



Rhode Island Executive Office of Health and Human Services
Appeals Office, 57 Howard Ave., LP Building, 2nd floor, Cranston, RI 02920
phone: 401.462.2132 fax: 401.462.0458

Date: March 2, 2015

Docket # 14-1438

Hearing Date: February 16, 2015



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided for you in part. During the course of the proceeding, the following issue(s) and Agency regulation(s) were the matters before the hearing:

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)
MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)
SECTION: 7.7 Voluntary Termination
7.8 Effective Date of Termination**

The facts of your case, the Agency regulation(s) and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the Appellant), your attorney Forrest C. Crooks, Esq. and Noah Zimmerman, Esq. HealthSource RI Representative

Present at the hearing were: You (the Appellant) your attorney Forrest C. Crooks, Esq. and Noah Zimmerman, Esq. HealthSource RI Representative.

ISSUE: Is the Appellant responsible for the healthcare insurance policy premiums after he had called HSRI to cancel the policy?

EOHHS RULES AND REGULATIONS:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Executive Office of Health and Human Services Medicaid Code of Administrative Rules (MCAR).

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

DISCUSSION OF THE EVIDENCE:

The Agency Representatives testified:

- HSRI is not contesting any facts or assertions that the Appellant made.
- HSRI has been in touch with BC/BS and there is a "ticket" that has been put in, which has been approved and that will cancel the Appellant's coverage and to dissolve any bills.
- HSRI is continuing to work on resolving this issue and it may still take another 2-3 weeks for this to happen.
- HSRI is working on this issue so that it doesn't happen to other individuals.

The Appellant testified:

- The Appellant had received healthcare through HealthSource RI for the months of January and February of 2014.
- In March of 2014, the Appellant was able to obtain healthcare insurance through his employer and as soon as he received confirmation that he did indeed have employer sponsored healthcare insurance, he called HSRI to cancel his Blue Cross/Blue Cross (BC/BS) policy. The Appellant distinctly made a call to cancel with HSRI the first week of March 2014 and may have spoken with a male representative named "Jason".
- When the Appellant called to cancel this healthcare insurance through HSRI, the representative only thanked him for calling and said that he was all set. The Appellant was not instructed to put his cancellation in writing or to take any other action.
- The Appellant's employer sponsored healthcare insurance is also with BC/BS.
- The Appellant took no other action even though he received a bill from BC/BS from the month of March 2014. The Appellant had heard that HSRI was running behind and that maybe the case with him. He also received a bill for April 2014 that he took no action on.
- In May 2014, the Appellant received a Termination of Coverage Notice due to the Appellant not paying his BC/BS for the months of March, April and May 2014.
- The Appellant called HSRI seeking why he received a termination notice since he had called and cancelled his coverage the first week of March 2014. The Appellant was told that HSRI has no record of him cancelling his plan. Unfortunately, the only proof that the Appellant did cancel his HSRI insurance policy was that he had coverage through his employer for that time frame also.
- The Appellant then filed an Appeal due, "HSRI has no record of his cancellation. I called due to the fact that I got a policy through my employer. Phone records don't verify my cancellation but BC/BS has me down as having two policies. No claims."
- The Appellant claims to have reached out to BC/BS to see what actions need to be taken hoping to expedite a resolution. During a telephone call with BC/BS

that Appellant was told that since that were no claims filed, all HSRI would have to call BC/BS themselves and ask to have the Appellant's account credited.

- The Appellant's attorney is requesting Attorney Fees for his work and his two appearances that were needed in this matter.

