



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

## Notice of Decision

Decision Date: November 21, 2014

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000767

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED],

On October 8, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's July 8, 2014 eligibility determination.

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).

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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[REDACTED]  
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## Issue

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

Did the Marketplace properly determine that you do not qualify for a special enrollment period as of July 8, 2014?

## Procedural History

The Marketplace received your application on October 13, 2013, which you modified on January 14, 2014. It found you preliminary eligible to enroll in a full pay qualified health plan. You enrolled in a platinum plan for health insurance coverage to begin on February 1, 2014.

On July 7, 2014, you again modified your Marketplace application, which triggered the Marketplace to rerun your eligibility. It determined that you continued to be eligible to enroll in a qualified health plan without subsidy, but did not qualify for a special enrollment period outside of the open enrollment period.

On July 8, 2014, the Marketplace issued an eligibility redetermination that was consistent with the July 7, 2014 preliminary determination.

On July 29, 2014, you called the Marketplace's Customer Service unit and appealed that determination.

Your hearing was initially scheduled for August 20, 2014, but you did not appear. This resulted in the Marketplace's Appeals Unit sending you a Notice of Dismissal for Failure to Appear. On September 17, 2014, you contacted the Marketplace and requested that the dismissal of your appeal be vacated for good

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cause and it was. The Marketplace sent you a Notice of Telephone Hearing on September 18, 2014 for the rescheduled telephone hearing on October 8, 2014.

On October 8, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and held open for up to 15 days to allow you the opportunity to submit income information. The record was to be closed upon receipt of that information or on October 23, 2014, whichever was earlier.

As of October 24, 2014, the Marketplace's Appeals Unit had not received any documents from you and none had been uploaded to your Marketplace online account. Accordingly, the record was closed and this decision is based on the record as of the October 8, 2014 hearing.

## **Findings of Fact**

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

- 1) You are married, and you and your spouse have two children.
- 2) You live in Westchester County, New York.
- 3) You do not expect to file taxes this year because you have had no income to date. You have an ongoing workers' compensation claim and have not worked since March 2012, when you suffered a work-related injury.
- 4) Your husband will be filing a 2014 tax return as married filing single and will be claiming your two children as dependents.
- 5) You had health insurance through the Marketplace from February 1, 2014 through May 31, 2014, and paid the monthly premiums of \$515.81.
- 6) You testified that you could not afford to pay the premiums thereafter because of mortgage payments, utilities, and other basic monthly living expenses.
- 7) You picked this plan because you had hoped the three appeals in your workers' compensation case would be found in your favor and your past benefits that had been awarded would be paid.
- 8) In July 2014, you contacted the Marketplace to try to get a less expensive plan because you could no longer afford the monthly premium.

- 9) You testified that you were told only that you could not change plans. You further testified you were not told you could disenroll from your current plan.
- 10) You had a death in the family and missed your hearing scheduled on August 20, 2014.
- 11) On September 17, 2014, you contacted the Marketplace to request that the dismissal of your appeal be vacated and the hearing rescheduled.
- 12) You testified that the Marketplace representative told you then that you could disenroll from your current plan.
- 13) You want to have health insurance but disenrolled from your health plan, effective September 30, 2014, because you could no longer afford to pay the premium.

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

## **Applicable Law and Regulations**

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.

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(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**

The Marketplace provided an open enrollment from October 1, 2013 until March 31, 2014. The record indicates that you were enrolled in the EssentialCare Platinum Plan – A Consumer Operated and Oriented Plan (CO-OP) during the open enrollment period.

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Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment in order to change to another health plan offered in the Marketplace. Here, you requested a special enrollment period on July 7, 2014 in order to change from EssentialCare Platinum Plan – A Consumer Operated and Oriented Plan (CO-OP) to a less expensive plan.

You contend that you enrolled in EssentialCare Platinum Plan – A Consumer Operated and Oriented Plan (CO-OP) expecting to be able to afford the plan with past wages from your worker's compensation claim. You indicated that you could no longer afford to pay the monthly premium as of June 2014, because of essential living expenses for a family of four and your workers' compensation awards being appealed. You also contend that the Marketplace did not fully inform you of your ability to disenroll from the health plan in July 2014, which resulted in additional premiums that you cannot afford to pay.

A special enrollment period can be granted when one of the qualifying events occurs, such as marriage or domestic partnership, a permanent move, gaining a dependent due to birth, adoption, placement for adoption, or placement in foster care, becoming a citizen, national or lawfully present, loss of health coverage, and/or no longer being incarcerated (45 CFR §155.420(d)). You testified that you can no longer afford to pay the premium for the health plan you selected. While this appears to be true based on your testimony, it is not one of the qualifying events. Therefore, the special enrollment period cannot be granted under 45 CFR §155.420(d) generally.

Additionally, 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. The Marketplace's omission in not telling you that you could disenroll in July 2014 does not constitute a qualifying event under this subsection of the law. Therefore, the special enrollment period cannot be granted under 45 CFR §155.420(d)(4).

The facts as set out in the record do not suggest that any other triggering event described in 45 CFR §155.420(d) has occurred.

Therefore, the Marketplace's determination to deny a special enrollment period is **AFFIRMED**.

## **Decision**

The Marketplace's July 8, 2014 eligibility determination to deny the Appellant's July 7, 2014 request for a special enrollment is AFFIRMED

**Effective Date of this Decision:** November 21, 2014

## **How this Decision Affects Your Eligibility**

Your disenrollment from EssentialCare Platinum Plan – A Consumer Operated and Oriented Plan (CO-OP) remains in effect.

You may enroll in another plan during the annual open enrollment period for 2015, which began on November 15, 2014 and will end on February 15, 2015.

## **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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Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The Marketplace's July 8, 2014 denial of the Appellant's July 7, 2014 request for a special enrollment period is **AFFIRMED**.

Your disenrollment from EssentialCare Platinum Plan – A Consumer Operated and Oriented Plan (CO-OP) as of September 30, 2014, remains in effect.

You may enroll in another plan during the annual open enrollment period for 2015, 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]