

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. Y-11/14-1101
)
Appeal of)

INTRODUCTION

Petitioner appeals a decision by the Department for Children and Families (DCF) reducing her Advance Payment of Premium Tax Credit (APTC) benefits based on a Departmental computational error. The issue raised by the petitioner is whether DCF can refund to the petitioner any penalties she may be required to pay when she files her 2014 federal tax return.

A hearing was held on November 26, 2014. The following findings of fact are not in dispute, and are based on the representations of the parties and documents submitted at and following that hearing.

FINDINGS OF FACT

1. The petitioner lives with her husband and two adult children. The household has combined adjusted gross income of \$86,001.50 per year, or \$7,166.79 per month.

2. The petitioner applied for coverage under a Quality Health Insurance Plan around January 1, 2014. At that time

the Department incorrectly calculated the family's APTC, which resulted in the petitioner being charged a premium of \$231 a month for coverage that began January 1, 2014.

3. The petitioner was notified in October 2014 of a Department error in calculating the amount of her federal subsidy due to a systems programming mistake. The Department notified her that the corrected amount of her subsidy, effective October 1, 2014 would be \$479.20 per month based on her family income and the applicable federal poverty level. This lower APTC resulted in a large increase in the petitioner's monthly premium (also effective October 1, 2014) from \$231 to \$680.85.

4. The petitioner was also notified that for the months of January through September 2014 she had received an overpayment of APTC of nearly \$450 a month, which was the difference between the incorrect premiums she had paid each month (\$231) and her corrected premium (\$680.85).¹

5. The petitioner does not dispute the Department's "corrected" calculations of her family's income and her premiums (see *infra*). However, she requests that if she is found to have received an excess amount, that it be refunded

¹It appears that the petitioner has requested a continuance of her \$231 premium pending the fair hearing. This will result in there being a 12-month overpayment.

to her to cover any penalty when she files her 2014 tax return. (If the Department is correct in its recalculations, it appears that the petitioner may end up having received about \$5,400 more in APTC than she should have based on her family's income.)

6. The Department has taken the position in these cases (reported to number 155 statewide) that it cannot get the APTCs back from the insurance company and pay them to IRS or refund them to the petitioner. However, it has advised the petitioner that the IRS plans to limit any overpayment recovery to a person in the petitioner's income category and family size to \$1,500.

ORDER

DCF'S decision regarding the correct calculation of the petitioner's APTC is affirmed. Consideration of the petitioner's request to refund any APTC benefits awarded to her in error is deferred until the petitioner has filed her 2014 tax return and has specific information on the amount of the overpayment, if any, she might be required to repay the IRS.

REASONS

Eligible persons may apply to the Vermont Health Connect (VHC) exchange to enroll in a qualified health plan (QHP) under regulations adopted by DCF. See Health Benefits Eligibility and Enrollment Rules, (1/1/14) (hereafter, HBEE) promulgated pursuant to authority and funding under the federal Patient Protection and Affordable Care Act, 42 USC § 18001 et seq. (ACA) and Vermont General Assembly Act Nos. 48 of 2011, 171 of 2012, and 79 of 2013. If enrollees do not have other insurance available to them which meets "minimum essential coverage" (MEC) they can also be considered for Advance Payments of Tax Credits (APTC) and cost sharing reductions (CSR). There is no dispute here that the petitioner was eligible to enroll for a QHP and that she did not have other insurance available to her that meets minimum essential coverage.

APTC benefits to subsidize the cost of their insurance premiums may only be granted to persons who have income of more than 100 percent per month² but less than 400 percent of federal poverty level (FPL). HBEE § 60 et seq. The

² As Vermont has opted for expanded Medicaid which covers people with up to 133 percent of the Federal Poverty Level, for Vermont the floor is actually 133 percent, not 100 percent.

regulations provide the following methodology for figuring APTC:

The premium assistance amount for a coverage month is the lesser of:

- (a) The premiums for the month for one or more QHPs in which a tax filer or a member of the tax filer's household enrolls, or
- (b) The excess of the monthly premium for the applicable benchmark plan (ABP) (\$ 60.06) over 1/12 of the product of a tax filer's household income and the applicable percentage for the benefit year.

HBEE § 60.04(b)

There is no dispute at this time that the petitioner's countable income is \$7,166.79 per month and that she has a four person tax household. HBEE § 28.03(c)(1). Application of the sliding scale for a subsidy begins with a determination of household income as a percentage of the FPL for the household size, which for the petitioner is 365 percent. This places petitioner at the maximum of 9.5 on the sliding scale provided in the regulations, which is the percentage of her income that the petitioner is expected to contribute toward her premium for the applicable benchmark plan. See HBEE Se 60.07(b). If the premium for the applicable benchmark plan exceeds the amount that petitioner is expected to contribute, the difference constitutes the APTC subsidy. See HBEE § 60.04. In the petitioner's case,

her expected monthly contribution is \$680.85 ($\$7,166.79 \times 9.5$ percent), and the monthly premium for the applicable benchmark plan is \$1,160.05. The difference between the benchmark plan (\$1,160.05) and her expected contribution (\$680.85), \$451.09, is the amount of her federal subsidy (APTC).³

There is no dispute in this matter that Department's "corrected" decision as to the amount of the petitioner's subsidy is consistent with the applicable rules. Thus, it must be affirmed by the Board. See 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

The above calculations show the amount the petitioner *should have* been awarded monthly as a federal credit starting on January 1, 2014 to subsidize her purchase of insurance. However, when the petitioner files her 2014 tax return, the Department's computer systems error will have caused it to have notified the federal Department of Health and Human Services (HHS) that the IRS was "advanced" *tax credits* of \$5,400 for the petitioner for 2014.

DCF's regulations discuss its obligations to transmit information promptly to both the federal Health and Human

³Because the petitioner has income of more than 300 percent of the FPL, she is not eligible for a further *Vermont* reduction of her premium amount equal to 1.5 percent of her income. HBEE § 60.07(c).

Services (HHS) agency and to the Internal Revenue Service (IRS) to obtain advance payments on tax credit for its enrollees (HBEE § 77) and to provide information necessary to determine whether excess advance payments have been made (HBEE § 78). The regulations appear to be silent on whether DCF must, or even can, recover erroneously paid federal tax credits from the insurers and refund them to the IRS. However, at this time it is at best premature for the Board to make any definitive ruling as to DCF's obligation without specific information regarding what amount, if any, IRS will require the petitioner to repay at the time of her tax filing.

It is IRS, not DCF, which makes the final "reconciliation" and determines what amounts, if any, a taxpayer must repay because too much credit was advanced. 26 CFR § 1.36B-4(a). Until the petitioner's tax return is actually filed, it cannot be said with precise accuracy what the family's income is.

As DCF represents, there are caps recently written into the IRS regulations limiting the amount of overpayment to be recovered based on the amount of a family's income. 26 CFR §

1.36B-4(a)(3).⁴ It is also possible that IRS will employ other guidelines when the overpayment was clearly based on an error by a state exchange, as it was here. The petitioner may want to attach a copy of this decision to her tax return to make it clear that she was not at fault. However, until the exact amount of any required repayment to IRS is known, it is not possible to consider what relief, if any, might be available to the petitioner, and premature for the Board to determine whether it would have jurisdiction to grant such relief. The petitioner may re-file this part of the appeal, without prejudice, if IRS determines she has a tax obligation for 2014 based on the erroneous determination by the Department of the amount of her federal subsidy.

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⁴ As noted above, for the amount of income reported by the petitioner and her family size, the overpayment limitation is presently set at \$1,500. 26 CFR § 1.36B-4(a)(3).