

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-04/16-426
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Appeal of)
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INTRODUCTION

The petitioner appeals a decision by Vermont Health Connect (VHC) denying his request to reduce the amount of premiums to his insurance carrier for reinstatement of his and his wife's Qualified Health Plan (QHP) coverage from September through December 2015. The issue is whether such relief is allowable under the regulations or as a matter of law.

Telephone hearings in the matter were held on July 5, August 9, and September 13, 2016. The following facts are not in dispute, and are based on the representations of the parties and the documents submitted at and pursuant to those hearings.

FINDINGS OF FACT

1. From January 1 through May 31, 2015 the petitioner and his wife were covered under a MCA Medicaid plan. Their children were covered by Medicaid/Dr. Dynasaur. It is not in

dispute that they received Medicaid coverage during all or part of this period due to an error by VHC. When VHC learned of the error the petitioner and his wife were enrolled in a QHP Silver plan through Blue Cross/Blue Shield (BCBS) effective June 1, 2015. Their children remained covered by Dr. Dynasaur.

2. Based on their reported income, the premium cost of the QHP (after subsidies) was \$256.35 per month. Effective June 1, 2015 the premium for their children's Dr. Dynasaur coverage was \$15 a month. It is not in dispute that the petitioner made timely premium payments as of June 1, 2016.

3. The problem in the case arose when VHC effectively terminated the petitioner's QHP coverage in its system effective September 1, 2015, apparently without notice and without the petitioner's knowledge. The reason this happened was never explained, but VHC acknowledges its error.

4. One result of the error was that all of the petitioner's premium payments applicable from September through December 2015 ended up being applied to his coverage for 2016, which became effective on January 1, 2016 (and has continued uninterrupted). Another was that VHC ended up reporting to IRS that the petitioner had not had insurance coverage for the months of September through December 2015.

A third was that the petitioner incurred, and has been billed for, medical expenses from September through December 2015 which were not covered by any insurance.

5. In April 2016 the petitioner appealed the decision by VHC not to reinstate his coverage from September through December 2015 unless he agreed to pay the premiums for those months *and* to remain current on his 2016 premiums.

6. Due to a delay by the petitioner in responding to pre-hearing directives of the Board, the matter was not set for hearing until July 5, 2016. By that time, the petitioner had not fully maintained premium payments in 2016 above the amounts of his payments in 2015 that had been credited to 2016. VHC offered to reinstate the petitioner's coverage from September through December 2015 and to allow him a "payment plan" for several months going forward that would allow him to make payments toward the four months of retroactive coverage for 2015 while at the same time remaining current on his 2016 premiums. The parties agreed to continue the matter to discuss the details of such a plan.

7. The petitioner was not available on the date and time of another hearing scheduled on August 9, 2016. VHC reported at that time that the petitioner had not accepted its settlement offer. The petitioner subsequently contacted

the Board and stated that he wished to continue with his appeal.

8. At a hearing held on September 13, 2016 the petitioner stated that he did not disagree with the written accounting statements VHC had provided to him and the Board regarding the correct amounts of his premiums from September 1, 2015 through September 30, 2016.¹ His position is that, given its mistakes in the matter, VHC should bear "financial responsibility" for at least half of the amount of the payment that would be owing for 2015 (\$1,025.40) if all his payments since September 2015 remain applied to his 2016 coverage. The petitioner concedes that VHC is not requiring him to pay more than he would have if no mistakes had been made in his case, but he feels VHC should, in effect, compensate him for the time he has spent on the phone and the mental anxiety VHC's error has caused him.

ORDER

VHC's decision denying the petitioner's request that he pay less than the full amount of any premium owed for the

¹In that correspondence VHC also stated that the petitioner retained the option to forgo reinstatement of his QHP coverage from September through December 2015 and to have all his premium payments made since September 1, 2015 applied toward maintaining his 2016 coverage.

reinstatement of his QHP coverage from September through December 2015 is affirmed.

REASONS

All individuals who are enrolled in a QHP are required to pay monthly premiums. HBEE § 64.00(a). Section 64.00(j) limits situations in which refunds or credits of premiums may be provided:

Premium payments are generally nonrefundable. . . With respect to QHPs, premiums may be refundable in certain cases, including death, overpayment (including retroactive adjustment of APTC), and invoicing errors.

The petitioner's request for an exemption from paying the full amount of the premiums that would be owed if his QHP coverage from September through December 2015 is reinstated does not meet these criteria. The record is clear that the petitioner would receive full insurance coverage for all the months in question; and there is no dispute (at least in retrospect) that VHC has accurately calculated the petitioner's premiums for all the months in question. To date, the petitioner has not *overpaid* any premiums or paid any tax penalty due to VHC's admitted error.²

² Upon payment of his 2015 premiums, VHC would notify IRS that the petitioner had maintained health insurance coverage for every month of 2015.

There are no provisions in the regulations requiring VHC (and/or the insurance carrier) to, in effect, waive the payment of premiums that would otherwise have been owed for coverage that was erroneously terminated, but subsequently reinstated.³ Thus, VHC's decision in this matter must be upheld. 3 V.S.A. § 3091(d), Fair Hearing Rule 1000.4D.

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³ In light of 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, based on a lack of subject matter jurisdiction, has also consistently refused to consider what-are-essentially-monetary claims against VHC and other departments. See, e.g., Fair Hearing Nos. L-01/16-36 and B-03/08-104, citing *Scherer v. DSW*, Unreported, (Dkt. No. 94-206, Mar. 24, 1999) and *In re Buttolph*, 147 Vt. 641 (1987).