

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-04/16-431
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Appeal of)
)

INTRODUCTION

The petitioner appeals a decision by Vermont Health Connect (VHC) denying his request for reimbursement of an IRS tax penalty he incurred due to receiving excess premium subsidies in the form of Advance Payment of Tax Credits (APTC) in 2015 due to an underreporting of his income. The issue is whether such relief is allowable under the regulations or as a matter of law.

A telephone hearing in the matter was held on July 5, 2016. The following findings of fact are based on the representations of the parties and on the documents that were submitted pursuant to the hearing.

FINDINGS OF FACT

1. The petitioner and his wife were enrolled in a Quality Health Plan through VHC in 2015. Their premium and the amount of their APTC were calculated by VHC based on the annual income from his wife's employment (about \$40,000) that the petitioner reported on his 2015 application. The

petitioner reenrolled in that QHP plan for 2016 using roughly the same reported income on his application

2. When they later filed their taxes for 2015 the petitioner and his wife were assessed a sizable penalty by IRS based on the fact that they had not reported to VHC an additional \$45,000 of income in 2015 from an IRA, which had resulted in an overpayment of APTC (premium subsidies) to them throughout 2015.

3. Upon being informed of the tax penalty, the petitioner called VHC and requested that his and his wife's health coverage be cancelled, which VHC did effective May 31, 2016.

4. On appeal, the petitioner maintains that he "didn't understand" that IRA withdrawals counted as income in determining premium amounts and tax credits for a QHP. He was vague, however, when queried about any misinformation VHC may have provided him with; and he did not allege any specific phone conversation or written directions, or lack thereof, from VHC that might have misled him.

5. VHC represents, and the petitioner did not dispute, that its online applications and call centers specifically inform applicants to report all "taxable income". The

petitioner does not dispute that he knew to include his IRA distributions as income on his tax returns.

6. The petitioner's request for relief was similarly vague. It appears that he is requesting that VHC reimburse him for all or part of the tax penalty he incurred for 2015, as well as any he is likely to incur for 2016.

ORDER

The Department's decision that it cannot reimburse tax penalties under its regulations is affirmed.

REASONS

There is no provision in the regulations or VHC policy for VHC to reimburse enrollees in a QHP for tax penalties they may incur due to an overpayment of APTC subsidies. Nor could it be concluded as a matter of equity that VHC is liable for tax penalties that resulted from misinformation provided by the enrollee which was not based on any mistake made or misinformation provided by VHC.

Regardless of the lack of merit to the petitioner's claim as a matter of equity, his grievance at this point, as best it can be determined, is essentially a claim for monetary damages. Based on at least two Vermont Supreme Court rulings (one affirming a decision by the Human Services

Board) holding that "an administrative agency may not adjudicate private damages claims," the Board has consistently refused to consider such claims, *regardless of their possible merits*. See, e.g., Fair Hearing No. L-01/16-36 (*citing Scherer v. DSW*, Unreported, [Dkt. No. 94-206, Mar. 24, 1999] and *In re Buttolph*, 147 Vt. 641 [1987]).

Inasmuch as the petitioner currently has no grievance that can be recognized by the Board as allowing "appropriate relief" under 3 V.S.A. § 3091(a), his appeal must be dismissed.

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