

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. M-10/23-838  
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Appeal of ) )  
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INTRODUCTION

Petitioner appeals, in essence, the denial of a request for retroactive termination or cancellation of her spouse’s qualified health plan, back to July 1, 2022, by decisions of the Department of Vermont Health Access (“Department”). The following facts are based on evidence presented at hearing on November 28, 2023, including documents presented by the Department, testimony from petitioner, and an audio recording submitted by the Department post-hearing, with the record closing on November 29, 2023.

FINDINGS OF FACT

1. In 2021, petitioner and her spouse were enrolled in a Qualified Health Plan (“QHP”) through Vermont Health Connect (“VHC”), Vermont’s health insurance exchange, with advance payments of the premium tax credit (“APTC”) to defray the monthly cost of their premium.
2. On November 1, 2021, VHC sent a notice to petitioner indicating that the QHP for both her and her spouse had been renewed for 2022 and that they both had been approved for APTC.

3. On January 31, 2022, petitioner's QHP coverage was terminated due to nonpayment to the insurance carrier. Petitioner contacted VHC on February 14, 2022 to reinstate her insurance and the reinstatement was processed the same day.

4. Around this time, collection of the premium payment had shifted from VHC to the insurance carrier. Petitioner had been making the monthly premium payments by autopay and did not realize for several months that this shift had occurred. As a result, several payments were made to VHC amounting to approximately \$4,000 that should have been made directly to the insurance carrier. It was petitioner's understanding that this amount was supposed to be refunded to her in order for her to pay the insurance carrier.

5. On May 11, 2022, petitioner called VHC to inquire about the refund. After discussing the problem with having made payments to VHC instead of her insurance carrier and not receiving APTC at that time, petitioner asked whether her husband's application for a supplemental Medicare plan would impact her APTC. The VHC representative inarticulately responded, "once he has coverage changes then he'll—know—it'll, you know, it'll, um, here—different choices—it will update."

6. Petitioner then reported that her husband's Medicare would start "July 1<sup>st</sup>" and discussed lowering the premium in the meantime. When discussing her husband's need to choose a Medicare supplemental plan, the VHC representative advised that he could apply through VHC and to call in June and VHC could send the forms to him. The representative did not tell petitioner that she would need to call in June to remove her spouse from the QHP once his Medicare coverage began.

7. Although Medicare for petitioner's husband was in effect in July 2022, petitioner had been making automatic payments to the insurance carrier at that time. As such, those payments continued to be made to the carrier, along with APTC.

8. On October 3, 2022, VHC sent a notice to petitioner advising that it was time to renew her health insurance for the following year.

9. On November 1, 2022, VHC sent petitioner a notice indicating that the QHP for her and her spouse had been approved, along with APTC. The notice also stated that if she had a QHP, she must report any changes within 30 days.

10. On January 31, 2023, VHC sent petitioner two IRS Forms 1095-A, reflecting that both petitioner and her spouse had been enrolled in health insurance through Vermont's health insurance exchange, and that from June 2022 through December 2022, they received \$750 per month in APTC, for a total of \$5,250.00 in 2022.

11. On July 11, 2023, VHC sent petitioner a notice stating that someone in the household was 65 years old or would soon turn 65 and could get Medicare and that if such person had Medicare, that person would stop receiving APTC if also enrolled in a QHP. Petitioner was advised that any person on a QHP who qualified for Medicare could enroll in Medicare and end their insurance through VHC, that anyone else on the plan could remain on it, and that the VHC plan for someone who qualifies for Medicare would not end unless that person called VHC to close that plan.

12. On September 18, 2023, petitioner called VHC to report that her Medicare would be starting on October 1, 2023 and requesting that her coverage through VHC be terminated on September 30, 2023.

13. The Department's internal notes indicate that on September 19, 2023, in processing petitioner's disenrollment from the QHP, it was learned that her husband was 66 years old and continued to receive APTC. VHC attempted to contact petitioner at that time.

