

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. B-05/15-580  
 )  
Appeal of )

INTRODUCTION

Petitioner appeals a decision by Vermont Health Connect ("VHC") to terminate health insurance coverage for her and her husband under a Qualified Health Plan ("QHP"). The issue is whether VHC's termination of petitioner's QHP is consistent with its regulations.

The following facts are adduced from the testimony of petitioner and representations of VHC during a telephone hearing on July 2, 2015, and copies of VHC records received by the Human Services Board ("Board") on July 21, 2015.<sup>1</sup>

FINDINGS OF FACT

1. Petitioner resides in a household of four with her husband and two children. Petitioner's children receive their health insurance through Dr. Dynasaur.

2. Petitioner and her husband had QHP coverage through Blue Cross Blue Shield ("BCBS") for a portion of 2014. On October 13, 2014, VHC mailed petitioner a notice informing her

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<sup>1</sup> VHC's records were admitted as evidence without objection.

that it was time to renew health insurance for 2015. The notice informed petitioner "[i]f you don't have any changes to report and want to keep your current coverage, you don't have to do anything."

3. Petitioner's BCBS policy ("BCBS Plan") was automatically renewed for 2015 in December of 2014.

4. On December 24, 2014, VHC mailed petitioner an invoice for \$92.11 for coverage under the BCBS Plan in January with a due date of December 26, 2014. It is found that this notice did not provide petitioner with the amount of time required by its rules to pay the January premium.

5. By letter dated January 1, 2015, BCBS informed petitioner that her payment was past due. This letter did not inform petitioner that she was in a grace period, the amount of premium past due, or provide a date by which payment must be received to cure the grace period.

6. On January 5, 2015, VHC mailed petitioner an invoice for \$184.22 for coverage under the BCBS Plan in January and February with a due date of January 26, 2015.

7. There is no record that VHC or BCBS mailed petitioner any letter informing her that she had a payment past due or that she was in a grace period in February.

8. On February 5, 2015, VHC mailed petitioner an invoice for \$276.33 for coverage under the BCBS Plan in January, February and March with a due date of February 26, 2015.

9. By letter dated March 1, 2015, BCBS informed petitioner that her payment was past due. This letter did not inform petitioner that she was in a grace period, the amount of premium past due, or provide a date by which payment must be received to cure the grace period.

10. On March 5, 2015, VHC mailed petitioner an invoice for \$368.44 for coverage under the BCBS Plan in January, February, March and April, with a due date of March 26, 2015.

11. There is no dispute that on March 27, 2015, petitioner mailed a check for \$184.22 to VHC and VHC processed that check. It is found that the March 27, 2015 check was a payment of the premiums due for January and February of 2015.

12. There is no evidence that VHC or BCBS ever mailed petitioner any notice of termination of her BCBS Plan.

13. On April 23, 2015, a BCBS representative called petitioner to inform her that her health insurance coverage had been terminated. At the suggestion of the BCBS representative, they held a conference call with a VHC representative that day.

14. Petitioner testified that the VHC representative informed her that if she made another payment of \$276.33, her health insurance coverage would be reinstated. Petitioner's testimony is found to be credible, and there is nothing in VHC's records that refutes it.

15. Petitioner mailed a check dated April 27, 2015 for \$276.33 to VHC. It is found that upon mailing this check, petitioner had paid a total of \$460.55,<sup>2</sup> and that this amount covered all premiums due for her BCBS Plan through May of 2015.

16. Petitioner's April 27, 2015 check was received by VHC and VHC records indicate it was "scanned into Siebel" on May 6, 2015, but it was not otherwise processed for payment.

17. VHC's Service Request notes document that on May 1, 2015, "Payment Support" reviewed petitioner's case and determined it did not warrant reinstatement because "[a]ll . . . premiums were due on both the 2014 and 2015 Plans. This did not happen and therefore the 2014 plan was retro termed 9/30/2014 and the 2015 Plan was cancelled."

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<sup>2</sup> HBEE § 64.04(c) (a premium payment made by mail is "considered received as of the date it is postmarked").

18. VHC stipulated at hearing that issues regarding petitioner's 2014 coverage were not relevant to whether she had made premium payments applicable to grace periods in 2015.

19. To the extent petitioner had premium payment issues in 2014, it is found, based on a review of notices mailed to petitioner in late 2014, that those notices did not include information necessary for meeting VHC's requirements for grace period notices,<sup>3</sup> and that VHC should not have considered petitioner's 2014 payment issues when deciding whether to terminate her 2015 BCBS Plan.

20. On May 11, 2015, petitioner's April 27, 2015 check was destroyed and she was mailed a letter confirming this action.

21. On May 21, 2015, a VHC representative called petitioner and informed her that she would not be reinstated because she had premiums past due for both her 2014 and 2015 BCBS Plans and she did "not fit the criteria to be reinstated."