FINDINGS OF FACT:

- The Appellant had received healthcare through HealthSource RI for the months of January and February of 2014.
- In March of 2014, the Appellant was able to obtain healthcare insurance through his employer and as soon as he received confirmation that he did indeed have employer sponsored healthcare insurance, he called HSRI to cancel his Blue Cross/Blue Cross (BC/BS) policy. The Appellant distinctly make a call to cancel with HSRI the first week of March 2014 and may ask spoke with a male representative named "Jason".
- When the Appellant called to cancel this healthcare insurance through HSRI, the representative only thanked him for calling and said that he was all set. The Appellant was not instructed to put his cancellation in writing or to take any other action.
- The Appellant's employer sponsored healthcare insurance if also with BC/BS.
- The Appellant took no other action even though he received a bill from BC/BS from the month of March 2014. The Appellant had heard that HSRI was running behind and that maybe the case with him. He also received a bill for April 2014 that he took no action on.
- In May 2014, the Appellant receive a Termination of Coverage Notice due to the Appellant not paying his BC/BS for the months of March, April and May 2014.
- The Appellant called HSRI seeking why he received a termination notice since he had called and cancelled his coverage the first week of March 2014. The Appellant was told that HSRI has no record of him cancelling his plan. Unfortunately, the only proof that the Appellant did cancel his HSRI insurance policy was that he had coverage through his employer for that time frame also.
- The Appellant then filed an Appeal due, "HSRI has no record of his cancellation. I called due to the fact that I got a policy through my employer. Phone records don't verify my cancellation but BC/BS has me down as having two policies. No claims."
- The Appellant claims to have reached out to BC/BS to see what actions need to be taken hoping to expedite a resolution. During a telephone call with BC/BS that Appellant was told since that were no claims filed, all that HSRI would have to call BC/BS themselves and ask to have the Appellant's account credited.
- HSRI is not contesting any facts or assertions that the Appellant made.
- HSRI has been in touch with BC/BS and there is a "ticket" that has been put in, which has been approved and that will cancel the Appellant's coverage and to dissolve any bills.
- HSRI is continuing to work on resolving this issue and it may still take another 2-3 weeks for this to happen.

On February 16, 2015, the Appellant's attorney, Forrest C. Crooks, Esq. submitted a letter and an invoice for his services. Mr. Crooks, Esq. and the Appellant had been requested to appear at the DHS Pawtucket Office with regards to the appeal of the agency's action. The matter had reached the Hearing Calendar on October 27, 2014 and at a pre-hearing conference, the HSRI representative (Lindsay Lang, Esq.) requested a reschedule of this matter to preserve the Appellant's rights and to allow HSRI time to resolve the issue; the Appellant and his attorney agreed to this continuance being granted. This matter went to full hearing on February 16, 2015 in which both the Appellant and Mr. Crooks appeared.

Mr. Crooks, Esq. is seeking \$500.00 in attorney's fees for two hours of work when he appeared on October 27, 2014 and February 16, 2015, one hour each day. Mr. Crooks, Esq. has a billable hour rate of \$250.00 per hour.

CONCLUSION:

The issue to be decided is whether the Appellant is responsible for the healthcare insurance policy premiums after he had called HSRI to cancel the policy.

The Appellant had applied for and was receiving healthcare insurance from BC/BS through HSRI for January and February 2014. The Appellant was able to obtain healthcare insurance through his employer but it wasn't available until March 1, 2014. The Appellant applied for healthcare insurance through his employer and once it was confirmed that he had been enrolled, he called HSRI, no later than the first week of March 2014 and cancelled his BC/BS policy that he had through them. The healthcare insurance sponsored by his employer is also BC/BS. When the Appellant called HSRI to cancel his policy, the HSRI representative thanked him for called and informed the Appellant that he was all set.

Late in the month of March, the Appellant received a bill for the policy that he had cancelled earlier that month but since the Appellant had heard how busy that HSRI had been, that maybe the paperwork had not been inputted yet. When the Appellant received a termination notice in May 2014 for three consecutive months without payment received, the Appellant called HSRI. During that telephone call the Appellant is told that HSRI has no record of the Appellant calling to cancel his BC/BS policy. The Appellant's position is that why wouldn't he have called since he already obtained healthcare insurance through his employer that started March 1, 2014.

