



Rhode Island Executive Office of Health and Human Services
Appeals Office, 74 West Rd., Hazard Bldg., 2nd floor, Cranston, RI 02920
Phone: 401.462.2132 fax: 401.462.0458

October 20, 2016

Docket # 16-1574
Hearing Date: September 30, 2016



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you. 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: 0110 COMPLAINTS AND HEARINGS

0110.05 Administrative Authorization

Definition of an Appeal

The facts of your case, the Agency regulations, 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) and Health Source RI (HSRI) Agency representatives: Ben Gagliardi, Esq., Lindsay Lang, Esq., and Derek Tevyaw.

Present at the telephonic hearing were: You (the Appellant), your husband, and HSRI representatives: Ben Gagliardi, and Derek Tevyaw.

ISSUE: Did the appellant file a timely appeal?

RIHBE 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 Health Source Rhode Island (HSRI) representative testified:

Timeliness/and Substantive Issues

- The issue raised on appeal is “appealing IRS bill due to incorrect information received from the Contact Center.”
- An IRS bill is not an appealable notice or an Agency action on behalf of HSRI.
- The 1095 does not come with appealable rights as do other eligibility notices and even that notification was sent in early February and the appeal itself was beyond the 30 days discussed earlier in the hearing.
- If that notice were deemed to constitute an Agency action then it is too late as well.
- HSRI implementing regulations through the Affordable Care Act (ACA) carve out certain areas-eligibility appeals, whereby a customer is allowed to file an appeal.
- HSRI has expanded those appealable reasons which is set forth in the HSRI Policy Manual, chapter 9, section G which says in part-a bill from the IRS does not fall into any of those categories; and, in fact we are pre-empted by the IRS from reconciling tax credits, and that is left solely to the discretion of that federal body.
- We cannot assist in the reconciliation of the tax credits provided nor do we have the jurisdiction to provide the relief requested by the appellant at prehearing, which is assistance with the \$10,000
- In response to her (the appellants’) request to see the 2015 monthly calculations on her account, we will go off the record and discuss arrangements.
- Our notices do say that the IRS is the ultimate arbiter of tax credits, and they discuss the need to notify within 10 days of a change of income.
- Also, whatever and however you report income it needs to be verified by you as to accuracy as your projected federal assistance is based off that income that the customer is reporting to us under oath.

The appellant testified:

Timeliness-

- She is not disputing the figures in the 1095, but is appealing the mistakes made by Health Source Rhode Island (HSRI) from January 2015 through December 2015.
- She assumed because they (HSRI) told her each and every month that it (her case) was going to the Escalation department that specialists were working on the account and trying to find out what was wrong.
- She appealed after she did her taxes and found out she owed the government over \$10,000.
- She had no clue that would happen when she did her taxes so she did not appeal prior to that.
- She is not disputing the figures on the actual 1095, but the reasons she got there.
- She didn't note the appeal rights on the notices because she was concerned with the bills coming in, and when she did not agree with the bill she would make a phone call, and she felt that was her appeal because she called and told them there was a problem with her bill, and they informed her they were working on it, it's in the escalation department.
- She called HSRI every month for 12 months, January through December 2015.
- After they did their taxes, they tried repeatedly to file an appeal, and had some difficulties actually filing the appeal on line, or obtaining the papers to file the appeal.
- During the held open period, the appellant corrected the date for filing her taxes- she reported through a phone message that April 4th is the correct date of filing.
- The prior year we also had HSRI and we owed the IRS and paid them at the end of the year, so we informed HSRI ongoing that we did not want to get caught again.
- We thought we were doing the appeal process because we called HSRI directly, and we don't know all the laws, and wanted the professionals to help us.

Substantive Issues:

- She agrees that at the end of the year, the IRS was saying they earned \$93,000

and the Agency based their income on \$76,000 and \$52,000.

- She agrees that she is appealing/and wrote on her complaint, that she is disputing the IRS bill due to incorrect information received by the Contact Center as of January 2015.
- She wants someone from HSRI to tell her, while looking back at every single month, that someone was calculating something wrong and every single bill was inaccurate.
- She agrees she is looking for financial assistance from HSRI to help pay the \$10,000.
- The prior year they had to pay the IRS what they owed them, and they informed HSRI that they did not want to get hit hard again at the end of the year.
- We thought we were doing the appeal process ongoing and we were letting the professionals help us.
- She did not know there was a big problem until she did her taxes.
- We believe things were wrong since day one, and perhaps we should have had a higher rate, or they could have told us if you go over you could lose all your credits, and we just weren't informed.
- We believe HSRI has tried to remedy some of these things, but it is just unfair
- Shouldn't HSRI base their billing correctly upon the information which is given them from us?
- Why aren't your bills being created correctly for your customers?
- When they calculated our income at \$72,000 why didn't they say to us-if your husband goes over \$72,000 we are going to take away all the credits we have given you?