22. On May 21, 2015, petitioner requested a fair hearing.

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<sup>3</sup> HBEE § 64.06(b)(1)(i).

ORDER

VHC's decision to cancel petitioner's BCBS Plan for 2015 is reversed, and this matter is remanded to VHC to reinstate petitioner effective January 1, 2015.<sup>4</sup>

REASONS

The Board's review of VHC decisions is *de novo*. As petitioner appeals the termination of her BCBS Plan for 2015, VHC has the burden of proving by a preponderance of evidence that its decision to allow termination of her coverage complied with its regulations. Fair Hearing Rule 1000.3.0(4). VHC has not met its burden here.

VHC's rules provide that individuals who are enrolled in a health insurance plan through VHC must pay a premium for each month of coverage under that plan. Health Benefits Eligibility and Enrollment Rules ("HBEE") § 64.01(a). The amount due for each month must be paid in full in order for an enrollee to maintain coverage. HBEE § 64.05(a). Pursuant to the process for paying for plans offered on the Exchange, VHC

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<sup>4</sup> "Reinstate" means "to restore eligibility after cancellation or closure." HBEE § 3.00. After VHC reinstates petitioner, she will need to pay the past due premiums for 2015 as a condition of her reinstatement. HBEE § 76.00(e)(3) (reinstatement "results in restoration of an enrollment with no break in coverage"). Petitioner may request another fair hearing if VHC does not reinstate her pursuant to this decision and complete her reinstatement pursuant to VHC's regulations.

bills enrollees and collects premium payments for insurers. HBEE § 64.04. When billing enrollees, VHC must send a monthly premium invoice by the 5th day of each month stating that the payment is due on or before the last day of the month for coverage for the following month. HBEE § 64.04(a)(1) and (2). If the premium payment is received by the due date, an enrollee's coverage continues into the next month. HBEE § 64.04(b).

If a premium is not timely paid, the rules provide for a grace period of three consecutive months for enrollees, such as petitioner in this case, who receive federal APTC subsidies. HBEE § 64.06(1)(i).<sup>5</sup> In the event of nonpayment, the insurer has the obligation of providing grace period notices which meet certain minimum requirements. HBEE § 64.06(b)(1). If the enrollee's nonpayment is cured in full before the grace period has been exhausted, coverage continues.<sup>6</sup> Conversely, if the premiums that accrued during the grace period are not received in full by the end of the three months, VHC must, in the absence of a pending fair

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<sup>5</sup> Individuals not receiving a subsidy have a grace period of one (1) month. HBEE 64.06(a)(1)(ii).

<sup>6</sup> The grace period is not cumulative if the nonpayment is cured while the period is in effect, as the grace period must run for three (3) consecutive months to result in termination. See HBEE 64.06(a)(1)(i).

hearing, allow insurers to terminate coverage for non-payment of premiums. HBEE § 76.00(b)(2).

In this case, BCBS did not send petitioner the grace period notices that are required before terminating or cancelling QHP coverage. HBEE § 64.06(b)(1). Specifically, BCBS's letters dated January 1, 2015 and March 1, 2015 did not provide petitioner with sufficient notice that she was in a grace period or what she needed to do to cure. And as BCBS did not send any letter in February, it must be concluded that a grace period was not triggered for the period of January through March of 2015.

Moreover, neither BCBS nor VHC provided petitioner with a notice of adverse action as required by HBEE § 68.01(a) and (b)(2) (an individual must be provided with a notice of termination of eligibility that includes the specific reasons for the termination, the regulations that support the action, and the individual's fair hearing rights). As such, the termination of petitioner's coverage did not comply with VHC's rules requiring that notice of a termination be sent to an individual at least eleven days before the termination takes effect. HBEE § 68.02(a).

Finally, on April 23, 2015 a VHC representative informed petitioner that she could have her BCBS Plan reinstated if she



mailed the balance of premiums due for coverage through May. Petitioner mailed her check before the end of April, thereby paying all past due premiums for 2015 and the premium for May in full, and VHC should have promptly completed restoration of her enrollment in the BCBS Plan at that time. However, even if petitioner had not mailed her check until early May, VHC had no basis to terminate her coverage because she had not been mailed notices to trigger a three-month grace period ending in April, and she had not been mailed advanced notice that her coverage would be terminated. HBEE §§ 64.06(b)(1) and 68.02(a).

Based on the foregoing, it must be concluded that VHC's decision to allow cancellation of petitioner's health insurance coverage did not comply with its regulations. Therefore, VHC's decision must be reversed and the matter must be remanded to VHC to reinstate petitioner as directed in this decision and pursuant to VHC's rules.<sup>7</sup> 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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<sup>7</sup>As part of her reinstatement, petitioner will owe premiums for March, April, May, June, July and August. HBEE § 76.00(e)(3). Her premium payment for September will due by the end of August. HBEE § 64.04(a).