This matter has had several requests for reschedule hearing prior to going to Hearings from both the Appellant and the HSRI Agency. The matter first reached a Hearing date on October 27, 2014, which was attended by the Appellant, his attorney Forrest C. Crooks, Esq. and Lindsay Lang, Esq. HSRI representative. The issue was discussed in great lengths during pre-conference and at the request of HSRI representative, a reschedule of the matter was requested and the Appellant agreed. The matter did not go to a full Hearing on this day. The HSRI representative had hoped that by the time

that this matter reached the next Hearing date, that HSRI would have been able to reach out to BC/BS and resolve the issue to the Appellant's satisfaction.

This issue went to a full Appeals Hearing on February 16, 2015 since the HSRI still had not been able to resolve the Appellant's issue, in attendance for this Hearing date was the Appellant, his attorney Forrest C. Crooks, Esq. and Noah Zimmerman, Esq. an HSRI representative. HSRI is claiming to be close to resolving the issue for the Appellant; dissolving the March, April and May of 2014 BC/BS premium bill for healthcare insurance. HSRI is suggesting that they need maybe another 2-3 weeks to resolve. HSRI and BC/BS are in agreement that since the Appellant already had employer sponsored healthcare cover, also with BC/BS and no claims had been filed by the Appellant, that the Appellant would not be required to pay those BC/BS premiums through HSRI for the months of March, April and May 2014.

The Appellant testified under oath that he did not call HSRI to cancel his BC/BS policy through HSRI until he received verification the first week of March 2014 that he had obtained BC/BS coverage through his employer sponsored health insurance plan. The Rules and Regulations pertaining to the Rhode Island Health Benefit Exchange state:

7.8 Effective Date of Termination.

- (a) Voluntary terminations.
 - (1) Upon a voluntary termination request submitted at least fourteen (14) days prior to the end of the month, coverage shall be terminated at the end of the month. Coverage shall be terminated at the end of the following month if the termination request is submitted less than fourteen days prior to the end of the month.

Under the Appellant own admission, he did not contact HSRI fourteen (14) days prior to March 2014 in order not to have incurred a bill for the month of March's premium. Had he called HSRI sometime prior to February 14, 2014, policy would be in his favor. The Appellant testified that he called HSRI sometime the first week of March 2014 and therefore should be exempt from the BC/BS premium bills for April and May 2014. If HSRI and BC/BS are will to dissolve the Appellant's March premium for the Appellant, then that is their prerogative; policy does not mandate that action.

Another issue arose during this Hearing on February 16, 2015, the Appellant's attorney requested attorney fees and had also submitted a letter stating his reasoning for the fees to be paid by the agency, an invoice for \$500.00 with a break down and a copy of a W-9. Due to DHS Policy § 0108.15, which states:

All claims for an award of reasonable litigation expenses shall be made on an application form to be supplied by the agency and shall be filed with the hearing office within thirty (30) to forty-five (45) days of the date of the conclusion of the adjudatory proceeding which gives rise

to the right to recover such an award. The proceeding shall be deemed to be concluded when the agency or adjudicative officer renders a ruling or decision.

The adjudicative officer may, at his or her discretion, permit a party to file a claim out of time upon a showing of proof and finding by such administrative officer that good and sufficient cause exists for allowing a claim to be so filed.

All claims shall be filed on a state agency form which is obtained from the hearing office. All claims must be postmarked or delivered to the hearing office no later than thirty (30) days from the date of the conclusion of the adjudicatory proceeding. These claims must contain:

- A summary of the legal and factual basis for filing the claim;
- A detailed breakdown of the reasonable litigation expenses incurred by the party in the adjudicatory proceedings, including copies of invoices, bills, affidavits, or other documents, all of which may be supplemented or modified at any time prior to the issuance of a final decision on the claim by the adjudicative officer;
- A notarized statement swearing to the accuracy and truthfulness of the statements and information contained in the claim, and/or filed in support thereof. In this statement the claimant must also certify that legal fee time amounts were contemporaneously kept.

