STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. B-04/15-449
	)	
Appeal of	)	
	)	
	)	

INTRODUCTION

Petitioner appeals a decision by Vermont Health Connect (VHC) denying his requests for (1) approval of retroactive Medicaid coverage from February through December of 2014, (2) cancellation of his coverage under a Qualified Health Plan (QHP) issued by Blue Cross Blue Shield (BCBS) during that same time period, and (3) reimbursement of the premiums he paid for his QHP coverage during that time. The issue is whether VHC followed its rules when it denied petitioner's requests for retroactive relief in this case.

The following facts are adduced from testimony of petitioner, petitioner's father, VHC case managers and VHC's Exchange Project Director, a witness for BCBS, representations of VHC counsel during telephone hearings held on July 2,

2015, April 18, June 21, and August 17, 2016,[1] and copies of VHC records received by the Board on August 26 and December 16, 2015, and June 17, 20, and 21, 2016, and from petitioner on June 21 and July 29, 2016.[2]

[1] Petitioner did not call for his initial telephone hearing scheduled on May 12, 2015. He subsequently responded to correspondence from the Human Services Board and his hearing was rescheduled (without objection from VHC) on July 2nd. Following the hearing, VHC filed records in support of its decision on August 26th, but did not include screen shots from petitioner's on-line application that had been requested by the hearing officer (indicating that they were not available). The volume of VHC appeals increased significantly in August, and as a result, petitioners with terminated coverage were given priority over petitioners who, as in this case, currently had health insurance. On December 16th, in response to a request from the hearing officer, VHC submitted copies of invoices, canceled checks and an Internal Revenue Service Form 1095-A, and confirmed that no written notice of decision existed for this petitioner. After further review of VHC's records, the hearing officer scheduled a hearing on March 21st. Petitioner requested a continuance, so the hearing was rescheduled (without objection from VHC) on April 18th. A recommendation was issued following the hearing. VHC filed a motion titled "Motion to Disapprove the Hearing Officer's Proposed Findings of Fact and Conclusions of Law" on May 27th. In light of allegations raised in the motion, the case was removed from the Board's agenda for its June 1st meeting and another hearing was held on June 21st, during which VHC introduced additional evidence. Based on that evidence, a recommendation affirming VHC was issued on July 19th. On July 29th, petitioner submitted, via email, copies of email correspondence with VHC in January and March of 2014 that he intended to submit to the Board at its August 3rd meeting. In light of the new evidence, petitioner's case was removed from the Board's August 3rd agenda and another hearing was held on August 17th. During that hearing petitioner and his father testified about the emails and also stated that they would like to seek additional evidence of website errors from VHC, both directly and through requests to other State agencies and officials. The hearing officer asked whether petitioner would like one more continuance to try to obtain these records. VHC objected, and although the hearing officer noted that another continuance would not prejudice VHC, after further discussion petitioner stated he would like his appeal to be decided on the evidence currently before the Board and requested that the hearing officer forward a recommendation to the Board for its September 7, 2016 meeting.

[2] All records and documents have been admitted into the evidentiary record in this matter without objection.

FINDINGS OF FACT

1. Petitioner initially applied on-line for health insurance through the VHC Exchange on October 26, 2013. At that time, he resided with his parents and had recently lost health insurance coverage he had through his parents' employer-sponsored insurance (ESI).

2. Petitioner's on-line application in October of 2013 included the following information:

a. he had recently turned 26 in September;

b. he resided with his parents (both 60 years of age at the time) in a household of three;

c. he reported that his parents had a combined annual income of $98,000 and that he expected to earn $10,000 in 2014; and

d. as his application accurately reflected that petitioner was a tax household of one, his countable income for the purpose of determining his eligibility for health insurance in 2014 was $10,000 (or $833.33 per month.[3]

3. Petitioner credibly testified that after he completed the on-line application in October, the website showed his father's name as the person applying for health insurance. Because he was applying as an individual, this

[3] Petitioner's countable income for 2014 was well below the income standard of $1,289 per month for Medicaid for Adults. HBEE section 28.03(d); Medicaid Procedures P-2420(B)(1) (effective January 1, 2014).

discouraged petitioner from continuing the application process for several months.

