

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-03/15-350
)
Appeal of)

INTRODUCTION

Petitioner appeals a decision by Vermont Health Connect ("VHC") denying her request for a Special Enrollment Period ("SEP") so that she may select and enroll in a Qualified Health Plan ("QHP"). The issue is whether petitioner is eligible for a SEP because of inaction by VHC.

The following facts are adduced from testimony and representations during a telephone hearing held on May 11, 2015 and copies of records received by the Human Services Board from VHC on May 20, 2015.

FINDINGS OF FACT

1. Petitioner is twenty-six years old and lives in a household of one.

2. Petitioner lost her employer-sponsored health insurance when she left her former employment for a new job in October of 2014. She thought her new employer offered employer-sponsored insurance, but subsequently learned that

her new employer had stopped offering health insurance to its employees the previous year.

3. Petitioner called VHC in early November of 2014 to inquire about purchasing health insurance because she had lost her employer-sponsored insurance.

4. At the time petitioner called VHC, she did not know whether she would be paid a salary or paid by the hour at her new job, so a VHC representative advised her to call back when she had received paystubs with that information.

5. During the telephone conversation described above, the VHC representative did not inform petitioner that she would need to apply for insurance during the 2015 annual open enrollment period, or AOEP, nor did she inform petitioner that the AOEP would end on February 15, 2015.

6. Petitioner did not contact VHC again about enrolling in health insurance until March 20, 2015, more than four months after she made her first inquiry. At that time she was told that she had missed the 2015 AOEP, and that she would not be able to enroll in an insurance plan before January 1, 2016 unless she qualified for Medicaid or she had a qualifying life event.

7. During the March 20, 2015 telephone call, petitioner was also told that if she wanted to appeal she would first

need to file an application for health insurance. A VHC representative filled out an application that same day based on information petitioner provided over the telephone, and then informed petitioner that she did not qualify for Medicaid or for a SEP.

8. Upon being informed of VHC's decision, petitioner requested a fair hearing because she disputes VHC's decision to deny her request for a SEP. Petitioner does not dispute VHC's decision that she is not eligible for Medicaid.

9. When asked to explain her reasons for waiting until March 20, 2015 to call VHC again about signing up for health insurance, petitioner credibly testified as follows:

a. she did not think about calling VHC back because she had just started a new job and, including her new job, she works seventy hours per week at two jobs;

b. she was informed she might need counseling in March, and that reminded her that she might need health insurance;

c. she asserted that she did not call back only because she learned she might need insurance for counseling expenses, and she pointed to her first inquiry with VHC in late October or early November of 2014 as

evidence that she genuinely wanted to sign up for health insurance; and

d. she noted that she had always had health insurance, first through her parents and then through her last employer, and that she did not want to be without coverage.

ORDER

VHC's decision to deny petitioner's request for a SEP is affirmed.

REASONS

VHC's regulations provide for SEPs, which allow for enrollment in a QHP outside of the AOEP under certain circumstances. Health Benefits Eligibility and Enrollment ("HBEE") § 71.03(a) (VHC "will provide SEP consistent with this subsection, during which qualified individuals may enroll in QHPs and enrollees may change QHPs"). Specifically, VHC's rules provide for the Agency of Human Services ("AHS"), acting through VHC, to allow a SEP as follows.

AHS will allow a qualified individual or enrollee . . . to enroll in or change from one QHP to another if one of the following triggering events occur:

- (4) The qualified individual's . . . enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of AHS . . . or its instrumentalities as evaluated and determined by AHS. In such cases, AHS may take such action as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction[.]

HBEE § 71.03(d) (4) .

The relief sought by petitioner in this case is an initial application for SEP eligibility which VHC has denied, and petitioner therefore has the burden of proving by a preponderance of evidence that she is eligible. Fair Hearing Rule 1000.3(O) (4). Based on the evidence set forth in the Findings of Fact, *supra*, and the applicable VHC regulations, the Board concludes that petitioner has not met her burden.

Petitioner needed to establish that she was not enrolled in a QHP during the AOEP as a result of inaction by the VHC representative with whom she spoke in early November of 2014. HBEE § 71.03(d) (4). While petitioner's credible testimony that the VHC representative neglected to inform her of the last day of the 2015 AOEP established "inaction" by VHC, she did not prove that this specific inaction is the reason she could not timely enroll in a QHP. Instead, the evidence shows that if petitioner had called back VHC as instructed to report her income from her paystubs, and she had done so during the

AOEP, petitioner could have completed her application and signed up for insurance for 2015. Since she did not, her four month delay superseded VHC's "inaction" as the primary reason she was not able to enroll in a QHP.

In the absence of an established nexus between VHC's inaction and petitioner's non-enrollment in a QHP for 2015, it must be concluded that the regulations do not authorize a SEP in this case. *Id.* Therefore, VHC's decision to deny petitioner's request for a SEP must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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