STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-01/15-08
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department for Children and Families, Economic Services Division denying her request for reimbursement for a premium payment she made under the Vermont Health Connect (VHC) program. The issue is whether the Board has jurisdiction to consider the matter.

The following findings are based on the representations of the parties at a hearing held on January 29, 2015.

FINDINGS OF FACT

1. Prior to September 30, 2014 the petitioner received medical coverage under a "catastrophic plan" offered by one of the private health insurers participating in VHC. Her premiums were $195.61 a month, payable before the first day of the next coverage month.

2. The petitioner did not pay her premium for the month of September. Sometime that month she was notified that her coverage would be terminated if she did not pay her premium for September by the end of the "grace period" ending

on September 30, 2014. When she did not pay her premium within in that time, and also failed to pay her premium due for October, her health insurance was terminated as of September 30.

3. The petitioner did not incur any health care expenses in September. On October 9, 2014 she called the Department’s call center to inquire about her coverage being reinstated. There is no dispute that the call center advised her that she had to retroactively pay her premium for September if she wished to have her coverage reinstated.

4. The petitioner alleges that she asked that her coverage be reinstated effective October 1, 2014, and that the person at the call center told her that she should send in retroactive premium payments for two months, September and October, and that he would get back to her if reinstatement was possible for October. The petitioner further alleges that the call center told her that if she sent in two retroactive premium checks, it would “hold” both of them until it was determined that she could be reinstated effective October 1. The next day, October 10, 2014, the petitioner sent the Department two checks for $195.61 each.

5. There is also no dispute that the Department did not contact the petitioner again after October 9, 2014. Having heard nothing from the Department, the petitioner contacted the call center again on November 21, 2014 to inquire about the status of her coverage. At that time the Department informed her that it had already cashed both of the checks she had sent in October, but that it had not reinstated her insurance coverage after September 30. Since it was already late November, and she had been and expected to remain healthy, the petitioner told the Department she did not want whatever health insurance she could now obtain just for the rest of 2014; and she demanded that the Department return the amount of money she sent in pending her (now denied) request for reinstatement effective October 1.

6. To date, the Department has reimbursed the petitioner for only one of the checks ($195.61). The Department represents that it used the amount of other check (also $195.61) to send to the petitioner’s insurer as payment for the coverage it had provided to the petitioner in September 2014. The Department represents that it has no legal basis to demand this money back from the insurer in that the insurer did provide coverage to the petitioner in September and would have had to pay any claim that the

petitioner might have made for medical services in that month had she incurred any.

7. The petitioner feels the Department should be held liable at this time to reimburse her for the $195.61 payment that it sent to the insurer for September. She alleges that she made it clear to the call center in October, and that the call center agreed, that the checks she was sending in were contingent on having her insurance coverage being reinstated effective October 1, 2014; and that if the Department did not reinstate her coverage as of that date, she would forego coverage for the rest of the year, and that the checks were to be returned to her.

8. The Department maintains that, inasmuch as it has already forwarded this money to the insurer for coverage the insurer in fact *did provide* to the petitioner, and insofar as there is no legal basis to ask *the insurer* for this money back, the Board has no legal basis to consider what-is-now-essentially a claim of monetary damages against the Department for the petitioner's detrimental reliance on the alleged representation and agreement by the call center that the Department would hold and return both checks to her if she could not have her insurance coverage reinstated effective October 1, 2014.

ORDER

The petitioner's appeal is dismissed as beyond the Board's jurisdiction.

REASONS

The Board has recently held that there is no provision in the VHC regulations authorizing or contemplating "reimbursements" to individuals for payments made to providers or insurers for medical services or coverage that have already been provided to that individual. Fair Hearing No. B-10/14-1004. In this case, there is no claim or indication that *the insurer* is in any way at fault. It correctly terminated the petitioner's coverage effective September 30, 2014 for the petitioner's failure to make a timely premium payment. It did, in fact, provide coverage for the petitioner for the month of September, even though the petitioner did not make any claims. The insurer was not a party to the petitioner's discussions with the call center in October, and there does not appear to be any legal basis to require the insurer to return the premium payment forwarded to it by the Department for the petitioner's coverage in September.

At this point, in light of the above, it must be concluded that the petitioner's grievance amounts to a claim for monetary damages against the Department. Based on at least two Vermont Supreme Court rulings (one affirming a ruling 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).

The Board's lack of jurisdiction at this time does not decide whether the petitioner may have a justiciable complaint against the Department *in another forum*. If she can show that the Department agreed to hold her checks pending a determination of her eligibility for reinstatement effective October 1, 2014, and agreed to return both of those checks to her if she could not be reinstated on that date, and that she would not have sent the checks to the Department had she known that the Department would forward one of them to the insurer for coverage in September, she *may* have a claim for damages against the Department based on her detrimental reliance on the Department's alleged misrepresentations. See 12 V.S.A. 5603. This is not to

suggest or speculate that the petitioner would, or should, prevail in such a claim, but to note that the petitioner is nonetheless free to seek legal advice and to take other legal action if she still feels aggrieved.[1]

However, for the above reasons, the petitioner's appeal to the Board must be dismissed. 3 V.S.A. § 3091.

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[1] The Board has noted that regardless of the ultimate merits of any claim by a petitioner for damages, considering the scope and severity of the problems that occurred in implementing VHC, and the likelihood that some individuals may be able to demonstrate that they incurred financial losses attributable to the Department's mistakes, misinformation and delays, the Department may well be advised to consider establishing a mechanism and funding to administratively process and adjudicate individual monetary claims by adversely affected VHC applicants and recipients. See Fair Hearing Nos. Y-07/14-553, S-10/14-1029, and B-10/14-1004.