

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. Y-11/21-695
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Appeal of)
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)

INTRODUCTION

Petitioner appeals certain decisions by the Department of Vermont Health Access ("Department"), related to petitioner's eligibility for subsidies for purchasing a qualified health plan ("QHP") on Vermont's health insurance exchange and his son's Medicaid eligibility, which he alleges were incorrectly implemented. The following facts are based upon a hearing held December 16, 2021, and documents submitted by the Department.

FINDINGS OF FACT

1. In the beginning of 2021, petitioner, his spouse, and petitioner's adult son were enrolled in a QHP purchased through Vermont's health insurance exchange (Vermont Health Connect or "VHC"). They received subsidies (Advanced Premium Tax Credits or "APTC") to defray the cost of their monthly premium. Petitioner's adult son was his own tax household

but was permitted to be on petitioner's plan because he was under age 26.

2. On February 16, 2021, VHC sent petitioner's son a notice that they had been unable to verify his income and needed him to send proof of income.¹ The notice indicated that petitioner's son needed to send the verification by May 24, 2021, or "your benefits through VHC may end" on June 30, 2021. Neither petitioner nor his son responded to the verification request.

3. In the meantime, VHC had received information that petitioner might have other "minimum essential coverage" (or "MEC") because he had Department of Veteran's Affairs ("VA") health benefits. On March 3, 2021, VHC sent petitioner a notice that they needed him to verify that he was no longer receiving those benefits by a deadline of June 7, 2021, or "your VHC financial help may end soon after your given deadline." Petitioner did not respond to this notice.

4. The record does not reflect what specifically prompted VHC to send verification requests to petitioner and his son; typically, this occurs when VHC receives information

¹ Confusing matters somewhat, petitioner's son has the same first name as petitioner and although petitioner has a "II" following his name, his son does not use a "III" following his name. In any event, the notices were sent to the same mailing address for both petitioner and his son.

or a notification from another source (often the federal government) suggesting there may be an inconsistency with the information provided by an applicant or enrollee.

5. On March 16, 2021, VHC sent another notice to petitioner's son that he needed to verify his income. Like the first (February 16th) notice, this notice indicated that petitioner's son needed to send proof of his income by May 24, 2021, or his VHC benefits "may" end by June 30, 2021. Petitioner did not respond to this notice, nor did his son.

6. On April 13, 2021, VHC sent petitioner's son a notice marked "Final Reminder" asking him again to verify his income information by May 24, 2021, or his VHC benefits "may end" by June 30, 2021. VHC received no response to this notice.

7. The next notice VHC sent to petitioner and his son was on July 9, 2021. Between the April 13, 2021, notice and the July 9, 2021, notice, VHC had determined that petitioner's son was eligible for Medicaid. At the same time, because petitioner's son had not responded to the verification notices, the son's eligibility for APTC had been terminated effective July 1, 2021. Thus, the family's total APTC for their family plan had decreased significantly,

although the premium notices sent to petitioner did not reflect this change at the time.

8. The title of the July 9, 2021, notice was "You may get more help paying health insurance bills!" and the notice informed petitioner that his household was eligible for additional subsidies based on the American Rescue Plan Act ("ARPA"). The notice indicated that petitioner's APTC had increased, although in fact, because petitioner's son had lost his APTC, their total APTC had significantly decreased. The July 9th notice did indicate that petitioner's son was not eligible for APTC because he was eligible for other MEC i.e., Medicaid. The notice further provided that petitioner, his spouse, and his son all remained eligible to enroll in a QHP, that VHC could not cancel their QHP enrollment without their permission, and that anyone wishing to cancel their enrollment "must call [VHC] at 1-855-899-9600, to let us know."

9. On July 14, 2021, VHC sent petitioner another notice specifying the following:

- Petitioner's son had been found eligible for Medicaid starting July 1, 2021;
- Both petitioner and his son had been determined ineligible for APTC because "they qualify for a

government-sponsored healthcare program, or they have access to an affordable employer-sponsored plan that meets the minimum-value standards, or other health benefits coverage.”

- The household’s APTC had been reduced from \$1,265.98 to \$596.60;²
- Petitioner, his spouse, and his son all remained eligible to enroll in a QHP, that VHC could not cancel their QHP enrollment without their permission, and that anyone wishing to cancel their enrollment “must call [VHC] at 1-855-899-9600, to let us know”; and
- That petitioner and/or other members of his household may qualify for a special enrollment period (“SEP”) to switch plans.

