

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. Z-09/21-580
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Appeal of)
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INTRODUCTION

Petitioner appeals a denial of retroactive termination of her qualified health plan ("QHP"), by decision of the Department of Vermont Health Access ("Department"). The following facts are based upon a hearing held November 18, 2021, and documents and audio files submitted by the Department, with the record closing on December 16, 2021. There are two primary issues in this appeal - whether petitioner's request for retroactive termination was timely made and whether her fair hearing request is timely.

FINDINGS OF FACT

1. In October 2020, petitioner was enrolled in a QHP through Vermont's health insurance exchange (Vermont Health Connect or "VHC"), with subsidies to defray the monthly cost of her premium. Petitioner's premium payment was automatically withdrawn from her bank account each month.

2. On October 9, 2020, petitioner contacted VHC to request termination of her insurance. For unknown reasons, petitioner's termination request was never processed by VHC. The Department acknowledges this was an error.

3. On November 1, 2020, VHC mailed petitioner a notice of decision that her insurance had been renewed for 2021. This decision contained information about appealing the decision within 90 days.

4. VHC continued to send petitioner premium invoices for her insurance coverage in November and December of 2020, as well for the first eight (8) months of 2021, up through (at least) August 2021. For November and December of 2020, petitioner's premium obligation after the application of subsidies was \$49.61 per month; in 2021, her monthly premium obligation was \$17.01.

5. On January 14, 2021, VHC mailed petitioner a 1095-A form (for tax preparation and filing). This form showed that petitioner had been insured through VHC and received subsidies for all 12 months of 2020.

6. On June 21, 2021, VHC sent a letter to petitioner that she could be eligible for additional subsidies through the American Rescue Plan Act. This letter was eventually returned to VHC by the postal service as undeliverable and

unable to forward (petitioner had moved twice since she requested termination in October 2020 and currently resides in New Hampshire).

7. Petitioner subsequently contacted VHC on August 23, 2021, requesting retroactive termination of her insurance, based on her October 2020 request to terminate her QHP. During the August 23, 2021, call, petitioner indicated that she had experienced trouble receiving her mail (due a postal service error) but had also been receiving mail from VHC for several months which she had assumed was "junk." At hearing, petitioner reiterated that she had a problem with her mail that was not rectified until March of 2021, following which she started receiving mail from VHC which she did not open for several months.¹ When petitioner eventually realized that she was still insured, this led to her August 23, 2021, phone call requesting retroactive termination. Petitioner's representation of these circumstances is presumed to be true for the purposes of her appeal.

8. The premiums owed on petitioner's account during the time period at issue were automatically deducted from her account each month.

¹ At hearing, petitioner acknowledged that she would have received the November 1, 2020, renewal notice, because it was sent before she moved and began forwarding her mail.

9. At hearing, petitioner argued that her insurance should have been terminated when that was requested and requested reimbursement of the amounts automatically withdrawn from her bank account, indicating that she has been unemployed and could not afford to lose those funds, particularly given that she did know she was insured nor did she use her insurance.² Petitioner did not offer an explanation as to why she did not notice the monthly withdrawals from her bank account.

10. Petitioner also asserted that she called VHC in June of 2021 to again cancel her insurance and provided the Board with a reference number that the VHC representative had given her at the time - however, this reference number matches VHC's records of petitioner's call on August 23, 2021. The Department has no record of petitioner calling VHC in June of 2021. The evidence, therefore, does not support petitioner's assertion that she called VHC at that time.

ORDER

Petitioner's appeal is dismissed to the extent it is an appeal of the November 1, 2020, renewal notice; to the extent

² It is not known whether petitioner would be required by the IRS to repay any subsidies advanced to her while she was covered by VHC-based insurance. For one, petitioner indicates she was uncovered by any other insurance during the time period at issue. Secondly, the Department indicated at hearing that the IRS forgave subsidy overpayments in 2020 and was considering the same for 2021.

petitioner states a specific claim for retroactive termination under the rules, 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.

