

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-12/15-1288
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Appeal of)
)

INTRODUCTION

The petitioner appeals decisions by Vermont Health Connect (VHC) determining the amount of premiums she still owes for coverage under a Qualified Health Plan (QHP) in 2015 and requiring her to pay the past due premiums. The issues are whether VHC correctly calculated the past-due premiums and whether the Board has the authority to grant relief for her claim that she is not obligated to pay those premiums.

The following facts are adduced from testimony and representations of the parties during hearings held on February 16 and April 5, 2016 and from documents admitted into the record.

FINDINGS OF FACT

1. During the relevant time period for this appeal - January through October of 2015 - petitioner's household included her husband and their two children. Petitioner and her husband separated during the year and their divorce became final on October 2, 2015.

2. In 2014 petitioner and her husband were enrolled in a Blue Cross Blue Shield (BCBS) Blue Rewards Silver Plan (BCBS Plan) with federal Advanced Premium Tax Credits (APTC) and Vermont Premium Assistance (VPA), and their two children were enrolled in Dr. Dynasaur for \$15 per month.

3. Since she and her family have been enrolled in health insurance coverage through VHC, she has experienced numerous delays with the processing of reported changes, including her change of employment, her income, her address and her marital status.

4. VHC acknowledges that it made errors during the renewal of coverage for petitioner's family for 2015 when it failed to approve petitioner and her husband for federal and state subsidies for which they were eligible, and when it failed to bill petitioner the \$15 monthly premium due for her children's Dr. Dynasaur coverage based on her household income.

5. VHC mailed petitioner and her husband invoices throughout 2015 which erroneously showed that they owed a premium of \$856.28, without any subsidies, for their BCBS Plan, and that their children were covered by Dr. Dynasaur with no premium.

6. It is not clear to what extent petitioner and her husband received these invoices because their address changed several times during the year. However, petitioner's husband submitted nine payments of \$197.62, totaling \$1,778.58, from January through September. As these payments were not sufficient to pay the full amount invoiced each month, petitioner's coverage was terminated for non-payment of premiums effective August 31, 2015. In September, VHC reinstated petitioner's coverage while attempting to correct other the billing errors in petitioner's account.

7. In October, petitioner reported that she would be enrolling in an employer-sponsored insurance plan effective November 1, 2015. After additional delays, in December VHC terminated petitioner's BCBS Plan effective October 31, 2015.

8. In a telephone call in early December of 2015, a VHC representative explained that if reported income changes were processed, petitioner would owe approximately \$249 per month, or \$2,490 for coverage from January through October. Petitioner disputed that she should owe additional premiums because VHC made the mistakes that caused the billing errors, and she requested a fair hearing.

9. At hearing, VHC representatives asserted that to make up the difference between the premiums petitioner owes

and the payments submitted in 2015, she needs to pay \$286.44 for coverage under the BCBS Plan from January through October, and because she was never billed for Dr. Dynasaur premiums, that she owes \$180 for her children's Dr. Dynasaur coverage. The VHC representative explained that upon receiving payment of the \$466.44 VHC believed was due, VHC would mail petitioner and the Internal Revenue Service (IRS) a corrected IRS Form 1095-A documenting her household's 2015 premium payments and the federal APTC subsidies paid to BCBS on her behalf. Petitioner noted that she has already filed her tax returns for 2015, but she stated that she plans to file an amended return when she receives the corrected IRS Form 1095-A from VHC.

10. At hearing, petitioner asserted that she had incurred far more than \$400 in time spent trying to fix the many mistakes VHC made with her coverage in 2015, and she does not believe she should be required to pay the remaining premium balance of \$466.44 claimed by VHC.

11. VHC submitted records documenting its calculation of petitioner's APTC and VPA subsidies based on the income she and her husband reported when they filed their application to renew coverage for 2015. VHC did not submit documentation of calculations to support its demand of

\$286.44 for the 2015 BCBS Plan as described in paragraph 9, above.

12. Based on an annual household income of \$49,981.50, (or \$4,165.13 per month) VHC's APTC Work Sheet correctly calculated APTC of \$591.93 per month and VPA of \$62.48 per month, for a total of \$656.39 in monthly federal and state subsidies.

13. After subtracting the total subsidies for ten months (\$6,563.90 for January through October) from the total of ten monthly premiums for the BCBS Plan (\$8,562.80), it is found that a net premium of \$1,998.90 was due for coverage from January through October of 2015.