And also, § 0108.15.05 Allowance of Awards:

Whenever a party which has provided the state agency with timely notice of the intention to seek an award of litigation expenses as provided in these rules, prevails in contesting an agency action, and the adjudicative officer finds that the state agency was not substantially justified in: (1) the actions leading to the proceeding; or (2) in the proceeding itself, an award shall be made of reasonable litigation expenses actually incurred.

In accordance with section 42-92-2 of the Rhode Island General Laws, as amended, "reasonable litigation expenses" means those expenses which were reasonably incurred by a party in adjudicatory proceedings, including, but not limited to, attorney's fees, witness fees of all necessary witnesses, and other costs and expenses as were reasonably incurred, except that: (i) The award of attorney's fees may not exceed one hundred and twenty-five dollars (\$125) per hour, unless the court determines that special factors justify a higher fee; (ii)

No expert witness may be compensated at a rate in excess of the highest rate of compensation for experts paid by this state.

The decision of the adjudicative officer to make an award shall be made a part of the record, shall include written findings and conclusions with respect to the award, and shall be sent to the claimant, unless the same is represented by an attorney, in which case the decision shall be sent to the attorney of record.

In conclusion, the Appellant had received BC/BS healthcare insurance through HSRI for January and February 2014. In March 2014, the Appellant was able to obtain healthcare insurance through his employer effective March 1, 2014 and the carrier also happened to be BC/BS. As soon as the Appellant was able to confirm that he had health insurance through his employer, he called the HSRI contact center and informed them that he no longer needed coverage and wished to cancel his cover through HSRI. The Appellant recalls making this call to HSRI the first week of March and possibly spoke with "Jason" at HSRI. The HSRI representative thanked him for calling and informed him that he did not need to do anything else. At the end of March the Appellant received a bill from HSRI but since he had heard how swamped with work HSRI was, he thought that HSRI had not caught up with the paperwork. The Appellant must have received a bill in April because in May 2014, the Appellant received a termination notice due to three consecutive months of not paying his BC/BS premium. The Appellant called HSRI to find out information regarding the termination notice. When he called HSRI, the representative informed him that they have no record of the Appellant calling to cancel his coverage.

Although the Appellant has no proof of cancelling his coverage as he said he did the first week of March, HSRI had agreed to reach out to BC/BS to see if they were willing to waive the premiums due for March, April and May 2014. The Appellant had also contacted BC/BS to see what could be done and was told that they would waive those three months of bill since no claims had been filed but HSRI would have to ask. At a pre-conference hearing on October 27, 2014, HSRI requested that the Hearing not go forward, instead the Hearing was rescheduled. Having the Hearing rescheduled would allow HSRI time to resolve the issue to the Appellant's satisfaction; the Appellant and his attorney agreed to the reschedule.

The rescheduled Hearing was taken place on February 16, 2015 and unfortunately HSRI still had not resolved the Appellant's issues. Both HSRI and BC/BS agreed to dissolve the Appellant's premiums for March, April and May 2014 but computer issues were preventing this from happening. During the Hearing, HSRI stated that they believe that the problem might be fixed in 2-3 weeks but that everyone was in agreement that the three months for bills will be removed from the Appellant's obligation.

The Rules and Regulations pertaining to the Rhode Island Health Benefit Exchange provide instructions for a policy holder to terminate their cover. In § 7.8 (a)(1) it states that, "Upon a voluntary termination request submitted at least fourteen (14) days prior to the end of the month, coverage shall be terminated at the end of the month." For this Appellant to be found exempt from being obligated to pay for his monthly healthcare premium, he would have had to contact HSRI fourteen days prior to March 1, 2014,

which would have been before February 14, 2014. The Appellant testified that he called HSRI during the first week of March 2014, which mean the Appellant is obligated to pay the March 2014 BC/BS premium but not the April and May healthcare premiums.

If HSRI is proposing to take action beyond what is mandated in the Rules and Regulations of the Rhode Island Health Benefit Exchange that is between HSRI, BC /BS and the Appellant and is above this Hearing Officer's authority.

