

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. Y-10/21-645
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Appeal of)
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INTRODUCTION

Petitioners appeal the denial by the Department of Vermont Health Access ("Department") of a request for a special enrollment period ("SEP") for petitioner T.Q. The following facts are based upon a hearing held November 18, 2021, and documents submitted by the Department.

FINDINGS OF FACT

1. Petitioner T.Q. was uninsured when his spouse (J.Q.) contacted Vermont's health insurance exchange (Vermont Health Connect or "VHC") on October 4, 2021, to report a change in circumstances - a change in their income. J.Q. has employer-sponsored insurance and thus this appeal only concerns T.Q.'s insurance coverage in 2021. It is noted that T.Q. did submit an application to enroll for calendar year 2022 during VHC's 2021 annual open enrollment period, although had not selected a plan at the time of hearing.

2. During the October 4, 2021, phone call, petitioner J.Q. was informed that T.Q. would qualify for a special enrollment period ("SEP") - which would have allowed him to be enrolled into a QHP with subsidies - based on the change in circumstances. Specifically, they were told that T.Q. would be eligible for a SEP because their change in income affected their eligibility for subsidies through VHC. Subsequently, on October 13, 2021, petitioners were informed that, in fact, T.Q. did not qualify for a SEP and that the information given to them was incorrect. This appeal followed.

3. At hearing, the Department acknowledged that the information given to petitioners was incorrect but that did not change the fact that T.Q. was ineligible for a SEP. The reason for the confusion as to T.Q.'s eligibility was that, in order to qualify for the SEP, he needed to be enrolled in a plan already - meaning, the SEP would allow for a *change* in enrollment, from an existing plan to a different plan, but did not allow for an entirely new QHP enrollment in 2021.¹

¹ Although not directly material, it is noted that the record also establishes that petitioners were notified by VHC on June 23, 2021, that T.Q. could sign up for a plan under the Department's "Covid SEP" if they contacted VHC by October 1, 2021.

4. At hearing, petitioners indicated that they filed their appeal because - after having initially been told T.Q. was eligible for a SEP - they wanted Board review of the Department's subsequent determination of ineligibility, to ensure that decision was correct.

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. 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 (leading to a non-enrollment or erroneous enrollment), among other reasons. See *Id.* A SEP

is also available for certain changes in an enrollee's eligibility for subsidies:

(6) *Newly eligible or ineligible for APTC, or change in eligibility for CSR [cost-sharing reductions].*

(i) The enrollee is determined newly eligible or newly ineligible for APTC or has a change in eligibility for CSR;

(ii) The enrollee's dependent enrolled in the same plan is determined newly eligible or newly ineligible for APTC or has a change in eligibility for CSR...

HBEE Rules § 71.03(d) (emphasis in original).

As argued by the Department, this rule refers to "the enrollee" or their dependent - whereas other parts of Rule 71.03(d) refers to the "qualified individual" being given a SEP. *See, generally, HBEE Rules § 71.03(d).* In drawing this distinction, the Department allows someone *currently* enrolled in a plan, or their dependent, to switch plans under this SEP, but does not allow an individual to initiate a new enrollment in an exchange QHP if not already enrolled in a plan.² The Department's application of the rule is consistent with the language of the HBEE rules, as well as (for that matter) federal guidance on the intent of the

² Buttressing the Department's argument are the remaining sections of HBEE Rule 71.03(d) (6), which pertain to SEPs for individuals already enrolled in employer-sponsored insurance or directly enrolled with an issuer. *See HBEE Rules §§ 71.03(d) (6) (iii) and (iv).* Neither of these circumstances apply here, but these sections generally support the Department's application of the rule to current enrollees.

federal rules underpinning the HBEE rules. See 78 FR 42160-01, at 42262, 2013 WL 3488383 (July 15, 2013) ("[w]e proposed to amend paragraph (b) to specify that the effective dates described therein apply *both to qualified individuals first enrolling in a QHP through the Exchange through a special enrollment period, as well as to current enrollees.*") (emphasis added).

Finally, while there is evidence that petitioners were given incorrect information during their October 4, 2021, telephone call with VHC, there is no evidence that this incorrect information was a causal factor in T.Q.'s non-enrollment, as contemplated by HBEE Rule 71.03(d)(4).

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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