14. After subtracting the total payments of \$1,778.58 by petitioner's husband in 2015 from the net premium of \$1,998.90, it is found that the remaining balance due for the BCBS Plan from January through October is \$220.32.

15. Based on the records submitted by VHC in this matter and the findings in paragraphs 12 through 14 above, it is found that a total of \$400.32 is still due for coverage under the BCBS Plan and Dr. Dynasaur in 2015.

ORDER

VHC's decision on the amount of premiums for the 2015 BCBS Plan is modified to reflect that \$220.32 remains due, and that with \$180 still due for Dr. Dynasaur, a total of \$400.32 remains due to VHC for health care coverage for petitioner's household in 2015.

REASONS

The Board's review of VHC decisions 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). Based on the Findings of Fact, above, and the applicable regulations, it must be concluded that VHC correctly determined the past due premiums for Dr. Dynasaur in 2015, but it did not correctly calculate the remaining premiums due for petitioner's BCBS Plan from January through October.

Individuals who meet certain eligibility requirements may apply to the VHC Exchange to enroll in a QHP. Health Benefits Eligibility and Enrollment Rules (hereafter, HBEE).¹

¹ The HBEE regulations are promulgated pursuant to authority and funding under the federal Patient Protection and Affordable Care Act, 42 USC § 18001 et seq. and Vermont General Assembly Act Nos. 48 of 2011, 171 of 2012, and 79 of 2013. The rules have been amended several times since they were initially promulgated. The HBEE rules effective July 15, 2015 are applicable to this appeal.

If enrollees do not have other insurance available to them which meets "minimum essential coverage"² (or MEC) they can be considered for Advanced Premium Tax Credits (APTC) and Vermont Premium Assistance (VPA). There is no dispute here that petitioner and her household were eligible to enroll in a QHP through October of 2015 and that petitioner did not have other insurance available that meets "minimum essential coverage" until November 1, 2015.

Turning first to VHC's computation of petitioner's APTC subsidy, the Board concludes that VHC's APTC Work Sheet documents correct calculations of the APTC subsidy of \$591.93 per month, based on the household income provided in petitioner's application, for the following reasons.

The APTC benefits are available to households with an income of more than 100 percent per month but less than 400 percent of the Federal Poverty Level (FPL). HBEE § 60 et

²Minimum essential coverage means that the employer offers a health insurance plan in which "the plan's share of the total allowed costs of benefits provided to the employee . . . is at least 60 percent[,]" and the plan must be "affordable" meaning that the amount which the employee must pay "for self-only coverage does not exceed the required contribution percentage of the applicable tax filer's household income for the benefit year." HBEE §§ 23.03 and 23.02 (a)(1)). The current required contribution is 9.66 percent. HBEE Rules § 23.02(c) (establishing an initial affordability test of 9.5 percent of income, subject to adjustment by the Internal Revenue Service (IRS) in subsequent years); IRS Rev. Proc. 2014-62 (eff. 12/31/15) (setting the 2016 affordability percentage at 9.66 percent).

seq. The regulations provide the following methodology for figuring APTC:

The premium assistance amount for a coverage month is the lesser of:

- (a) The premiums for the month for one or more QHPs in which a tax filer or a member of the tax filer's household enrolls, or
- (b) The excess of the monthly premium for the applicable benchmark plan (ABP) (\$ 60.06) over 1/12 of the product of a tax filer's household income and the applicable percentage for the benefit year.

HBEE § 60.04(b).

There is no dispute that petitioner's Modified Adjusted Gross Income (MAGI) as reported on her application was \$4,165.13 per month based on a four-person tax household for the relevant time period in 2015. See HBEE § 28.00. Application of a sliding scale VHC uses for calculating a subsidy begins with a determination of household income as a percentage of the FPL for the household size, which for petitioner is 209.57 percent. This places petitioner at 6.68 percent on the sliding scale, which is the percentage of income petitioner is expected to contribute to her monthly premium. HBEE § 60.07(b). Thus, her expected monthly contribution is \$278.23 ($\$4,165.13 \times 6.68$ percent) and the monthly premium for the applicable benchmark plan (in this case for two parents with MEC eligible children) is \$872.40.

The difference between the benchmark plan (\$872.40) and her expected contribution (\$278.23) equals \$593.91, which is the correct amount of her federal APTC. HBEE § 60.04.

