

STATE OF RHODE ISLAND  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES APPEALS OFFICE

██████████

DOCKET No. 24-3037

v.

HEALTHSOURCE RI

**DECISION**

**I. INTRODUCTION**

A telephonic hearing on the above-entitled matter was held on June 13, 2024. ██████████ ██████████ (“Appellant”) initiated this matter by filing an appeal on March 20, 2024, to dispute the amount of Advanced Premium Tax Credits (“APTC”) her household received on the Qualified Health Plan (“QHP”) coverage purchased through Rhode Island’s Health Benefits Exchange, also known as HealthSource RI (“HSRI” or “Exchange”). The Appellant claims that despite informing HSRI of the correct household gross income in November 2023, HSRI failed to update the income correctly, resulting in the household’s gross income being substantially less than what was reported to HSRI. Upon reconciling the household’s taxes for the tax year 2023, the Appellant incurred a \$6,737.00 penalty by the Internal Revenue Service. Testimony was heard regarding the timeliness of the appeal and the substantive matter under appeal. For the reasons discussed in more detail below, the Appellant’s appeal is denied due to timeliness.

**II. JURISDICTION**

The Executive Office of Health and Human Services (“EOHHS”) is authorized and designated by Rhode Island General Laws (“R.I.G.L”) §42-7.2-6.1, EOHHS regulation 210-RICR-10-05-2, and HSRI regulation 220-RICR-90-00-1.14, to be the entity responsible for

appeals and hearings related to HSRI. The administrative hearing was held in accordance with the Administrative Procedures Act, R.I.G.L. §42-35-1 et. seq. and EOHHS regulation 210-RICR-10-05-2.

**III. ISSUE**

The issue is whether the Appellant filed a timely appeal based on State regulations.

**IV. STANDARD OF PROOF**

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treaties* §10.7(2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail, as with *Lyons v. Rhode Island Pub. Employees Council* 94, 559 A.2d 130, 134 (R.I. 1989), a preponderance standard is the “normal” standard in civil cases. For each element to be proven, the factfinder must believe that the facts asserted by the proponent are more probably true than false. When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. vs. Carbone*, 898 A.2d 87 (R.I. 2006).

**V. PARTIES AND EXHIBITS**

Tristan Blount, HSRI Appeals Specialist, and Ben Gagliardi, Esq., HSRI General Counsel, attended the hearing on HSRI's behalf. Ms. Blount provided testimony on the Appellant's QHP eligibility and contacts with HSRI. Vianchell Tiburcio, HSRI Operations Support Supervisor, also attended the hearing and observed for training purposes. HSRI offered the following exhibits into evidence at the hearing:

- HSRI Exhibit #1 – McGuire v. Comm’r, 149 T.C. No. 9 United States Tax Court, August 28, 2017.
- HSRI Exhibit # 2 – a copy of an Annual Open Enrollment Notice, issued on October 8, 2023, for RIB Case# [REDACTED]
- HSRI Exhibit # 3 – a copy of a Benefits Decision Notice (“BDN”) issued on November 20, 2023, for RIB Case# [REDACTED]
- HSRI Exhibit # 4 – a copy of the BDN, issued on January 6, 2024, for RIB Case# [REDACTED]
- HSRI Exhibit # 5 – a copy of an Enrollment Notice issued on January 8, 2024, for RIB Case# [REDACTED]
- HSRI Exhibit # 6 – a copy of Form 1095-A for the tax year 2023, issued on January 14, 2024, for RIB Case# [REDACTED]
- HSRI Exhibit # 7 – a copy of excerpts of regulations relied upon by HSRI.

The Appellant attended the hearing and testified on her own behalf. The Appellant’s husband, [REDACTED], also testified. The Appellant offered the following documents as exhibits at hearing:

- Appellant Exhibit #1 – Letter from the Appellant detailing the household income and explaining the timeline of the Appellant’s contacts with HSRI, received by the EOHHS Appeals Office on June 10, 2024.

**vi. RELEVANT LAW/REGULATIONS**

State Regulation 220-RICR-90-00-1, entitled “Rules and Regulations Pertaining to HealthSource RI,” specifically section 1.14(C) entitled “Appeals,” states that Exchange appeals

must be filed within thirty (30) days of the contested agency action. The thirty (30) days begins five (5) days after the mailing date of the notice of an agency action.

## **VII. FINDINGS OF FACT**

1. The Appellant filed an appeal on March 20, 2024.
2. Two (2) BDNs were issued to the Appellant. The first was issued on November 20, 2023, and the second on January 6, 2024.
3. An Open Enrollment Notice was issued to the Appellant on January 8, 2024.
4. Form 1095-A for 2023 was issued to the Appellant on January 14, 2024.
5. Two BDNs, the Open Enrollment Notice and Form 1095-A, were all issued more than thirty-five (35) days before the Appeal was received.

## **VIII. DISCUSSION**

The Appellant had until December 26, 2023, to file an appeal on the November 20, 2023, BDN. Because thirty-five days from the BDN was December 25, 2023, and the office was closed, the Appeal was due the following day. The Appellant had until February 10, 2024, to file an appeal on the January 6, 2024, BDN, but since the EOHHS Appeals Office is closed on Saturday, an appeal would have been accepted on February 12, 2024. An appeal on the January 8, 2024, Open Enrollment Notice was due on February 12, 2024. Finally, the Appellant would have had until February 18, 2024, to file an appeal on Form 1095-A, issued on January 14, 2024. The EOHHS Appeals Office would have accepted the appeal if it had been filed by February 19, 2024, since February 18 fell on a Sunday. The Appellant filed an electronic appeal on March 20, 2024, sixty-six (66) days after the last notice issued to the Appellant on January 14, 2024. The Appeal was clearly not filed within the thirty-five (35) days specified in the State regulations. Accordingly, this appeal was not timely filed and is dismissed.

**IX. CONCLUSION OF LAW**

After a careful review of the evidence and testimony at the administrative hearing, HSRI has presented sufficient evidence that:

1. The Appellant filed an appeal more than thirty-five (35) days after:
  - i. The November 20, 2023, and January 6, 2024, BDNs.
  - ii. The January 8, 2024, Open Enrollment Notice.
  - iii. The January 14, 2024, Form 1095-A.
2. The appeal filed on March 20, 2024, is therefore untimely and dismissed.

**X. DECISION**

Based on the foregoing findings of fact, the conclusion of law, evidence, and testimony, it is found that a final order be entered that there is sufficient evidence to support that the appeal filed by the Appellant was received more than thirty-five (35) days after the notices issued to the Appellant.

**APPEAL DENIED**

*/s/ Robert Pelosi*  
EOHHS Appeals Officer

**NOTICE OF APPELLATE RIGHTS**

This Final Order constitutes a final order of the Executive Office of Health and 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.

#### **CERTIFICATION**

I hereby certify that I mailed a true copy of the foregoing to [REDACTED], via regular mail, postage prepaid. Copies were sent via email to [REDACTED] and HSRI Representatives Tristan Blount and Ben Gagliardi, Esq. on this 14th day of June, 2024.

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