4. Petitioner sent VHC an email on December 5, 2013 in which he explained that he had made a mistake on his initial application, but had not been able to correct the mistake or delete his application. He requested that VHC "purge" his previous applications from the system so that he could start a new application. As of December 5, 2013, petitioner had not enrolled in health care coverage for 2014.

5. VHC has established, through its copies of screen shots showing the information the VHC Exchange would have displayed based on petitioner's 2013 application and through the detailed and credible testimony of VHC's Exchange Project Director,[4] that the Exchange displayed a page showing petitioner three options for health care coverage. VHC's screen shots show that petitioner had been "approved" (in green highlighting) for a catastrophic plan and "temporarily approved" (also in green highlighting) for Medicaid and a QHP, and "not approved" (in red highlighting) for Advanced Premium Tax Credits and Cost Sharing Reductions. VHC also

[4] VHC's Exchange Project Director was also the Acting Deputy Director of Operations for VHC and Green Mountain Care at the time of the hearing on June 21, 2016.

established, through testimony and its Service Request notes for petitioner's account, that these options were displayed twice: first when he completed his application in October of 2013, and second when he logged in to the VHC Exchange on January 10, 2014 (as confirmed by emails submitted by petitioner) to complete his enrollment.

6. At hearing on June 21, 2016, petitioner testified that while he recalled seeing a "green box" and a "red box," when he completed his enrollment, he did not recall seeing that he was eligible for Medicaid, QHP, and catastrophic coverage (although he testified that he was aware that a catastrophic plan was available and he would have selected it but his parents convinced him not to do so). However, during the first hearing in this matter, petitioner twice provided direct and unprompted testimony that when he first completed his application in October of 2013, the first plan that "came up" was a catastrophic plan, but he selected a different plan that was more appropriate for his situation. Petitioner's testimony, when considered in the context of VHC's records, shows confusion and a lack of clarity in recalling the eligibility determinations displayed on VHC's web page when he completed his application and enrollment in October of 2013

and January of 2014, respectively, and is therefore assigned no weight.

7. Based on VHC's screen shots and the credible testimony of VHC's Exchange Project Director, it is found that VHC informed petitioner that he had been approved for a catastrophic plan and temporarily approved for Medicaid and QHP coverage when he logged in to complete his enrollment in early January of 2014.

8. VHC's records also include screen shots showing that the VHC website displayed a "Plan Selection" page with three tabs for categories of plans in which petitioner could have enrolled: "QUALIFIED HEALTH PLANS," "MEDICAID PLANS" and "DENTAL PLANS." In 2013 and early 2014, the website was set up so that the default for the visible tab was "QUALIFIED HEALTH PLANS," while the other two tabs were hidden unless petitioner clicked on them to reveal the options for "MEDICAID PLANS" (immediately to the right of the "QUALIFIED HEALTH PLANS" tab) and "DENTAL PLANS" (immediately to the right of the "MEDICAID PLANS" tab).[5]

9. At hearing on June 21, 2016, petitioner testified that he recalled seeing tabs for "QUALIFIED HEALTH PLANS" and

[5] The default tab on the "Plan Selection" page was changed to the "MEDICAID PLANS" tab on or about February 5, 2014.

"DENTAL PLANS," but that he did not recall seeing a tab for "MEDICAID PLANS." As VHC's records show that the "MEDICAID PLANS" tab was just as visible as the tab for "DENTAL PLANS," petitioner's testimony is assigned no weight for the purpose of determining whether the "MEDICAID PLANS" tab was displayed on the VHC Exchange's "Plan Selection" page.

