

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-05/13-373
)
Appeal of)

INTRODUCTION

Petitioners appeal the termination of their Vermont Health Access Program eligibility by Department for Children and Families ("Department") through its Health Access Eligibility Unit. The primary issue is petitioners' failure to respond to a reapplication notice, and the circumstances surrounding such failure. The following facts are adduced from a hearing held June 20, 2013.

FINDINGS OF FACT

1. Petitioners are a household of two. They were found eligible for VHAP coverage in May of 2012.
2. In December of 2012, petitioners left on a trip for 5 months. They left the care of their home and monitoring of their mail with a house-sitter during this period.
3. In January of 2013, petitioners were informed by their house-sitter that some "important" mail had arrived from the State of Vermont. They were told by their house-

sitter about a notice that they were being charged a monthly premium of \$66 (total) for their VHAP coverage.

4. Petitioners paid the premium bill. However, because the premium charge was new, petitioners contacted the Department's customer service line in February to inquire about the change.

5. When petitioners contacted the customer service line, the representative they spoke to was not able to tell them why they were now being assessed a premium. When petitioners asked about whether they could be sure they were covered by insurance, and explained that they were away from home and out of the country, the representative responded that "you're paying a premium aren't you? Of course you're covered."

6. The customer service representative provided no additional information to petitioners, and their conversation ended at that point.

7. When petitioners returned home in May they discovered several notices from the Department that their house-sitter had not told them about.

8. These notices included:

- a. A March 9, 2013 "Review Reminder Notice" stating that:

Your family's health care coverage is due for review. Please complete, sign and return the enclosed form if you wish to have your coverage continue . . . If you don't return your completed form [by April 1], your Medicaid will end as of April 30, 2013;

b. An April 3, 2013 "Second Reminder Notice"

stating that the review form had not been received

and:

Without your review form, we cannot find out if you are still eligible for health care coverage. If you do not return your review form by April 15, 2013, we cannot complete a review and health care coverage will end on April 30, 2013 for any family member who is due for review;

c. An April 19, 2013 "Health Care Closure Notice"

stating that petitioners' health care coverage will

end on April 30 because of a lack of response to

the prior letters;

d. Several premium bills, the final one dated

March 28, 2013, indicating a coverage period of May

1, 2013 through May 31, 2013. All the premium bills

included on the back side a listing of ways to pay

the bill and various "reminders," including a

statement that "If you have been notified that you

are no longer eligible for benefits, you will not

get coverage, even if you have already paid your

premium."; and

e. A series of notices dated January 10, February 15, and February 23, 2013, related to payment of petitioners' premium. The January 10 and February 23 notices indicated that petitioners' period of coverage ends April 30, 2013.

9. After petitioners returned home, they began looking through their mail, but before they discovered the notices about their coverage ending April 30, one of them was admitted to the hospital on May 12 for a bowel obstruction, then again for the same thing on May 17.

10. In the process of the hospital admission, petitioners were surprised to learn they had no VHAP coverage. They received a total of around \$6,000 in medical bills for the two hospitalizations.

11. In the absence of VHAP coverage, petitioners arranged for private health insurance coverage. The Department refunded their premium payment for May coverage.

12. Petitioners have declined to reapply for VHAP coverage, citing a recent inheritance they had received which

provides additional monthly income.¹ Had they known about their impending loss of VHAP coverage prior to April 30, they would have arranged for new health insurance coverage by that date.

ORDER

The Department's decision is affirmed.

REASONS

Continuing Vermont Health Access Plan coverage is subject to review of a household's eligibility. See VHAP Rule 5342 ("Once enrolled, coverage continues until the scheduled eligibility review..."). Failure to participate in the eligibility review process results in termination of coverage. Id.

There is no dispute that petitioners failed to participate in the review process. Moreover, petitioners are not contending that they would have been eligible for VHAP if they had participated in the review process. The sole issue here is whether they should be granted coverage during the month of May based on the communications they had with the

¹ Absent an actual application by petitioners, it is not known whether petitioners are eligible for VHAP. Given their inheritance, petitioners did not feel "comfortable" applying for VHAP. There is a possibility, albeit remote, that if they do remain eligible for VHAP, the Department would exercise its discretion to apply coverage retroactively. Petitioners declined the opportunity for such consideration.

Department and the fact that they paid their monthly premium for May coverage. Petitioners cite the conversation they had with a Department customer service representative in February of 2013, and the March 28 premium bill they paid which indicates a May coverage period, and aver that they relied on these communications in believing they were covered by VHAP.

The Board can apply equitable estoppel in cases if the petitioner can show that all four essential elements of equitable estoppel are met. See *Stevens v. Dept. of Social Welfare*, 159 Vt. 408 (1992). The four elements are:

- (1) the party to be estopped must know the facts;
- (2) the party to be estopped must intend that its conduct shall be acted upon or the acts must be such that the party asserting estoppel has a right to believe it is so intended;
- (3) the party asserting estoppel must be ignorant of the true facts; and
- (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped.

Stevens, supra; See also *Burlington Fire Fighter's Ass'n. v. City of Burlington*, 149 Vt. 293 (1988).

Petitioners' argument suffers from at least two deficiencies. At the time of their conversation with the Department's customer service representative, the Department had not initiated the eligibility review process. This was

not a fact that existed at the time, to be known and, for the purposes of argument, erroneously withheld by the Department. While petitioners were advised at the time that payment of their premium would continue coverage, it is not reasonable to assume this would continue in perpetuity, especially given that the notices sent to petitioners at the time indicated an ending eligibility date of April 30, 2013.

Secondly, petitioners have not established that they were "ignorant of the true facts." They had received numerous and persistent notices of their impending loss of coverage at their address of record. While their house-sitter's failure to notify them of these notices is unfortunate, this is not a failure of the Department. In fact, the Department was simply acting in accordance with petitioners' putative wishes by sending mail to their home address.²

The Department's decision is otherwise consistent with the applicable regulations. Therefore, the Board is required

² Likewise, the March 28 premium bill cited by petitioners also states that payment of the premium does not confer coverage if there is no corresponding eligibility. In any event, petitioners paid their premiums remotely and by their own account did not see their mail until after the coverage period had ended.

to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No.
1000.4D.

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