With regards to the request for Attorney Fees, the Appellant and his attorney have up until 30-45 day after this decision from being issued to submit their application to recover for an award. As stated in Policy §§ 0108.15 and 0108.15.05, certain step are required and are to be followed.

After a careful review of the Agency's policies, as well as the evidence and testimony given, this Appeals Officer finds in part for the Appellant; the Appellant is still obligated for only the premium bill for March but it is HSRI and BC/BS's wish to also remove that bill as well. The appellant's request for relief is therefore granted in part.

A handwritten signature in cursive script, appearing to read "Shoumit Deka".

Appeals Officer

APPENDIX

RULES AND REGULATIONS PERTAINING TO THE RHODE ISLAND HEALTH BENEFITS EXCHANGE

7.7 Voluntary Termination. The Exchange shall terminate enrollment at any time upon the request of an enrollee. Effective termination dates for voluntary termination shall be established by the Exchange.

7.8 Effective Date of Termination.

(a) *Voluntary terminations*.

- (1) Upon a voluntary termination request submitted at least fourteen (14) days prior to the end of the month, coverage shall be terminated at the end of the month. Coverage shall be terminated at the end of the following month if the termination request is submitted less than fourteen days prior to the end of the month.
- (2) The Exchange may grant a different termination date if the request is submitted at least fourteen (14) days prior to the proposed termination date.
- (3) The Exchange has discretion to grant an earlier termination date, on a case-by-case basis.
- (4) If the enrollee requests coverage termination due to eligibility for Medicaid, coverage will terminate the day before Medicaid coverage begins.

EXECUTICE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS) MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)

0108.15 Application/Awards of Litigation Expenses

REV: 08/2013

All claims for an award of reasonable litigation expenses shall be made on an application form to be supplied by the agency and shall be filed with the hearing office within thirty (30) to forty-five (45) days of the date of the conclusion of the adjudicatory proceeding which gives rise to the right to recover such an award. The proceeding shall be deemed to be concluded when the agency or adjudicative officer renders a ruling or decision.

The adjudicative officer may, at his or her discretion, permit a party to file a claim out of time upon a showing of proof and finding by such administrative officer that good and sufficient cause exists for allowing a claim to be so filed.

All claims shall be filed on a state agency form which is obtained from the hearing office. All claims must be postmarked or delivered to the hearing office no later than thirty (30) days from the date of the conclusion of the adjudicatory proceeding. These claims must contain:

- A summary of the legal and factual basis for filing the claim;
- A detailed breakdown of the reasonable litigation expenses incurred by the party in the adjudicatory proceedings, including copies of invoices, bills, affidavits, or other documents, all of which may be supplemented or modified at any time prior to the issuance of a final decision on the claim by the adjudicative officer;
- A notarized statement swearing to the accuracy and truthfulness of the statements and information contained in the claim, and/or filed in support thereof. In this statement the claimant must also certify that legal fee time amounts were contemporaneously kept.

0108.15.05 Allowance of Awards

REV: 08/2013

Whenever a party which has provided the state agency with timely notice of the intention to seek an award of litigation expenses as provided in these rules, prevails in contesting an agency action, and the adjudicative officer finds that the state agency was not substantially justified in: (1) the actions leading to the proceeding; or (2) in the proceeding itself, an award shall be made of reasonable litigation expenses actually incurred.

In accordance with section 42-92-2 of the Rhode Island General Laws, as amended, "reasonable litigation expenses" means those expenses which were reasonably incurred by a party in adjudicatory proceedings, including, but not limited to, attorney's fees, witness fees of all necessary witnesses, and other costs and expenses as were reasonably incurred, except that: (i) The award of attorney's fees may not exceed one hundred and twenty-five dollars (\$125) per hour, unless the court determines that special factors justify a higher fee; (ii) No expert witness may be compensated at a rate in excess of the highest rate of compensation for experts paid by this state.

The decision of the adjudicative officer to make an award shall be made a part of the record, shall include written findings and conclusions with respect to the award, and shall be sent to the claimant, unless the same is represented by an attorney, in which case the decision shall be sent to the attorney of record.

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.