10. On or around July 22, 2021, VHC received the July 9, 2021, notice back from the U.S. Postal Service, with a label providing a new mailing address for petitioner. The new mailing address was inputted into the VHC system.

Petitioner acknowledges that he did not register a change of

² As noted above, the APTC for petitioner’s son had already been removed and so this change was after that reduction had taken effect; prior to any of these changes (including the ARPA increase in APTC), the household’s total APTC was \$1,749.80 per month.

address directly with VHC, although he did register the change with the post office.

11. Despite the changes made to petitioner's and his son's eligibility, the invoices sent to him by VHC in June, July and August did not reflect those changes, instead showing an unchanged APTC of \$1,749.80. However, on September 7, 2021, VHC mailed petitioner an invoice showing an APTC of \$596.60, a "balance forward" of \$3,802.02, and a total amount due of \$4,611.66 (until that point petitioner's monthly premium obligation had been \$270.13). On October 7, 2021, VHC mailed petitioner an invoice with a balance forward of \$5,247.39 and total amount due of \$6,057.03. This caused petitioner to contact VHC (and, as petitioner testified to at hearing, also made him highly concerned about the amount owed).

12. Petitioner contacted VHC on October 18, 2021, about the amount of premium he owed. By that time, his family plan had continued in place for four (4) months (July through October), although petitioner's son was covered by Medicaid and his subsidies had been removed for failing to verify his income. In addition, petitioner's subsidies had been removed effective August 1, 2021, because he had been determined eligible for other MEC. The unsubsidized cost of

petitioner's family plan was \$2,087.27 per month.

Petitioner's progressively reduced APTC, coupled with the fact that VHC attempted to collect the premium amounts owed in a one-time invoice (September), explains why petitioner was suddenly faced with such a high amount owed.³

13. Eventually, after contacting VHC, petitioner was able to verify that his VA benefit was not health insurance. In addition, the Department agreed to allow him to retroactively terminate his family plan and change it to a (less expensive) couples plan effective September 30, 2021. This appears to have addressed some of petitioner's premium arrearage and by the time of hearing, petitioner was fully current with his premium obligation (as assessed by VHC) and was not appealing that specific issue.

14. However, petitioner continued to feel aggrieved by what he considered inadequate notice by VHC and that - as he asserted - his son had been placed on Medicaid without his knowledge and consent. Petitioner acknowledged at hearing that he understood any APTC he was underpaid during 2021 could be recovered when he filed his 2021 taxes in 2022.

³ While there is some question as to whether VHC followed the required procedures in failing to invoice petitioner until September 2021, as further explained below, the Board need not reach issues related to the removal of petitioner's and his son's APTC.

15. While the precise Departmental decision at issue is not entirely clear, in effect petitioner is asking the Board to remedy what he alleged was an inadequate process leading to his and his son's loss of APTC, his son's enrollment in Medicaid, and petitioner's putatively unnecessary enrollment in a family plan during July, August and September 2021.

ORDER

The Department's decision allowing for retroactive termination of petitioner's family plan effective September 30, 2021, is affirmed; petitioner's appeal is otherwise dismissed as moot.

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.

There are several potential rules in play related to petitioner's appeal. First, the Department was operating well within the rules when petitioner and his son were requested to verify, respectively, the unavailability of other MEC for petitioner and his son's income. See,

generally, Health Benefits Eligibility and Enrollment Rules ("HBEE") § 56.00 (Attestation and verification of financial information) and HBEE Rules § 57.00 (Inconsistencies). The record does not reflect the nature and content of the information received by VHC that led to the verification requests. The rules contemplate a variety of situations when verification is necessary, particularly where income may have been significantly under-reported, or over-reported to the extent that an applicant might be eligible for Medicaid instead of APTC. See e.g., HBEE Rules §§ 56.06 and 56.07. The rules also contemplate the need for verification under a more general standard of whether there is "reasonable compatibility" between information attested to by an individual compared to other information received by VHC. See HBEE Rules § 57.00(a).