14. VHC had contact with petitioner on October 16, 2023, at which time she requested retroactive cancellation of her spouse's QHP. The Department determined that the earliest termination date allowed was the last day of the previous month, which was September 30, 2023.

15. Petitioner has found the procedures associated with having coverage through VHC difficult to navigate. It has been overwhelming and confusing to deal with both the insurance carrier and VHC. Petitioner does not believe she should have been paying the insurance carrier for her spouse's QHP when he was not supposed to be on the plan and she was under the impression that he had been taken off.

ORDER

The Department's decisions denying petitioner's request for retroactive termination or cancellation of her spouse's qualified health plan, back to June 30, 2022, 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(O)(4). Here, petitioner bears the burden of establishing an entitlement to retroactive termination of her spouse's QHP dating back to June 30, 2022. The Department's position is that this appeal is untimely because petitioner requested a fair hearing on October 16, 2023, more than 90 days following the Department's November 1, 2022 Notice of Decision informing petitioner that her spouse's QHP, with subsidies, was renewed for 2023.

Notably, while petitioner's appeal is not understood as an appeal of the Department's November 1, 2022 decision to renew her spouse's QHP for 2023, any such appeal would be untimely as 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") Rule 80.04(c). However, it is not necessary to reach the question of whether the timing of petitioner's fair hearing request with respect to the date of this decision operates as a bar to petitioner's appeal.

The Health Benefits Eligibility and Enrollment ("HBEE") Rules allow for retroactive termination in certain limited situations, as follows:

- (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 Rule 76.00(b)(1).

The HBEE Rules also allow for limited retroactive cancellation of a qualified health plan when the individual is newly eligible for Medicaid or other minimum essential coverage, subject to the insurance carrier's determination.<sup>1</sup> HBEE Rule 76.00(d)(2)(iii). In this respect, when a person is "newly eligible" for minimum essential coverage, the effective date for termination of coverage or enrollment is "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." *Id.*

Here, even assuming that the May 11, 2022 phone call obligated VHC to follow up with petitioner regarding the start of her husband's Medicare coverage in July 2022, petitioner should have known that he was still enrolled in a QHP at the least, as of November 1, 2022, when the Department notified her that she and her husband's QHP had been renewed for 2023. The IRS Form 1095-A reflecting that both petitioner and her spouse had been enrolled in health insurance through VHC and had received \$750 per month in APTC from June 2022 through December 2022, provided further notice that her husband's QHP remained active.

Notwithstanding this information that petitioner's husband was still enrolled in a QHP as of December 2022, petitioner did not contact VHC to point out any

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<sup>1</sup> HBEE Rule 23.01(a), "[m]inimum essential coverage means coverage under any of the following: Government-sponsored programs, eligible employer-sponsored plans, grandfathered health plans, individual health plans and certain other health-benefits coverage."

purported error stemming from the May 11, 2022 phone call or to request retroactive termination within 60 days of “discovering” the allegedly erroneous enrollment. See Fair Hearing No. A-06/19-424 (construing an erroneous enrollment in terms of whether the enrollee “knew or should have known” about such enrollment). Thus, petitioner has failed to establish her entitlement to retroactive cancellation of her spouse’s QHP coverage.

Further, to the extent the Department deemed petitioner’s husband to be “newly eligible” for Medicare, it appropriately found that September 30, 2023 would be the earliest effective termination date for his QHP, subject to the carrier’s determination. See HBEE Rule 76.00(d)(2)(iii).

Based on the above, the Department’s decision denying termination effective June 30, 2022 is consistent with the rules and must be affirmed. See 3 V.S.A. § 3091(d) (“the Board may affirm, modify, or reverse decisions of the Agency”); Fair Hearing Rule No. 1000.4(D) (“The Board will not reverse or modify a decision that is found to be in compliance with the applicable law and policy even though the Board might disagree with the results effected by that decision.”).

To the extent petitioner wishes to challenge a decision made by the insurance carrier, she is not precluded from seeking relief from the Vermont Department of Financial Regulation.

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