



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
P.O. Box 11729  
Albany, NY 12211

## Notice of Decision

Decision Date: September 10, 2014

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000588

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED],

On May 29, 2014, your authorized representative, [REDACTED], appeared by telephone at a hearing on your April 17, 2014 request for a special enrollment period (SEP).

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of the NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting the NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification Number at the top of this notice.

### Legal Authority

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(b).

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

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## Decision

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NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000588

[REDACTED]  
[REDACTED]  
[REDACTED]

## Issue

The issue presented for review by the Appeals Unit of the NY State of Health is:

Does [REDACTED] qualify for the special enrollment period (SEP) that he requested on April 17, 2014?

## Procedural History

On March 17, 2014, your broker filed a Non-Financial Assistance application for health insurance through the NY State of Health Marketplace on your behalf.

On March 18, 2014, the Marketplace prepared an eligibility determination that you, your spouse, and your child were eligible to enroll in a qualified health plan through NY State of Health. The determination states that all members of the household chose Empire Gold Guided Access-ccav.

On April 15, 2014, the Marketplace issued an eligibility determination stating that you, your spouse, and your child remained eligible to enroll in a qualified health plan without a subsidy. The determination further stated: "You will be able to change your plan during the annual open enrollment period, which will begin on November 15, 2014 and will end on February 15, 2015. If you miss the deadline, you may not be able to enroll in a health insurance plan through New York State of Health until the next open enrollment period, unless you qualify for a special enrollment period. Should you qualify for a special enrollment period, this will allow you to switch plans during other times of the year."

On April 17, 2014, your broker, in his capacity as an authorized representative, called Marketplace Customer Service and requested a special enrollment period (SEP).

On April 17, 2014, you also called Marketplace Customer Service to request the SEP and to enter an appeal on that issue.

On April 18, 2014, the Marketplace issued a notice confirming your request for a telephone hearing to review a denial of a SEP.

On May 27, 2014, your authorized representative appeared on your behalf for the scheduled telephone hearing. At the request of the authorized representative, the hearing was adjourned until May 29, 2014, and formal notice was waived. Testimony was taken during the hearing. The record is now complete and closed.

## **Findings of Fact**

A review of the record supports the following findings of fact:

1. You appointed your broker to act as his authorized representative for purposes of this appeal.
2. On March 15, 2014, you and your broker reviewed the Empire BlueCross BlueShield website and concluded that your health care provider participated in Empire Gold Guided Access-ccav.
3. According to the appeal summary in the evidence packet, you told Marketplace Customer Service that you did not call your health provider's office to confirm that it would accept Empire Gold Guided Access-ccav before selecting that plan.
4. You directed your broker to file a Non-Financial Assistance application for health insurance through the NY State of Health Marketplace for yourself, your spouse, and your child. You selected Empire Gold Guided Access-ccav as your QHP.
5. On April 16, 2014, you were notified by your health care provider that the provider does not accept Empire Gold Guided Access-ccav.
6. On April 17, 2014, both you and your broker/authorized representative spoke with Marketplace Customer Service and requested a special enrollment period. You want to change your family's insurance coverage from Empire Gold Guided Access-ccav to a plan that will be accepted by your medical provider.

7. No notice of eligibility determination has been issued by the Marketplace in response to your request for a special enrollment period.

8. On April 18, 2014, the Marketplace issued a notice confirming your request for a telephone hearing to review denial of your special enrollment period.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

## **Applicable Law and Regulations**

The Marketplace Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “*De novo review* means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

The Marketplace is required to provide “timely written notice to an applicant of any eligibility determination” made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual Marketplace (45 CFR § 155.310(g)). An applicant or enrollee has the right to appeal an eligibility determination or redetermination or a failure by the Marketplace to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

The Marketplace must provide an initial open enrollment period and annual open enrollment periods during which time qualified individuals may enroll in a QHP and enrollees may change QHPs (45 CFR §155.410(a)). The initial open enrollment period began October 1, 2013 and extended through March 31, 2014 (45 CFR §155.410(b)).

After each open enrollment period ends, the Marketplace provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a QHP and an enrollee may change to another plan. This is permitted when one of the following triggering events occurs:

- (1) The qualified individual or his or her dependent loses certain health insurance coverage:
  - (a) Health insurance considered to be minimum essential coverage; or
  - (b) Enrolled in any non-calendar year health insurance policy that will expire in 2014, even if they have the option to renew the expiring non-calendar year individual health insurance policy; or

(c) Pregnancy-related coverage; or

(d) Medically needy coverage.

(2) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care; or

(3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status; or

(4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange; or

(5) The enrollee or dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee; or

(6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions; or

(7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move; or

(8) The qualified individual who is an Indian may enroll in a QHP or change from one QHP to another one time per month; or

(9) The qualified individual or enrollee, or their dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide; or

(10) A qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities

(45 CFR § 155.420(d)).

## Legal Analysis

On April 15, 2014, the Marketplace issued a notice of eligibility redetermination that, among other things, advised you that you would be able to change your health insurance plan during the next open enrollment period, which begins on November 15, 2014.

On April 17, 2014 you spoke with Marketplace Customer Service and requested a special enrollment period. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period (SEP). It does contain an April 18, 2014 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issue on appeal as "Denial of Special Enrollment Period."

In this particular case, the lack of a notice of eligibility determination on the issue of SEP does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. First, under 45 CFR § 155.505(b), you are as entitled to appeal Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the April 18, 2014 notice, which acknowledges the appeal on the issue of SEP denial, permits an inference that the Marketplace did deny your SEP request. Third, since Appeal Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued.

The Marketplace provided an open enrollment from October 1, 2013 until March 31, 2014. The record indicates that you were enrolled in the Empire Gold Guided Access-ccav QHP during the open enrollment period.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to change to another health plan offered in the Marketplace. Here, you requested a special enrollment period on April 17, 2014 in order to change from the Empire Gold Guided Access-ccav QHP to another plan.

You contend that you and your family enrolled in Empire Gold Guided Access-ccav QHP in reliance upon misinformation that his health care provider accepted that policy. A special enrollment period can be granted on the basis of "error, misrepresentation, or inaction of an officer, employee, or agent of the [Marketplace] or [the U.S. Department of Health and Human Services], or its instrumentalities as evaluated and determined by the [Marketplace]" (45 CFR § 155.420(d)(4)). Here, the record does not indicate that the Marketplace, by action or inaction, made an error or misrepresented information regarding the plan that you selected. Therefore, a special enrollment period cannot be granted under 45 CFR § 155.420(d)(4).

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They may change their plan during the annual open enrollment period, which will begin on November 15, 2014 and will end on February 15, 2015.

## **Legal Authority**

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(a).

**A Copy of this Decision Has Been Provided To:**

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]