As in this case, in most situations the rules allow an individual a 90-day "opportunity period" to verify information. See HBEE Rules § 57.00(c)(2)(ii)(A). The rules vary somewhat regarding the process following that opportunity period, depending on the situation. *Compare*, e.g., HBEE Rules § 57.00(c)(4)(ii) and 56.08. Federal regulations also vary depending on the circumstances, but generally appear to contemplate a final notification of any

determination following the verification period. See 45 C.F.R. § 155.320(c)(3)(iii)(E) and (F); *but compare* 45 C.F.R. § 155.320(c)(3)(vi)(E), for a varying situation.

In this case, VHC notified petitioner regarding the discontinuation of his APTC, based on his access to VA health benefits, but did not provide a final eligibility determination to petitioner's son, based on his failure to verify his income. There is not enough information in the record to determine whether VHC was required to send a final notice of eligibility to petitioner's son, as has been done in other cases. See *e.g.*, Fair. Hearing No. H-07/19-476. However, the Board need not reach that issue in this case, given that - under the circumstances of this case - the recovery of incorrectly removed APTC, if any, more appropriately falls under the process for tax filing and APTC reconciliation administered by the IRS, not any process administered by the Department. In general, when the Department adjusts APTC eligibility, any reconciliation of those amounts is determined within the same calendar year for which APTC is awarded. HBEE Rules § 73.07 (Recalculation of APTC/CSR). This appeal concerns APTC eligibility in 2021. The benefit administered by VHC concerns "advance" premium tax credits which are generally provided during the same

benefit year. Under the circumstances presented here, petitioner may recover any APTC through the tax filing process. Thus, this aspect of petitioner's appeal is moot.

Petitioner's appeal also concerns his son's Medicaid eligibility and his son's inclusion on petitioner's family plan for three (3) months while simultaneously being eligible for Medicaid. While the Department allowed petitioner to retroactively terminate the family plan effective September 30, 2021, petitioner's appeal is understood as a request for a further retroactive termination. First, federal regulations appear to consider petitioner's son ineligible for APTC from the first month following the date of the notice of decision, not the first month of Medicaid eligibility (in the event eligibility is retroactive). See 26 C.F.R. § 1.36B-2(c)(iv). In this case, APTC ineligibility for petitioner's son based on his Medicaid eligibility would have commenced from August 1, 2021. Secondly, VHC sent petitioner's son notices on July 9 and July 14, 2021, that he was eligible for Medicaid and therefore had been determined ineligible for APTC; in addition, the notices specified that he remained eligible for QHP enrollment and if he wished to cancel that enrollment, he needed to contact VHC. This requirement is generally consistent with the rules. See HBEE

76.00(b)(1) ("An individual will be permitted to terminate their coverage or enrollment in a QHP, including as a result of the individual obtaining other MEC, with appropriate notice to AHS.").

The rules do allow an individual to request retroactive termination as follows:

In the case of a termination in accordance with paragraph (b)(1) of this section, the last day of enrollment is the last day of the month during which the termination is requested by the individual, unless the individual requests a different termination date. If an individual requests a different termination date, the last day of enrollment is. . .

. . .(iii) If the individual is newly eligible for Medicaid or other MEC, and the individual so requests, the last day of the month prior to the month during which the termination is requested by the individual, subject to the determination of the individual's QHP issuer.

HBEE Rules § 76.00(d)(2).

Petitioner contacted VHC on October 18, 2021. In turn, VHC eventually granted his request to terminate the family plan effective on the last day of the month prior to his request - consistent with the above rule. As described above, notice was sent to petitioner's son that he was eligible for Medicaid and needed to contact VHC to terminate or change his QHP. There is no other evidence in the record which supports a further retroactive termination under the

rules. See e.g., HBEE Rules § 76.00(b)(1)(iv) (unintentional or erroneous enrollments based upon error or misrepresentation of VHC). There is furthermore no factual basis for a special enrollment period, to the extent applicable, to allow petitioner to retroactively switch plans. See, generally HBEE Rules § 71.03. The July 14, 2021, notice specifically informed petitioner of his potential eligibility for a special enrollment period, but petitioner contacted VHC well after the 60-day period for taking advantage of any available SEP.

As such, the Department's decision granting a retroactive termination of petitioner's family plan and corresponding enrollment in a couples plan, effective September 30, 2021, is consistent with the rules.

Petitioner's appeal of the discontinuation of his and his son's APTC is moot and must be dismissed on this basis. See 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.⁴

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⁴ It is noted that, if petitioner's claim is understood as 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).