



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

Notice of Decision

Decision Date: November 25, 2014

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000818

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On September 17, 2014, you appeared by telephone at a hearing on your denial of a special enrollment period.

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 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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NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000818

[REDACTED]
[REDACTED]
[REDACTED]

Issue

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

Did you qualify for the special enrollment period that you requested on July 30, 2014?

Procedural History

On March 18, 2014, you filed an application for health insurance with the Marketplace and indicated an expected 2014 income of \$10,530.00. That same day, the Marketplace made preliminary determination that you were eligible for Medicaid. A September 24, 2014 notice of determination on the March 18, 2014 application clarified that you were conditionally eligible for Medicaid but ineligible for Medicaid Managed Care because you indicated that you had comprehensive third-party health insurance.

On March 20, 2014, the income information in your Marketplace account was updated to indicate an expected 2014 income of \$21,203.00. The Marketplace made a preliminary determination that you were eligible for \$267.00 in advance premium tax credits (APTC). You were also found eligible to receive cost-sharing reductions (CSR), provided you enrolled in a silver level health plan.

On March 20, 2014, you enrolled in Empire Platinum Guided Access.

On April 11, 2014, during a conversation with Marketplace Customer Service, you cancelled your Empire Platinum Guided Access coverage and enrolled in UnitedHealthcare Platinum HMO.

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On or about July 30, 2014, you contacted the Marketplace and requested a special enrollment period to change your qualified health plan (QHP) because your doctors do not take UnitedHealthcare Platinum HMO.

On or about August 8, 2014, the Marketplace denied your request but did not issue a written decision setting out this denial.

On August 8, 2014, you spoke with the Marketplace Customer Service unit and appealed the denial of a special enrollment period.

On August 9, 2014, the Marketplace issued a notice confirming your request for a telephone hearing to review a denial of a special enrollment period.

On September 15, 2014, you were scheduled to appear for a telephone hearing. A Hearing Officer from the Marketplace's Appeals Unit called you and adjourned the hearing because you contended that you had not received sufficient notice of the hearing.

On September 17, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. During the hearing, you waived your right to formal notice on the record. The record was developed and it was closed at the end of the hearing.

Findings of Fact

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

- 1) You testified that you completed your original application for health insurance over the phone with a Marketplace Customer Service representative.
- 2) You testified that Marketplace Customer Service told you that if your doctor did not take your selected plan you could change to another qualified health plan.
- 3) You testified that on March 20, 2014 you enrolled in Empire Platinum Guided Access and on April 11, 2014 changed your enrollment to UnitedHealthcare Platinum HMO.
- 4) You testified that when you called your doctor in April to make an appointment, her office told you that they were not sure the practice accepted UnitedHealthcare Platinum HMO insurance.
- 5) You testified that it took several weeks for you to be told that your doctor did not take the plan you selected.

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- 6) You testified that in July, after you found out that your doctor would not accept UnitedHealthcare Platinum HMO, you called the Marketplace Customer Service unit to change to another health insurance plan.
- 7) You testified that you were told by a representative that you cannot change plans outside of open enrollment and that you would have to wait until the next open enrollment period to do so. You stated that this was the first time anyone from the Marketplace told you that you could not change plans outside of the open 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 qualified health plan (QHP) and enrollees may change from one plan to another (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 certain triggering events occur (45 CFR § 155.420(d)).

A triggering event includes when an individual or enrollee is eligible to enroll in a QHP, such person may be eligible to enroll or change enrollment in a QHP during a special enrollment period when the individual or that individual’s enrollment or non-enrollment is (1) unintentional, (2) inadvertent, (3) or erroneous, and is the result of the error, misrepresentation, or inaction of an

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officer, employee or agent of the Marketplace. In such cases, the Marketplace may take such action as may be necessary to correct or eliminate the effect of the error, misrepresentation, or inaction, including ensuring the coverage is effective on an appropriate date based on the circumstances of the special enrollment period (45 CFR § 155.420 (d)(4)).

Legal Analysis

On or about July 30, 2014, you spoke with Marketplace Customer Service and requested a special enrollment period. The record does not contain a notice of determination on the issue of special enrollment period. It does contain an August 9, 2014 notice in which the Marketplace acknowledges receipt of an appeal request on August 8, 2014, and identifies the issue on appeal as “Denial of Special Enrollment Period.”

The lack of a notice of determination on the issue of special enrollment period does not prevent the Appeals Unit from reaching the merits of the case. Under 45 CFR § 155.505(b), you are entitled to appeal Marketplace failure to timely issue a notice of eligibility determination. The text of the August 9, 2014 notice, which acknowledges the appeal on the issue of special enrollment period denial, permits an inference that the Marketplace did deny your request for a special enrollment period. Also, since Appeals Unit review of Marketplace determinations is performed on a *de novo* basis, no deference would have been granted to the notice had it been issued.

The Marketplace provided an open enrollment period from October 1, 2013 until March 31, 2014, and extended that period until mid-April. The record indicates that you first enrolled in the Empire Platinum Guided Access and then changed your enrollment to UnitedHealthcare Platinum HMO during the open enrollment period.

Generally, 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 or about July 30, 2014 in order to change from the UnitedHealthcare Platinum HMO to another plan.

During the open enrollment period, which continued for more than five months, Marketplace customers were able to enroll in plans and change their enrollments. Here you enrolled in one health insurance plan and then changed your enrollment to another plan during the open enrollment period. You testified that your doctor’s office could not tell you whether it accepted your new plan until July, when it told you that it did not. Since this does not constitute a triggering event and the record does not credibly indicate that your decision to enroll in the UnitedHealthcare Platinum HMO was made due to the error, misrepresentation,

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or inaction of the Marketplace or its agents, the special enrollment period was properly denied.

Decision

The Marketplace's determination to deny you a special enrollment period is AFFIRMED.

Effective Date of this Decision: November 25, 2014

How this Decision Affects Your Eligibility

You have not shown that you have qualified for a special enrollment period.

You may enroll in a different qualified health plan during the annual open enrollment period for 2015, which ends on February 15, 2015.

If you want a different qualified health insurance plan to take effect on January 1, 2015, enroll in that plan through the Marketplace by December 15, 2014.

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

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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:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The Marketplace's determination to deny you a special enrollment period is **AFFIRMED**.

You have not shown that you have qualified for a special enrollment period.

You may enroll in a different qualified health plan during the annual open enrollment period for 2015, which ends on February 15, 2015.

If you want a different qualified health insurance plan to take effect on January 1, 2015, enroll in that plan through the Marketplace by December 15, 2014.

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]