



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

Notice of Decision

Decision Date: October 22, 2014

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000722

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

Dear [REDACTED],

On August 29, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's June 18, 2014 eligibility redetermination.

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

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Issue

The issues presented for review by the Appeals Unit of NY State of Health are:

Did the Marketplace properly determine that you are not eligible for a special enrollment period to enroll in a qualified health plan as of June 18, 2014?

Did the Marketplace properly determine that you were eligible for Medicaid on June 18, 2014?

Procedural History

The Marketplace received your non-financial application on October 25, 2013. With the assistance of brokers, you enrolled in a platinum level full pay qualified health plan (Empire Platinum Guided Access), with coverage beginning on January 1, 2014.

On June 17, 2014, you contacted the Marketplace to inform it of your change of address and to request a change to your health plan. The Marketplace redetermined your eligibility and informed you that you were eligible for Medicaid.

The corresponding June 18, 2014 notice of eligibility redetermination stated you are eligible for Medicaid because your household income of \$3,527.00 is at or below the allowable income limit of \$16,105.00. It also said you had to pick a plan or one would be chosen for you and that your insurance coverage through Medicaid would begin on March 1, 2014.

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On June 20, 2014, you spoke with a representative in the Marketplace's Customer Service Unit and appealed that determination.

On June 21, 2014, the Marketplace issued a notice confirming your request for a telephone hearing to review the eligibility determination and the denial of a special enrollment period.

On June 30, 2014, the marketplace issued a Notice of Telephone Hearing to advise you that the hearing you requested was scheduled for July 21, 2014 at 2:30 p.m.

On July 2, 2014, the Marketplace issued an eligibility redetermination. It confirmed that you selected Empire Platinum Guided Access as your health insurance plan and your premium responsibility was \$620.69. It also said that your Medicaid coverage would begin on June 1, 2014, and you needed to select a plan soon or one would be chosen for you.

Since the Notice of Telephone Hearing for a hearing scheduled for July 21, 2014, was sent to the wrong address, the Appeals Unit adjourned that hearing and rescheduled it for a later date.

On August 7, 2014, the Marketplace sent you a Notice of Telephone Hearing scheduling an August 29, 2014 telephone hearing.

On August 29, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

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

- 1) You are single and expect your 2014 filing status to be head of household with a qualifying individual (Appellant's Testimony of 8/29/14; Marketplace Application).
- 2) You expect to claim your daughter as your dependent on your 2014 income tax return but did not report this on your Marketplace application (Appellant's Testimony of 8/29/14; Marketplace Application).
- 3) You reside in New York County, New York.

- 4) You feel you were not given accurate information when you applied for health insurance in the Marketplace through a broker, in that you did not know there was a difference between filing a non-financial and financial application and were not informed that you were eligible for financial assistance (Appellant's Testimony of 8/29/14; NYSOH Exhibit 4).
- 5) You testified that you told the broker you "wanted the best coverage," as you had always had good coverage in the past (Appellant's Testimony of 8/29/14).
- 6) You contend that you did not receive any information from your health insurance plan until mid-March 2014, when you received a package from Empire, which showed you were enrolled in Empire Platinum Guided Access (Appellant's Testimony of 8/29/14; NYSOH Exhibit 1).
- 7) You testified that you contacted Empire after paying your premiums for four or five months and realizing that this reduced your ability to pay other essential bills (Appellant's Testimony of 8/29/14).
- 8) You testified that you were told by Empire that you could enroll in a less expensive plan but would have to go through the Marketplace to change your enrollment (Appellant's Testimony of 8/29/14).
- 9) On June 17, 2014, you contacted the Marketplace to change your address and to ask to be put in the less expensive Empire plan (Appellant's Testimony of 8/29/14; NYSOH Exhibit 2).
- 10) You indicated that a Marketplace representative asked about your income from work and you reported making \$3,547.00. You testified that you were not asked about any other sources of income. You stated you were put on hold and then told you were Medicaid eligible, to which you responded, "I don't think I want to be on Medicaid" (Appellant's Testimony of 8/29/14; NYSOH Exhibit 3).
- 11) You testified that you did not ask the Marketplace representative to change your application to financial from non-financial and were not asked if that was your preference (Appellant's Testimony of 8/29/14).
- 12) You testified that you do not want Medicaid coverage because it is not accepted by your doctors, including some who have treated you for twenty to thirty years (Appellant's Testimony of 8/29/14).
- 13) You testified that you still want to be able to enroll in a less expensive Empire plan with an affordable premium (Appellant's Testimony of 8/29/14).