There are two rule-based deadlines at issue in petitioner's appeal. One - as argued by the Department here - is that fair hearing requests must be made within 90 days of when the "notice of decision" is sent to the individual who is claiming to be aggrieved by that decision. See Health Benefits Eligibility and Enrollment ("HBEE") Rules § 80.04(c). In this case, and without dispute, the Department mailed a notice of decision to petitioner on November 1, 2020, that her insurance was renewed in 2021. Petitioner acknowledges that this notice was mailed to the correct address and prior to the time that she indicates she began having issues with her mail delivery. Because the renewal notice was sent to petitioner despite her request to terminate coverage, this notification to petitioner may be

construed as an adverse decision vis-à-vis her request to terminate, and petitioner's subsequent contact with VHC on August 23, 2021, nearly 10 months later and leading to this appeal, was well beyond the 90-day time period for appeals. Petitioner's appeal is untimely in that respect.

However, because the HBEE Rules also have a specific provision for requesting retroactive termination for erroneous enrollment(s), assuming *arguendo* that could give rise to a more specific affirmative claim for relief here, it is warranted for the Board to review that issue. Generally, enrollee-initiated termination requires advance notice to VHC, and the rules generally presume that at least 14 days' notice is considered "reasonable" to cancel or terminate insurance *prospectively*. See Health Benefits Eligibility and Enrollment ("HBEE") Rules §76.00. The rules otherwise allow for *retroactive* termination in certain limited situations:

(iv) AHS will permit an enrollee to retroactively terminate or cancel their coverage or enrollment in a QHP in the following circumstances:

(A) The enrollee demonstrates to AHS that they attempted to terminate their coverage or enrollment in a QHP and experienced a technical error that did not allow the enrollee to terminate their coverage or enrollment through VHC, and requests retroactive termination within 60 days after they discovered the technical error.

(B) The enrollee demonstrates to AHS that their enrollment in a QHP through VHC was unintentional, inadvertent, or erroneous and was the result of the error or misconduct of an officer, employee, or agent of AHS or HHS, its instrumentalities, or a non-Exchange entity providing enrollment assistance or conducting enrollment activities. Such enrollee must request cancellation within 60 days of discovering the unintentional, inadvertent or erroneous enrollment. For purposes of this paragraph, misconduct includes the failure to comply with applicable standards under this rule or other applicable federal or state laws, as determined by AHS.

(C) The enrollee demonstrates to AHS that they were enrolled in a QHP without their knowledge or consent by any third party, including third parties who have no connection with AHS, and requests cancellation within 60 days of discovering of the enrollment.

HBEE Rules §76.00(b)(1).

The above rule requires that a request for retroactive termination be made within 60 days of discovery of the erroneous enrollment. The Board has construed this "discovery" rule in terms of whether the enrollee "knew or should have known" about the erroneous enrollment. See Fair Hearing No. A-06/19-424. In general, there is a presumption established by the evidence that petitioner was "on notice" of her enrollment due to the many invoices, and the November 2020 renewal notice, and 1095-A form mailed to her during the time period at issue. See e.g., Fair Hearing No. Z-11/20-742 and Fair Hearing No. J-08/15-824. While petitioner alleged

that there were issues with her mail delivery that were out of her control, petitioner also acknowledged that she had received mailings from VHC for several months that she did not open because she thought they were junk mail. As noted above, petitioner also agreed that she would have received the November 1, 2020, notice of renewal sent to her by VHC, because this was sent before she moved and began forwarding her mail.

Thus, while it appears that VHC made an error in not processing petitioner's request to terminate in October 2020, petitioner's request for retroactive termination comes well after the 60-day deadline for making such requests.

For the above reasons, to the extent petitioner's appeal is construed as an appeal of the November 1, 2020, renewal decision by VHC her appeal must be dismissed as untimely; the Department's decision is otherwise consistent with the rules and must be affirmed. See 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.³

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³ 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).