10. Based on VHC's records and the credible testimony of VHC's Exchange Project Director, it is found that VHC screened petitioner's application for Medicaid eligibility, that VHC informed him that he was eligible for Medicaid, and that the "MEDICAID PLANS" tab on the "Plan Selection" page informed him of the option to enroll in Medicaid.[6]

11. At hearing on August 17, 2016, petitioner testified about emails with VHC in early January of 2014 in which a VHC representative acknowledged that a screen shot from his application showed his father as the primary account holder, and that she was "pretty certain that this is just an error on our website." These emails also document that the VHC representative informed petitioner that only he was listed on

[6] It should be noted that the April 18, 2016 recommendation found, based on evidence available at that time (which did not include the evidence introduced during the June 21st and August 17th hearings) that VHC did not screen petitioner for Medicaid. As noted above, the new evidence shows that VHC screened petitioner for Medicaid as required by its rules.

his application as applying for health insurance, and that based on that application and his plan selection, he had been enrolled in a QHP with individual coverage. Petitioner asserted that these emails show that the VHC website was "not a functional site" when he applied in 2013 and early 2014, and that this is sufficient evidence to find that the website would not have displayed the option to select Medicaid at that time. However, it cannot be found that this error refutes the evidence, described in paragraphs 6 through 10, above, establishing that the VHC Exchange notified petitioner of his Medicaid eligibility and displayed a tab for selecting Medicaid plans based on the information in his October 26, 2013 application.

12. Petitioner also asserted that a VHC email on March 14, 2014 informing him, in error, that he had not yet selected a plan, was further evidence of a "broken system." However, VHC sent another email to petitioner on March 15, 2014 apologizing for sending the previous email in error and advising him to contact VHC if he had any further questions. It cannot be found that an email sent in error in March of 2014 refutes the evidence, described in paragraphs 6 through 10, above, that the VHC Exchange notified petitioner of his Medicaid eligibility and displayed a tab for selecting

Medicaid plans based on the information in his October 26, 2013 application.

13. On January 10, 2014, VHC mailed petitioner an invoice for $359.47 (the full premium without any federal or state subsidies deducted) for coverage under a BCBS Bronze Plan starting February 1, 2014. Petitioner mailed his first premium payment to VHC on January 11, 2014. A VHC Service Request note shows that petitioner's QHP enrollment was considered complete on January 28, 2014.

14. Petitioner paid premiums totaling $3,953.73 for BCBS coverage from February through December of 2014.

15. BCBS paid claims for the cost of some vaccinations petitioner received in 2014 in preparation for international travel. And although he was not aware of it, BCBS would have covered claims that arose while petitioner was out of the United States.

16. After learning that he was eligible for Medicaid in 2014, petitioner requested a refund of the premiums he paid for BCBS coverage that year, and VHC has denied his request. Petitioner timely appealed VHC's decision.

17. Petitioner asserts, and VHC disputes, that VHC should retroactively enroll him in Medicaid for 2014, cancel

his 2014 BCBS coverage, and require BCBS to provide him with a premium refund for 2014.[7]

ORDER

VHC's decision to deny petitioner's requests for retroactive approval for Medicaid from February through December of 2014, cancellation of his 2014 QHP coverage, and a refund of the premiums he paid for that coverage is affirmed.

REASONS

The Board's review of VHC decisions is de novo. As petitioner is requesting that VHC cancel his 2014 QHP coverage and require BCBS to refund his premiums paid for that coverage, as well as approve him for retroactive Medicaid coverage, 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 applicable VHC regulations and the evidence set forth in the Findings of Fact, the Board concludes that petitioner has not met his burden.

[7] VHC enrolled petitioner in Medicaid in January of 2015 upon discovering that petitioner was eligible. He continues to have Medicaid coverage to date.

