

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. T-12/21-727
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Appeal of)
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INTRODUCTION

Petitioner appeals the start date of her benefits through the Medicare Savings Program ("MSP"), by decision of the Department of Vermont Health Access ("Department"). The following facts are adduced from a telephone hearing held on January 20, 2022, documents submitted by the Department, and digital copies of recordings between petitioner and Vermont Health Connect ("VHC") submitted by the Department following the hearing, at the request of the hearing officer.

FINDINGS OF FACT

1. Petitioner became eligible for and began receiving Medicare Part B benefits in or around February 2020; her monthly Part B premium was deducted from her Social Security Disability Insurance ("SSDI") payment. At the time, she was also eligible for and receiving Medicaid for Children and Adults ("MCA"). On June 16, 2020, VHC mailed petitioner a notice titled (in bold) "Apply to Green Mountain Care to get

other help with health care costs. To apply, send in the booklet with this letter." The notice went on to explain (among other things) that petitioner could apply for the MSP benefits, which would cover her Medicare Part B premium and possibly other Medicare-related costs, by filling out and returning the "booklet" that was included with the notice. The booklet was described as "Supplemental Information for Medicaid for the Aged, Blind and Disabled" or the "205SUPP" form.

2. The Department has no record that petitioner ever returned the 205SUPP form or made any contact with VHC regarding the June 16, 2020, notice. Petitioner's Medicare Part B premium continued to be deducted from her monthly SSDI payment.

3. On November 7, 2020, VHC mailed petitioner a notice that her MCA coverage had been renewed. Although under normal circumstances, petitioner's eligibility for MCA would have been in question because she was also eligible for Medicare as an element of her SSDI eligibility, the Department was not, in general, terminating the Medicaid coverage of any existing enrollee due to the Covid-19 public health emergency.

4. On December 11, 2020, petitioner contacted VHC to inquire about why her Medicare premiums were still being deducted from her monthly SSDI payments. Petitioner was informed that she needed to apply for this benefit, which she could do by submitting what is known as a "205ALLMED" application which covers Medicare for the Aged, Blind and Disabled ("MABD") eligibility as well as other healthcare benefits, including the Medicare Savings Program. The customer service representative indicated she would have an application mailed to petitioner. When petitioner asked about retroactive benefits, the representative informed her it would depend on the program for which she was specifically eligible. Petitioner also requested that VHC mail her "proof of insurance" going back to the beginning of 2019, which the representative said would also be mailed to her along with the 205ALLMED application.

5. The Department has no record following this call that petitioner submitted a 205ALLMED application.

6. On March 31, 2021, petitioner again contacted VHC about why her Medicare premiums were being deducted from her monthly disability payments. She was again informed that she needed to submit a 205ALLMED application and that one would be mailed to her. Petitioner indicated that she believed she

had already submitted several applications over the past year. When the issue of retroactive coverage came up, the representative informed petitioner that there was a possibility of three (3) months of retroactive coverage if she was eligible for "SLMB" benefits, but not "QMB" benefits.¹ At no point did the representative inform petitioner that she could be eligible for coverage of her Medicare Part B premium retroactive to February 2020 (if the representative had done so, that would have been generally erroneous). The representative did advise petitioner to apply for what is known as the "low-income subsidy" program, through Medicare, so that she would have assistance paying for prescription drug costs.²

7. The Department did not receive a 205ALLMED from petitioner following the March 31, 2020, phone call. However, in July 2021, petitioner eventually applied for the low-income subsidy through an online portal administered by the federal government. As part of this process, petitioner was screened for MSP eligibility. She was found eligible,

¹ The representative used these acronyms, which are further explained below, verbatim.

² As explained by the representative, this would also avoid any issues with Medicaid coverage of her prescription drugs, because as the "payor of last resort" Medicaid expects that Medicare enrollees pursue low-income subsidy coverage before turning to Medicaid for payment of prescription drugs.

and her case was referred to the State of Vermont for further processing.

8. On July 21, 2021, the Department determined that petitioner was eligible for MSP benefits (at the Qualified Medicare Beneficiary - or "QMB" - level). However, an issue arose with activating this coverage because of how petitioner's last name was entered into the system compared to how it was associated with her name as entered into the Social Security Administration's system (petitioner's last name is hyphenated). The Department's records show that, in effect, petitioner's MSP eligibility lapsed as a result of not being activated in the first place.

9. When petitioner contacted the Department about this, she was requested to submit a 205ALLMED to reapply for MSP benefit. Petitioner eventually submitted the 205ALLMED and was (again) determined eligible for MSP benefits at the QMB level.

10. During this process, the Department's records reflect that the possibility of retroactive coverage back to February 2020 was discussed with petitioner; however, ultimately the Department only agreed to grant coverage back to July 2021, in conjunction with the timing of petitioner's low-income subsidy application. The Department denied

petitioner's request for further retroactive coverage because an application was not received from her for MSP benefits prior to July 2021. This appeal followed.

11. On appeal, petitioner asserts that (1) she submitted several applications for MSP benefits in the year preceding her low-income subsidy application in July 2021; and (2) she was informed during that same general time period that she would be entitled to retroactive coverage back to February 2020, regardless of when she submitted her application.

12. Petitioner did not submit copies of any of the applications that she indicated she filed, nor is there any other evidence (apart from her assertion) that she mailed numerous applications to the Department. On the other hand, despite petitioner's assertion, the Department has no record of any MSP application filed by petitioner prior to July 2021; in effect, for petitioner's assertion to be accepted, the Department would have misplaced as many as three (3) applications by petitioner. Overall, the preponderance of evidence supports the Department's conclusion that petitioner did not submit an MSP application prior to July 2021.

13. Review of the relevant phone records prior to July 2021 establish that petitioner was accurately advised

regarding what she needed to do to apply for MSP benefits; otherwise, there is no evidence that petitioner was given misinformation or evidence of any errors or other misrepresentations by the Department.

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.

The MSP benefit pays the Medicare Part A premiums, Part B premiums, and (possibly) cost-sharing obligations of those eligible, at three levels of assistance that depend upon income thresholds running from 100 to 135 percent of the Federal Poverty Level. See Health Benefits Eligibility and Enrollment ("HBEE") Rules § 8.07(b). Petitioner's eligibility is at the Qualified Medicare Beneficiary ("QMB") level, for which benefits are effective in the month *following* the month that an applicant is deemed to be approved eligible; retroactive coverage is not allowed under

the rules. See HBEE Rules § 8.07(b)(1). The "SLMB" category, which stands for Specified Low-Income Medicare Beneficiary and covers individuals at a slightly higher income level than the QMB level with less comprehensive benefits, does allow for limited (up to three months) retroactive eligibility; however, this is not petitioner's source of eligibility. See HBEE Rules § 8.07(b)(2).

Thus, to prevail in her appeal, petitioner must establish that an exception to the normal operation of the rules is warranted. In this case, petitioner is effectively claiming that Department error, omission, or misrepresentation resulted in a delay in the start-date of her MSP eligibility. However, the preponderance of evidence does not support petitioner's claim and therefore does not support the extension of retroactive QMB coverage beyond that already granted to petitioner by the Department.

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

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