Because the petitioner has income of less than 300 percent of the FPL, she is eligible for a further reduction of the premium amount equal to 1.5 percent of her income. HBEE § 60.07(c). That amount is \$62.48 ($\$4,165.13 \times .015$). Her total monthly subsidy is therefore \$656.39.³

After subtracting the total subsidies of \$6,563.90 for ten months (January through October) from the total premiums of \$8,562.80 for that period, the net premium due was \$1,998.90. Subtracting the total payments of \$1,778.58 in 2015 leaves a past-due amount for the BCBS Plan of \$220.32.

The foregoing subsidy amount is based on the records VHC submitted in this matter. Although VHC indicated at hearing that petitioner owes a past-due premium of \$286.44 for 2015, there are no calculations in the record to support that amount. Accordingly, based on the APTC Work Sheet and documentation of petitioner's payments in the record, it must

³ For households with income between 200 and 250 percent of the FPL, the range for the applicable percentage is 6.34 percent to 8.10 percent. HBEE § 60.07(b). VHC's APTC work sheet includes "sliding scale" calculations that correctly show that petitioner's applicable percentage falls at 6.68 percent, but it is not necessary to replicate those calculations here to verify the result.

be concluded that \$220.32 remains due for her BCBS coverage in 2015. It should be noted that while her household income appears to have increased in August and then decreased when her divorce became final in October, any discrepancy between the federal subsidy calculated in the APTC Work Sheet and the APTC for which petitioner is eligible based on her household's actual income for 2015 will have to be reconciled⁴ when she files an amended tax return with the IRS.⁵

Second, the applicable regulations show that petitioner should have paid \$15 per month for her children's Dr. Dynasaur coverage in 2015 based on the household's monthly income of \$4,165.13. HBEE § 64.00; Medicaid Procedures 2420(B)(3). Accordingly, it must be concluded that VHC correctly determined that a premium payment of \$180 remains due for Dr. Dynasaur coverage in 2015.

⁴ Federal and state regulations provide that any overpayment or underpayment of APTC will be reconciled when an individual pays his or her federal income taxes. 26 CFR § 1.36B-4(a); HBEE §§ 55.02(d)(3)(i) and (iii)(C) and 57.00(c)(4)(i)(B) (procedures for AHS to verify that qualified individuals are receiving APTC if they have attested "that they understand that any APTC paid on their behalf is subject to reconciliation."); HBEE §§ 77.00(c) and 78.00 (requirement that AHS report monthly payments of APTC subsidies to the IRS and the tax filer for reconciliation of such payments).

⁵ Petitioner should also note that there are caps written into the IRS regulations limiting the amount of overpayment that may be recovered based on a household's income. 26 CFR § 1.36B-4(a)(3).

Based on the foregoing, VHC's decision with the respect to the amount of the past due premium for the BCBS Plan must be modified to reflect that petitioner owes a remaining balance of \$220.32 for 2015 coverage. When that amount is added to the \$180 remaining due for Dr. Dynasaur coverage, she owes a total of \$400.32 for past due premiums for her BCBS Plan and Dr. Dynasaur in 2015. See 3 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4D.

Finally, with respect to petitioner's assertion that she should not be obligated to pay the remaining premiums due for 2015 because she spent more than \$400 of her time trying to get VHC to correct all of the mistakes on her account, she is making a claim for monetary damages against VHC. While VHC's regulations authorize premium refunds under certain circumstances,⁶ nothing in the rules authorizes VHC or the Board to waive premiums due for coverage provided by an insurer. In this case, there is no claim or indication that the insurer was in any way at fault. It provided health care coverage to the petitioner's household from January through October of 2015, and there does not appear to be any legal basis for VHC or the Board to require the insurer to forego

⁶ See HBEE § 64.01(j) (premiums for QHPs may be refundable in certain cases. . .).

the premium payments still due for this coverage or to order VHC to pay them.

Moreover, based on at least two Vermont Supreme Court rulings (one affirming a decision by the Human Services Board) holding that "an administrative agency may not adjudicate private damages claims," the Board has consistently denied 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).

It is noted that decisions by the Board as to its lack of authority to grant relief do not decide whether petitioner may have a justiciable complaint against VHC in another forum, and she is free to seek legal advice and to take other legal action if she still feels aggrieved. See, e.g., Fair Hearing No. B-01/15-08.

There is no question that petitioner has experienced substantial frustration because VHC's billing errors have resulted in her owing a balance for past due premiums for her 2015 coverage. However, inasmuch as the Board does not have the authority to grant relief for petitioner's claim for damages in the form of waived premiums under 3 V.S.A. § 3091(a), that claim must be dismissed.

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