- 14) You testified that you have made \$6,500.00 in [REDACTED] sales and expect to receive alimony of \$12,000.00 in 2014 (Appellant's Testimony of 8/29/14).
- 15) No notice of eligibility determination has been issued by the Marketplace regarding your request for a special enrollment period.
- 16) On June 21, 2014, the Marketplace issued a notice confirming your request for a telephone hearing for review of the eligibility determination and 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 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 QHP. A special enrollment period may be permitted when one of the following triggering events occurs:

- 1) The qualified individual or his or her dependent
 - i) loses health insurance considered to be minimum essential coverage

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- ii) is enrolled in a non-calendar-year health insurance policy that will expire in 2014, even if they have the option to renew the policy
 - iii) loses pregnancy-related coverage
 - iv) loses 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
 - 3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status
 - 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
 - 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
 - 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
 - 7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move
 - 8) The qualified individual who is an Indian may enroll in a QHP or change from one QHP to another one time per month
 - 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
 - 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 October 26, 2013, the Marketplace issued a notice of eligibility determination that, among other things, advised you that you would be able to change your health insurance plan during the next open enrollment period in the fall of 2014 (NYSOH Exhibit 1).

On June 17, 2014, you spoke with Marketplace Customer Service and requested “the ability to continue with a NON-Financial Assistance application and to choose a less expensive QHP” (NYSOH Exhibit 4). However, the record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period (SEP). It does contain a June 21, 2014 notice in which the Marketplace acknowledges receipt of an appeal request and identifies one of the issues 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. 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 June 21, 2014 notice, which acknowledges the appeal on the issue of SEP denial, permits an inference that the Marketplace did deny your SEP request. 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 your plan 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 June 17, 2014, in order to change from the Empire Platinum Guided Access to a less expensive Empire plan.

You testified that you enrolled in Empire Platinum Guided Access after asking for the best coverage and being offered this plan. However, you contend that you were not aware you could receive financial assistance and, therefore, were given misinformation by the two brokers who had assisted you in October 2013. You also testified that, after paying for this full pay qualified health plan for several months, you realized you could no longer afford the monthly premium.

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A SEP 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).

You testified that your expected income is not just \$3,547, but is the sum of \$6,500 in sales to date and \$12,000 in alimony received for an expected 2014 income of \$18,500. Since this amount is below the allowable limit of \$21,708 (138% of the FPL of \$15,730), you are eligible for Medicaid and do not qualify for an advance premium tax credit or cost-sharing reductions.

A SEP may be granted to a person who was not enrolled in a QHP or failed to receive an advance premium tax credit or cost-sharing reductions due to the misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities. Here, the record indicates that you made your preference known and enrolled in a platinum plan with coverage you wanted and only later realized you could not afford it. Here, the record reflects that you were enrolled in the full-pay QHP you requested and that you were eligible for Medicaid but not eligible for an advance premium tax credit or cost-sharing reductions. Therefore, a special enrollment period cannot be granted under 45 CFR § 155.420(d)(10).

No evidence has been offered, or argument made, to support granting of a special enrollment period under the remaining provisions of CFR § 155.420(d).

Since the credible evidence of record confirms that you were eligible for Medicaid and ineligible for a special enrollment period, the June 18, 2014 notice of eligibility redetermination is correct and is AFFIRMED.

Decision

The June 18, 2014 eligibility determination is AFFIRMED.

Effective Date of this Decision: October 22, 2014

How this Decision Affects Your Eligibility

This decision does not change your eligibility.

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).

You are eligible for Medicaid coverage, and you are eligible to remain enrolled in your qualified health plan through the Marketplace without financial support.

If you wish to change your qualified health plan, you may do so during the Marketplace's open enrollment period, which runs from November 15, 2014 to February 15, 2015. Information on open enrollment is available at the Marketplace's web site, <https://nystateofhealth.ny.gov/>.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to U.S. Department of Health and Human Services or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

If you do not agree with this Decision, you have the right to appeal outside the Marketplace and may:

- Make an appeal request to the U.S. Department of Health and Human Services appeals entity within 30 days of the date of the Decision Date, which appears on the first page of the Decision (45 CFR § 155.520(c))

AND/OR

- Bring a lawsuit in state court in accordance with Article 78 of the Civil Practice Law and Rules within four months after the date of the Decision Date, which appears on the first page of the Decision.

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services for assistance.

If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:

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- By fax: 1-855-900-5557

Summary

The June 18, 2014 eligibility determination is AFFIRMED.

You are eligible for Medicaid coverage, and you are eligible to remain enrolled in your qualified health plan through the Marketplace without financial support.

If you wish to change your qualified health plan, you may do so during the Marketplace's open enrollment period, which runs from November 15, 2014 to February 15, 2015. Information on open enrollment is available at the Marketplace's web site, <https://nystateofhealth.ny.gov/>.

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]