

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-06/15-608
)
Appeal of)

INTRODUCTION

Petitioner appeals a decision by Vermont Health Connect ("VHC") denying his requests to cancel his health insurance coverage under a Qualified Health Plan ("QHP") starting from March 1, 2015, to approve him for a Special Enrollment Period ("SEP") to enroll in a QHP effective June 1, 2015, and for a premium refund or credit for March, April and May. The issue is whether the relief requested by petitioner is authorized under the Human Services Board's statutory authority and VHC's regulations for approving a Special Enrollment Period ("SEP") and premium refunds.

The following facts are adduced from testimony of petitioner and a VHC case manager during a telephone hearing held on August 6, 2015 and February 16, 2016, representations of VHC counsel, and from copies of VHC records received by the Board on August 19, 2015 and February 16, 2015.¹

¹ VHC's records, including three audio recordings, have been admitted into the evidentiary record in this matter without objection.

FINDINGS OF FACT

1. Petitioner originally applied for health insurance on the VHC Exchange on February 10, 2014. In his application he listed his address at that time. VHC Service Request notes verify that petitioner called with follow-up questions in late February and early March of 2014, stating that he would like to be enrolled by March 15th.

2. Petitioner credibly testified that he called VHC to report his change of address when he moved in April of 2014.

3. Petitioner further credibly testified that he did not hear anything or receive anything from VHC indicating that his application had been processed,² and there is no dispute that he went without health insurance in 2014.

4. Petitioner subsequently applied for health insurance by telephone on February 10, 2015, and provided information for his application to a VHC representative at that time.

5. Petitioner testified that the information he provided to VHC on February 10th included his new address. Petitioner noted that at the time of the call he had moved ten months earlier, and that he had informed the VHC

² VHC's records indicate there were no telephone calls between VHC and petitioner in 2014 after March 10th, but Service Request notes for July 7th, 11th and 14th indicate that VHC attempted to call petitioner and left him voice mail messages on those dates.

representative his new address. He further testified that the VHC representative told him VHC had been experiencing problems processing change of address requests and that it was not petitioner's fault that his new address had not been updated in VHC's system, and that he would receive a bill for his first premium as soon as his application was processed.

6. VHC introduced audio recordings of two telephone calls between petitioner and a VHC representative on February 10, 2015, during which he provided information for his application for QHP coverage in 2015.³

7. The two audio recordings (approximately seven minutes and thirty-two minutes respectively) show that petitioner and the VHC representative primarily discussed how to estimate his income for 2015 since he would be leaving his job and would be self-employed for the remainder of 2015.

8. During the two February 10th telephone calls, petitioner and the VHC representative discussed the following.

a. VHC records showed that petitioner had submitted an application for health insurance in early 2014, but his application was never processed.

³ VHC also introduced an audio recording of a telephone call between petitioner and VHC on May 26, 2015. This recording is assigned no weight with respect to determining whether VHC made an error on petitioner's application in February of 2015.

b. The VHC representative informed petitioner that she could use the information in his 2014 application for his 2015 application.

c. After entering petitioner's income information and an annual income estimate in the 2015 application, the VHC representative asked petitioner "is there any other information that doesn't seem correct to you that we had other than your income?" Petitioner responded "no."

d. In response to questions from petitioner, the VHC representative informed him twice that he would receive an invoice in the mail. She also told him twice that his start date would be March 1st, and that if he was worried about the status of his coverage he could call VHC.

e. When the VHC told petitioner that his coverage would start on March 1, 2015, she suggested that he might want to file for a hardship exemption for a two-month gap in coverage in 2015 when he filed his 2015 tax returns.

f. The VHC representative provided petitioner with the Service Request numbers of VHC notes which document that (i) petitioner called VHC in February of 2014 to question his subsidy amount given his income, (ii) VHC did not discover any problems with calculations of his income until later in February, and (iii) VHC did not attempt to call him to answer his questions until July of 2014. Based on these records, the VHC representative encouraged petitioner to apply for a hardship exemption in 2014 because his lack of coverage that year might not be his fault. However, there was no discussion about whether petitioner reported his new address in 2014.

g. Petitioner selected a Blue Cross Blue Shield ("BCBS") Silver Plan for 2015.