FINDINGS OF FACT:

- The record identifies multiple notices generated during the 2015 coverage year including Enrollment notices generated on December 30, 2014; September 26, 2015; October 19, 2015; and, December 17, 2015.
- The December 17, 2015 Enrollment notice, was submitted as a template for all the enrollment notices. The notice identifies a section labeled Appeal rights and Deadlines which specifies the possible loss of rights if the appeal is not filed

within 30 days. A second page of appeal instructions begins with the 30 day appeal deadline information, and also includes on the same page, a discussion of the informal resolution which notes that the resolution can be considered simultaneous to the appeal.

- A 1095-A Marketplace Statement was generated on January 19, 2016.
- An appeal was filed on May 6, 2016.
- A hearing was convened on September 29, 2016.
- The record of hearing was left open until October 7th for submission of additional evidence.
- Additional evidence was received.

CONCLUSION:

This case was heard on September 29, 2016. At that time, the issue of timeliness was discussed. In the event timeliness was not determined in favor of the appellant, the appellant was informed the substantive issues could not then be considered. In the event timeliness was won by the appellant, it was agreed upon that a reconvene might be considered if the record had not been fully developed at hearing. Questions of jurisdiction were also raised by the Agency with regard to the reconciliation of tax credits, and with regard to the appellant's request for damages.

The first issue to be decided is whether the appellant filed a timely request.

The Executive Office of Health and Human Services (EOHHS) is the Department in the Rhode Island State Government authorized to hold hearings on social services programs including appeals related to the Rhode Island Health Benefits Exchange (RIHBE). An appeal or request for an opportunity to present one's case to the appropriate state agency must be filed within guidelines specific for that program. In the case of RIHBE appeals, the appeal must be filed within 30 days from the notice mail date for any RIHBE-administered program.

The appellant testified that she began questioning her monthly bills with HSRI as early as January 2015. She continued to make monthly calls questioning the amount of the bills and their correctness. The appellant continued to question HSRI by contacting the Agency through December 2015. She testified that she did not choose to appeal the issue, as she thought the ongoing process with HSRI was sufficient and was a form of appeal. She admittedly did not read the notices with regard to her appeal rights as her concerns were about the bills at that time. The appellant testified that there was no further reason to question HSRI in 2016 until completion of her taxes. At that time she

realized she would now have to pay back all the tax credits borrowed throughout the 2015 year as her final actual income as calculated by the IRS, was higher than that allowed for governmental assistance and was higher than that projected throughout the year. The appellant presented the 1095-A received in early February 2016 as the document under appeal. She wrote, "Appealing IRS bill due to incorrect information received from the contact center." The document identifies the amount of monthly advance premium tax credits taken by the appellant during each of the 2015 coverage months. The appellant does not dispute the actual figures represented in the document.

The Agency argues that the 1095 is not an appealable document, and as such, it does not come with appealable rights as do the other notices. They further contend that even the 1095 sent in early February was beyond the 30 days discussed at hearing.

As noted above, RIHBE regulations allow a Claimant "an opportunity to present his/her case to the appropriate state agency authority for resolution of the pertinent matter." The appellant has 30 days from the mail date for any RIHBE-administered program.

A review of the record reveals that the appellant appealed the IRS notice on May 6th following completion of her taxes, reportedly on April 4th. The 1095-A is a statement of summary which includes identifying information about medical coverage for households (i.e. number of individuals covered, tax credits received, monthly premium amounts, and the comparative coverage plan-all for the previous year) which is used by the IRS for tax purposes at the end of a fiscal year. It appears, per the Notices summary, that the document was generated on January 19th and should have been received by the appellant by the 26th of January (allowing 5 day delivery). That document was not appealed until May. Regardless, the notice is not a RIHBE-administered program as referred to previously. It is a summary of actions already taken throughout the 2015 coverage year. The appellant did not formally appeal any actions taken in 2015, and in fact, did not follow up after December 2015. She stated she believed that her monthly calls in 2015 replaced the need for an appeal at that time, as she was requesting help ongoing. She no longer pursued any action in 2016 as she did not realize the ramifications of those actions taken in each of the prior months until she completed her taxes. The appellant had an opportunity to appeal any given months' calculations in 2015 if she felt she was not being reconciled. Additionally, on at least four different occasions throughout the year the enrollment notices, also available on line at all times, notified the appellant of the difference between an appeal and an internal resolution. The notices further clarified in several different places, the necessity to file an appeal within 30 days, as well as the loss of appeal rights if not filed within the allotted time. The appellant argues that they trusted the Agency as they were the professionals and she and her husband were not familiar with the laws and regulations, and they did not note the appeals section specifically. However, the Agency argues that they legally provided the appellant with notification of her appeal rights which they did.

