

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-02/15-124
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department for Children and Families, Economic Services Division denying his requests for reimbursements under the Vermont Health Connect (VHC) program. The preliminary issue is whether the Board has jurisdiction to consider the matter.

The following facts are not in dispute, and are based on the representations of the parties at a hearing held on March 6, 2015.

FINDINGS OF FACT

1. In 2014 the petitioner and his wife received medical coverage under a "Bronze Plan" offered by one of the private health insurers participating in VHC. During the open enrollment period for 2015 the petitioner notified the Department that he wished to enroll in an upgraded "Platinum Plan" (with a higher premium) effective January 1, 2015.

2. The Department admits that it delayed processing the petitioner's request for upgraded coverage until sometime in January 2015. As a result, the petitioner and his wife were

kept on Bronze Plan coverage for January 2015, and Platinum Plan coverage was made effective February 1, 2015.

3. The petitioner paid the lower premium for Bronze Plan coverage in January. He paid the higher premium for Platinum Plan coverage for February. As of the date of the hearing he was not behind in any of his premium payments.

4. The petitioner's wife incurred pharmacy costs in January 2015 that were not covered under the Bronze Plan that was still in effect for that month. However, because those expenses were close to, if not less than, the premium difference they would have had to pay to have gotten Platinum Plan coverage for January, the petitioner is not seeking retroactive Platinum Plan coverage for January. It appears that he is asking instead for an unspecified reduction or discount in his ongoing Platinum Plan premiums because of the confusion and trouble he and his wife allegedly endured due to the Department's delays in upgrading his coverage, as well as for an unrelated problem that has arisen in the Department's reporting to IRS of the premium subsidies the petitioner received in 2014.

5. As to the latter problem, due to widespread mistakes the Department initially made in determining many individuals' 2014 subsidy amounts, and its willingness to now

consider *ex post facto* changes in the petitioner's income that occurred in 2014 for tax-reporting purposes, the Department has not yet been able to determine the correct amount of the subsidies it will report to IRS for the petitioner in 2014. The petitioner alleges that in addition to giving him a discount on his ongoing premiums the Department should also be held liable to reimburse him for whatever tax liability he may incur due to any errors it turns out the Department may have made in determining his 2014 subsidies.

6. The petitioner was advised at the hearing that whatever the outcome of this appeal, he is free to separately appeal any decision the Department might yet make regarding its calculation of the *amount of the subsidies* it ends up reporting to IRS.

ORDER

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

REASONS

The Board has jurisdiction to decide, but has 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. See e.g. Fair Hearing No. B-10/14-1004. There is also no provision in the regulations for "discounts" in future premiums recipients might owe their insurers based solely on past mistakes or delays the Department might have made in processing their claims. The Board has held that such claims amount to requests 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 above notwithstanding, the Board has also held that it would be, at best, premature to decide in advance that the Department is liable to reimburse individuals for tax penalties or liabilities that *might* be imposed by IRS that are attributable to errors the Department made in determining the amount of their 2014 subsidies. It has also noted that decisions by the Board as to *its* lack of jurisdiction do not decide whether recipients may have a justiciable complaint

against the Department *in another forum*, and that such individuals are nonetheless free to seek legal advice and to take other legal action if they still feel aggrieved. See e.g. Fair Hearing No. B-01/15-08.

At this time, however, for the above reasons the petitioner's appeal to the Board in this matter must be dismissed.

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