9. Based on VHC's audio recordings described in paragraph 8, above, it is found that petitioner did not provide VHC with any information regarding his new address

during his phone call with VHC on February 10, 2015. And although the VHC representative did tell petitioner that his lack of coverage in 2014 and the first two months of 2015 might not be his fault, the audio recordings show that she did not inform petitioner that VHC had been having problems processing change of address requests or otherwise discuss his address.

10. Petitioner's February 2015 application included his old address rather than his new address.

11. As the VHC representative asked petitioner if there was any other information (other than his income) that was not correct from his first application, and petitioner did not mention his new address at that time, it cannot be found that including petitioner's 2014 address in his 2015 application was an error solely attributable to VHC.

12. There is no dispute that petitioner did not hear anything or receive any correspondence from VHC until May 26, 2015 because his old address had been included in his 2015 application for health insurance.

13. On May 26, 2015, petitioner received an invoice billing him for \$356.32 in premiums for BCBS coverage from March through June. Petitioner called VHC the same day and explained that this was the first notice of coverage that he

had received. He told VHC that he did not think he should have to pay for coverage he did not know was active, but he paid the bill anyway because he did not want any problems with his coverage.⁴ He also requested a fair hearing to contest the premiums VHC says he owed for March, April and May.

14. Petitioner also requested that the start date of his coverage be changed to June 1, 2015, because he was not aware he had coverage until that time.⁵

15. At hearing a VHC representative confirmed that petitioner had not been enrolled in BCBS coverage as of May 26th because VHC and BCBS had not received petitioner's first premium payment. BCBS did not enroll petitioner in a QHP plan until June 24, 2015, and at that time he was enrolled effective March 1, 2015.

⁴ VHC's records include copies of checks from petitioner in May and June for the balances shown on those two invoices (\$356.32 for March through June and \$89.08 for July, respectively).

⁵ On May 26, 2015 petitioner also reported to VHC that his income had increased in 2015, and he informed VHC that he wanted to pay the full premium amount for his QHP, but VHC never implemented his request. Petitioner was concerned that he would receive an excess of federal Advanced Premium Tax Credits (APTC) and would have to pay some of those subsidies back when he files his tax returns. Petitioner should note that he will need to reconcile any discrepancies between the federal subsidies for which he was eligible and the subsidies he actually received in 2015 with the Internal Revenue Service. See HBEE § 55.02(d)(3)(i) and (iii)(A) (procedures for AHS to verify that qualified individuals are receiving APTC and CSR if they have attested "that they understand that any APTC paid on their behalf is subject to reconciliation.").

16. Petitioner testified that it was his understanding, based on the absence of invoices or any other correspondence, that he had not had health insurance coverage in March, April or May of 2015. Petitioner further testified that during that time he paid for prescription medications out-of-pocket and he did not make an appointment for a blood test that he requires twice a year (or more depending on his medical condition and his medication dose) which should have been completed before May because he believed he did not have health insurance. Petitioner's testimony is found to be credible.

17. Petitioner testified that he did not call VHC from March through May to inquire about the status of his coverage because he believed that VHC's delay in processing was similar to the delay he experienced in 2014 and he was frustrated. He had decided that if he needed emergency care he would go to a community health center and pay for treatment out-of-pocket. Petitioner's testimony is found to be credible, but it is assigned little weight because during his February 10th call with VHC he was informed that his coverage would start on March 1st and that he should call VHC if he was worried about the status of his coverage.

ORDER

VHC's decision to deny petitioner's requests for (1) cancellation of his QHP coverage effective March 1, 2015, (2) a SEP so that he can enroll in a QHP with a start date of June 1, 2015, and (3) a refund of the premiums he paid for coverage from March through May of 2015 is affirmed.

REASONS

The Board's review of VHC decisions is de novo. As petitioner is requesting that VHC cancel his 2015 QHP coverage, approve a SEP to enroll him in a QHP effective June 1st, and refund his premiums for three months, he has the burden of proving by a preponderance of the evidence that VHC's rules authorize the relief he requests. Fair Hearing Rule 1000.3(O) (4). Based on the evidence set forth in the Findings of Fact, above, and the applicable VHC regulations, the Board concludes that petitioner has not met his burden.