In summary, regulations allow the appellant a thirty day period in which to appeal a specific notice or adverse action by the Agency. The appellant had the opportunity to appeal omissions or commissions by the Agency throughout 2015. Although she

participated in an internal resolution process with the Agency in 2015, she did not simultaneously file an appeal which is limited to a 30 day period. The notices sent by HSRI legally notified the appellant of her opportunities to file in 2015, and it was not until completion of her taxes in April 2016, that she realized the consequences of the actions taken in 2015. She then appealed in May. At that time, per regulations, she was well beyond the allowable time frames within which she could appeal. As a result the appellant filed an untimely appeal and a decision will not be rendered based on the full merits of the case.

After a careful review of the Agency's regulations, as well as the credible testimony and evidence submitted by all parties, the Appeals Officer finds that the appellant's request for relief is therefore denied.

Karen Walsh
Appeals Officer

APPENDIX

MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)

0110 COMPLAINTS AND HEARINGS

0110.05 ADMINISTRATIVE AUTHORIZATION

REV: 08/2013

The Executive Office of Health and Human Services (EOHHS), through federal/state programs established by the Social Security Act of 1935,

as amended, the Rehabilitation Act of 1973, as amended, and through state/local programs established by Chapter 42-7.2, of the General Laws of Rhode Island, as amended, is the Department in the Rhode Island State Government authorized by law and designation to hold hearings on a statewide basis, the following public financial, medical, vocational and social services programs:

- o RIW: Rhode Island Works
- o CCAP: Child Care Assistance Program
- o SNAP: Supplemental Nutrition Assistance Program
- o SSI-SSP: Supplemental Security Income and State Supplemental Payment Program
- o Medicaid
- o MAGI Medicaid: The portion of the Medicaid program with eligibility subject to Modified Adjusted Gross Income ("MAGI"), pursuant to 42 C.F.R. 435.119
- o OCSS: Office of Child Support Services
- o GPA: General Public Assistance Program
- o SS: Social Services Program
- o ORS: Office of Rehabilitation Services' Vocational Rehabilitation (VR) Program and Services for the Blind and Visually Impaired (SBVI) Program
- o VA: Veterans' Affairs (VA) Program
- o DCYF: Department of Children, Youth, and Families programs and services
- o DOH: Department of Health (DOH) programs and services

General Provisions of the OHHS Code of Rules 5

- o BHDDH: Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals programs and services
- o DEA: Division of Elderly Affairs programs and services. The Rhode Island Health Benefits Exchange ("RIHBE" or "Exchange") has designated EOHHS to serve as the Exchange appeals entity for all Exchange appeals other than large employer appeals (hereinafter "Exchange Appeals"). EOHHS accepts that designation and thus is the

Department authorized and designated hereinafter to hear and decide such Exchange Appeals.

Exchange Appeals include the following categories of appeals: Basic QHP Eligibility; APTC/CSR Eligibility or Calculation; Exemption; SHOP

- Employer; SHOP - Employee; and Large Employer.

These specific policies and procedures are set forth under the law to

provide equitable treatment for all applicants and recipients.

0110.20 Definition of an Appeal

REV: 08/2013

An “appeal” means a request by a claimant (or his/her authorized representative) for an opportunity to present his/her case to the appropriate state agency authority for resolution of the pertinent matter. The appeal must be filed within:

- Ten (10) days from the mail date if it pertains to General Public Assistance;
- Ninety (90) days from the mail date related to SNAP benefits;
- Forty-five (45) days from the mail date related to Office of Rehabilitation Services matters;
- Thirty (30) days from the mail date related to child support services;
- Thirty (30) days from the mail date related to the State Medical Assistance (Medicaid) Program;
- DCYF: Thirty (30) days from the mail date for any DCYF-related matter;
- BHDDH: Thirty (30) days from the mail date for any BHDDH-related matter;
- Thirty (30) days from the mail date for any other DHS program;
- Thirty (30) days from the mail date for any RIHBE-administered program.

Appeal requests for any of the programs listed above may be submitted:

- In person to any DHS/DCYF/BHDDH field office/appeals office, as appropriate; and
- By U.S. Mail to any DHS/DCYF/BHDDH field office/appeals office, as appropriate.

[EOHHS Technical Amendment September 2015 7](#)

Appeal requests related to the MAGI Medicaid Program or related to any program administered by

the RIHBE may, in addition to the submission methods listed above, be submitted:

- by telephone to the RIHBE contact center;
- by fax to the RIHBE contact center/appeals office;
- by U.S. Mail to the address indicated on the appeals request form; or
- online by accessing the user’s account through the website made available by the RIHBE allowing for the electronic submission of appeals.

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.

This hearing decision constitutes a final order pursuant to RI General Laws §42-35-12. An appellant may seek judicial review to the extent it is available by law. 45 CFR 155.520 grants appellants who disagree with the decision of a State Exchange appeals entity, the ability to appeal to the U.S. Department of Health And Human Services (HHS) appeals entity within thirty (30) days of the mailing date of this decision. The act of filing an appeal with HHS does not prevent or delay the enforcement of this final order.

You can file an appeal with HHS at <https://www.healthcare.gov/downloads/marketplace-appeal-request-form-a.pdf> or by calling 1-800-318-2596.