTC already used for the year to the recalculated APTC eligibility for the year, a process known as "exhaustion." HBEE Rules §28.05(c); § 60.00; § 73.05. It was undisputed that petitioner had already received \$4,588.66 in APTC through the end of October 2021. Therefore, the remaining APTC available for November and December was correctly calculated as \$355.18 or \$167.59 for each month. HBEE Rules §73.07 [Recalculation of APTC/CSR].

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

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