The Board has the statutory authority to grant "appropriate relief" if it determines a delay by VHC in providing such relief was not justified. 3 V.S.A. § 3091(d) (the Board "may determine whether an alleged delay was justified; and it may make orders consistent with this title requiring the agency to provide appropriate relief including retroactive and prospective benefits."). In this case, the

Board must determine whether the presence of petitioner's old address in his 2015 health care application, and the ensuing delay in mailing VHC invoices to petitioner's new address, resulted primarily from an error or errors by VHC.

The Board accepts as true that petitioner reported his change of address at some point in 2014, and that VHC erred by not processing that request and updating petitioner's information. Nor is there a dispute that VHC's use of his old address was a factor in delaying petitioner's receipt of his first invoice, delaying his initial payment, and delaying his enrollment until June 24th.⁶ However, petitioner's argument relies heavily on his recollection that he informed VHC of his new address when he provided updated income information for his 2015 application during calls on February 10, 2015. The Board must therefore consider petitioner's conversations with VHC on February 10th when determining whether the error in his 2015 application resulted in an unjustified delay in his enrollment in BCBS coverage under 3 V.S.A. § 3091(d).

The audio recordings from February 10th establish that petitioner never mentioned his new address during those calls, even when the VHC representative asked him if there was any

⁶ HBEE § 64.01(h)(2) ("timely payment of a premium is required as a condition of initial and ongoing enrollment").

other information that "did not seem correct" from his old application. While petitioner accurately recalled being told that VHC's failure to process his 2014 application was not his fault, and he clearly genuinely believes he reported his new address during those discussions, the recordings show he did not.

Instead, the audio recordings demonstrate that VHC made a sufficient effort to verify petitioner's current information, including his address, when it filed and processed his application in February. Moreover, although there is no dispute that petitioner postponed medical care and incurred out-of-pocket costs for prescriptions⁷ as a result, on February 10th he was twice informed that his coverage would start on March 1st, and he was told he could call VHC if he had any concerns about the status of his coverage. Accordingly, where petitioner both neglected to update his address and to call VHC when his first invoice did not arrive, the Board cannot conclude that the fault for including his old address in his 2015 application, or the subsequent mailing of invoices to his old address, rests primarily with VHC and that the

⁷ Petitioner should request that the pharmacy where he paid for prescription medications between March 1 and June 24, 2015 submit claims for those expenses to BCBS and then reimburse to him the amounts that his BCBS plan covers.

delay in notice was therefore unjustified in this case. Under these circumstances, petitioner has not established a basis for cancellation of QHP coverage effective March 1, 2015 under 3 V.S.A. § 3091(d).

As there is no basis to cancel petitioner's coverage, he did not experience "non-enrollment" in a QHP as contemplated by VHC's SEP regulations. Health Benefits Eligibility and Enrollment ("HBEE")⁸ § 73.01(d)(4).⁹ Therefore, the Board need not review VHC's denial of his request for a SEP.

Finally, as petitioner's request to cancel his coverage effective March 1, 2015 must be denied, he had coverage in March, April and May of 2015, and accordingly his premium payments for those months do not qualify as an overpayment for which he may receive a refund under VHC's rules. See HBEE §

⁸ HBEE Rules effective July 30, 2014 (Bulletin No. 14-04F).

⁹ HBEE § 71.03(d)(4) provides 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, misconduct or inaction of an officer, employee, or agent of AHS or HHS, 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, misconduct or inaction. See § 76.00(e)(3) regarding correction of an erroneous termination or cancellation of coverage[.]

64.01(j) (“[QHP] premiums may be refundable in certain cases, including . . . overpayment. . .”).

Based on the foregoing, VHC complied with its regulations when it denied petitioner’s request for cancellation of his QHP, a SEP to enroll in a QHP effective June 1, 2015, and a premium refund. Therefore, VHC’s decision must be affirmed.

3 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4D.

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