VHC's rules on applications provide in relevant part:

> A single, streamlined application will be used to determine eligibility and to collect information necessary for:
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> (1) Enrollment in a QHP;
>
> (2) APTC;
>
> (3) CSR;
>
> (4) Vermont Premium Reduction;
>
> (5) Vermont Cost Sharing Reduction and
>
> (6) Medicaid,. . .

Health Benefits Eligibility and Enrollment Rules (HBEE) § 52.02(a).[8] With respect to web-based applications, VHC's rules also provide in relevant part:

> When an individual files a complete, accurate and web-based application and relevant data can be fully verified through the use of available electronic means, an individual can expect a real-time or near-real-time eligibility determination.

HBEE § 61.02(b).

As shown in the Findings of Fact above, VHC screened petitioner's application for Medicaid through its on-line system and provided him with a real-time eligibility

[8] HBEE Rules effective January 1, 2014. The Board must apply the earlier rules that were in effect at the time petitioner's application was processed. The rules have been amended several times during the course of this appeal, but they are not materially different with respect to provisions cited herein.

determination, both in October of 2013 and again in January of 2014, as required by its rules. Petitioner's lack of recall of, and confusion about, the on-line eligibility determinations does not refute the evidence presented in VHC's screen shots and described by VHC's Exchange Project Director. The screen shots and explanatory testimony establish that petitioner was clearly informed that he was eligible for Medicaid, as well as for coverage under a catastrophic plan[9] or a Qualified Health Plan, when he completed the VHC on-line application and enrollment process.

In addition, VHC's "Plan Selection" page shows that, although the first visible tab was for "QUALIFIED HEALTH PLANS," there were two other tabs clearly showing that petitioner had the option to select "MEDICAID PLANS" and "DENTAL PLANS." Petitioner's recall of the tab for "DENTAL PLANS" demonstrates that the format was sufficiently visible to inform him of the availability of those plans. As the tab for "MEDICAID PLANS" is equally clear and visible (and located between the "QUALIFIED HEALTH PLANS" tab and the "DENTAL PLANS" tab), his lack of recall of the "MEDICAID PLANS" tab

[9] Individuals are eligible for a catastrophic plan only if they "have not attained the age of 30 before the beginning of the plan year[.]" HBEE § 14.00.

does not refute VHC's evidence that it was clearly displayed as shown in VHC's screen shots. There is no question that it makes more sense for the "MEDICAID PLANS" tab to be the default tab, and VHC recognized this when it changed the default tab to "MEDICAID PLANS" in February of 2014. However, VHC's efforts to improve its website does not alter the fact that the "MEDICAID PLANS" tab was clearly visible when petitioner made his plan selection in January.

Finally, during the August 17, 2016 hearing petitioner argued that his emails with VHC in January and March of 2014 reflect VHC errors, including listing petitioner's father as the primary account holder on the application, which are evidence that VHC's website would not have displayed his Medicaid eligibility or the option to select a Medicaid plan. This argument is not supported by the record. In particular, petitioner's testimony that the website displayed a catastrophic plan (available only to individuals up to age 30) when he first applied on-line demonstrates that VHC screened his application to determine his individual eligibility for health insurance programs, and not the eligibility of his father (who was aged 60 and who was listed on petitioner's application as enrolled in ESI at the time). Therefore, while there is no question that the VHC Exchange experienced

problems in 2013, it cannot be concluded that the emails submitted by petitioner refute VHC's evidence showing that its website clearly displayed his Medicaid eligibility and his option to select Medicaid at the time he applied for health insurance. VHC cannot be faulted for petitioner's failure to see the "MEDICAID PLANS" tab and his selection of unsubsidized QHP coverage for 2014.

In conclusion, the evidence in this case shows that petitioner did not meet his burden of proving that VHC failed to notify him of his Medicaid eligibility. As such, it must be concluded that VHC followed its rules when it denied petitioner's requests for retroactive Medicaid coverage, cancellation of his QHP coverage and a premium refund in 2014. Therefore, VHC's decision must be affirmed. 3 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4D.

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