

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. L-10/21-635
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Appeal of)
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INTRODUCTION

Petitioner seeks a remedy from the Department of Vermont Health Access ("Department") with respect to her earlier-than-desired enrollment into Medicare, which she alleges is due to Department error. The following facts are based upon a telephone hearing held November 18, 2021. The primary issue is whether the relief sought by petitioner is of a nature that the Board is authorized to grant, and correspondingly whether the Board has jurisdiction over petitioner's appeal.

FINDINGS OF FACT

1. Petitioner was enrolled in a qualified health plan ("QHP") in 2021, with advance premium tax credits ("APTC") to defray the cost of her premium, when she started to plan for her transition to Medicare coverage in connection with turning 65 in September 2021. Petitioner had the option of enrolling into Medicare for a period of time prior to and

after the month she turned 65 - this is referred to as Medicare's "initial enrollment period."¹

2. As part of this process, petitioner scheduled a meeting with the Social Security Administration ("SSA") for September 16, 2021, to discuss her potential enrollment into Medicare. Petitioner explained in a written submission to the Board that she made this appointment because she had initially been informed, during a Vermont State Health Insurance Program ("SHIP") workshop, that she would lose her eligibility for APTC once she became eligible to enroll into Medicare and when she turned 65. Thus, she was anticipating that she would need to enroll into Medicare during the month of her 65th birthday because she would correspondingly need to terminate her QHP, if it became unsubsidized (and therefore unaffordable to her).

3. However, petitioner subsequently discovered that she could delay her Medicare enrollment during her "initial enrollment period," to a month after she turned 65, and still keep her APTC eligibility. Petitioner contacted Vermont Health Connect ("VHC") on August 18, 2021, about her options for keeping her subsidized QHP for as long as possible before

¹ It is understood that this period of time is three (3) months before and three (3) months after the month a prospective enrollee turns 65, or a total time period of seven (7) months.

her eligibility for Medicare would render her ineligible for APTC. Petitioner was seeking to extend her eligibility for subsidies because she had medical procedures scheduled in October 2021 and had met her QHP deductible for the year already; thus it was financial advantageous for her to remain in her QHP (rather than enrolled in Medicare) so long as the cost of her premium was subsidized.

4. Petitioner indicates that she was informed during the August 18, 2021, conversation with the VHC representative that she could not delay her enrollment into Medicare until later in her "initial enrollment period" without losing her eligibility for APTC. Petitioner further indicates that she expressed her disagreement to the VHC representative and at no point did she inform the representative that she wished to terminate her QHP.

5. However, by notice dated August 25, 2021, VHC notified petitioner that her QHP would be terminated as of September 30, 2021, because she was eligible for Medicare coverage.² Petitioner indicates that she also received a notice from her insurance carrier, informing her that her QHP

² The notice sent to petitioner appears to cite a rule pertaining to Medicaid eligibility, not QHP eligibility. Although this suggests some confusion on the part of VHC as to the eligibility of individuals on QHPs transitioning to Medicare coverage, it is ultimately not material to the issues presented in this case.

coverage was going to be terminated effective September 30, 2021.

6. Petitioner then contacted Vermont's Office of the Healthcare Advocate to get advice about her situation. An advocate contacted VHC on her behalf, eventually requesting on September 14, 2021, that petitioner's QHP coverage be reinstated on the assumption that she could maintain her APTC eligibility for three (3) months after the month of her 65th birthday. On September 17, 2021, after some email communications between petitioner's advocate and the Department, petitioner's QHP coverage was reinstated so that it would continue into October 2021.

7. In the meantime, petitioner had met with an SSA representative as scheduled, on September 16, 2021, and decided to enroll into Medicare. As petitioner explained at hearing, at that point she did not know whether her QHP coverage would be extended into October, and she was concerned that the only coverage she would have access to was Medicare coverage and, coupled with the fact that rescheduling her appointment with the SSA might have taken several more weeks or even months, petitioner decided to enroll when she had the opportunity to avoid the risk she would be without any coverage beginning October 1, 2021.

8. Thus, after finding out the next day (September 17th) that her QHP coverage had been reinstated, petitioner informed her advocate that she wanted to terminate the coverage as of September 30, 2021.³ This request was communicated to VHC, and petitioner's QHP coverage was terminated effective September 30, 2021. This appeal followed.

9. On appeal, petitioner requests that the Department reimburse her for the costs she incurred when she (in her view, prematurely) switched from her QHP to Medicare coverage starting in October 2021. Petitioner also requests that the Department assure that "the correct information" about APTC and Medicare eligibility is given to VHC staff as well as the SHIP offices around the state. Petitioner estimates that her out-of-pocket costs for her early enrollment into Medicare amount to \$761, comprised of her Medicare premiums for two months and co-pays for services, minus the QHP premiums she would have owed for October and November 2021. Petitioner indicates she would have enrolled into Medicare on December 1, 2021, and kept her QHP until then, had her QHP not been

³ At hearing, petitioner indicated that she did not look into whether there was any way to request that the SSA delay her Medicare enrollment, after already enrolling on September 16th.

initially terminated as of September 30, 2021, in her view setting in motion the above events.

10. The Department argues that petitioner's request does not fall within the Board's jurisdiction. The Department argues further that VHC granted petitioner's request to reinstate her coverage within a few days after petitioner's advocate made that request. While the Department acknowledged at hearing that an "error" was made when petitioner was initially terminated from her QHP, the Department argues that this error was corrected within a few days after petitioner made the request to be reinstated, and - as noted above - that the Board does not have jurisdiction over the remedy sought by petitioner, in any event.

11. The Department does not have any control over the Medicare enrollment process or Vermont's SHIP offices. At hearing, the Department indicated that it does aim to improve VHC's processes and in that respect will always consider input on ways to do so, including reports of customer experiences with VHC's customer service line.

ORDER

Petitioner's appeal is dismissed as beyond the Board's jurisdiction.

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 case presents a threshold jurisdictional question of whether the relief sought by petitioner is available in this forum. The Board's jurisdictional statute provides that:

(a) An applicant for or a recipient of assistance, benefits, or social services from the Department for Children and Families, of Vermont Health Access, of Disabilities, Aging, and Independent Living, or of Mental Health, or an applicant for a license from one of those departments, or a licensee may file a request for a fair hearing with the Human Services Board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits, or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other Agency action affecting his or her receipt of assistance, benefits, or services, or license or license application; or because the individual is aggrieved by Agency policy as it affects his or her situation.

* * * *

(d) After the fair hearing, the Board may affirm, modify, or reverse decisions of the Agency; it may determine whether an alleged delay was justified; and it may make orders consistent with this title requiring the Agency to provide appropriate relief including retroactive and prospective benefits..

3 V.S.A. § 3091.

Petitioner's request to be reimbursed for her Medicare premiums and co-pays is, in effect, a claim for damages. It is well-settled that the Board lacks jurisdiction over such claims. See, e.g., Fair Hearing No. B-03/08-104, citing *Scherer v. DSW*, Unreported, (Dkt. No. 94-206, Mar. 24, 1999) and *In re Buttolph*, 147 Vt. 641 (1987). While petitioner argues that the Department *initially* made an erroneous decision to cancel her QHP, that decision was reversed shortly after petitioner requested (through her advocate) that it be reversed. The Department then granted petitioner's subsequent request through her advocate to terminate her QHP. While petitioner's decision to ultimately terminate her QHP is understandable under the circumstances, there is currently no decision regarding or affecting a Departmental benefit program that petitioner seeks to reverse or modify, or any delayed decision in that regard. See V.S.A. §§ 3091(a) and (d).

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

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