



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

Notice of Decision

Decision Date: December 22, 2014

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000870

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

Dear [REDACTED],

On September 24, 2014, you appeared by telephone at a hearing on your May 15, 2014 request for 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 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 State of Health is:

Did [REDACTED] qualify for the special enrollment period that he requested on May 15, 2014?

Procedural History

On May 15, 2014, the Marketplace received your initial application for health insurance. The Marketplace made a preliminary determination that you were eligible to enroll in a qualified health plan, to receive up to \$260.00 monthly of advanced premium tax credit, and to receive cost-sharing reductions if you enrolled in a silver-level plan.

You also spoke with Marketplace Customer Service Center to request a special enrollment period to enroll in a QHP outside of the open enrollment period.

On May 16, 2014, the Marketplace issued an eligibility determination notice stating that the you were eligible to enroll in a qualified health plan, eligible to receive up to \$260.00 monthly of advanced premium tax credit, and cost-sharing reductions if enrolled in a silver-level plan. It states, "If you are eligible to enroll in a health plan at this time, you must choose a plan for your health insurance coverage to start." However, it does not indicate whether you have been granted a special enrollment period.

On August 22, 2014, you requested an appeal of the denial of your request for a special enrollment period.

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).

On August 23, 2014, the Marketplace issued a notice stating that you have requested a telephone hearing. The notice states the reason for the appeal is “Denial of Special Enrollment Period (SEP).”

On September 24, 2014, you appeared for the scheduled telephone hearing. Testimony was taken at the hearing. The record was held open until September 24, 2014 at 4:30 pm, at your request, to allow you to submit additional documentation.

On September 24, 2014, you submitted a copy of a December 29, 2013 email you received from the Marketplace stating that you have registered a NY.gov ID as your additional documentation. That documentation was made part of the record as Appellant’s Exhibit “A” and the record was closed. The record is now complete and closed.

Findings of Fact

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

1. You testified that you first attempted to apply for health insurance in December 2013. You stated that you received a message in your Marketplace application that you must submit income verification documents and to contact the Marketplace Customer Service Center.
2. On September 24, 2014, you submitted the December 29, 2013 email you received from the Marketplace stating that you have registered a NY.gov ID that can be used for logging in to the NY State of Health (Appellant Exhibit A).
3. You testified that you attempted to apply for health insurance through the Marketplace numerous times between December 2013 and May 2014, but received the same message to submit income verification documents and to contact the Marketplace Customer Service Center. You also stated that you tried to contact the Marketplace Customer Service Center during this time period, but were unable to because of telephone wait time.
4. According to your May 15, 2014 Marketplace Application, the Marketplace issued a preliminary determination that you were eligible to enroll in a qualified health plan, to receive up to \$260.00 monthly of advanced premium tax credit, and to receive cost-sharing reductions if enrolled in a silver-level plan.

5. On May 15, 2014, you contacted the Marketplace Customer Service Center to request a special enrollment period to enroll in a qualified health plan.
6. No notice of eligibility determination has been issued by the Marketplace in response to your request for a special enrollment period.
7. On August 23, 2014, the Marketplace issued a notice confirming your request for a telephone hearing to review the 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 qualified health plan (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

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- (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

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(45 CFR § 155.420(d)).

Unless otherwise stated in the regulations, a consumer has 60 days from when the triggering special enrollment event occurs to enroll in or change their QHP. (45 CFR § 155.420 (c)).

Legal Analysis

On May 15, 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 August 23, 2014 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issue on appeal as “Denial of Special Enrollment Period (SEP).”

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 August 23, 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.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in a qualified health plan offered in the Marketplace. Here, you requested a special enrollment period on May 15, 2014 in order to enroll in a qualified health plan.

You contend that you first attempted to apply for health insurance in December 2013. You stated that you received a message in your Marketplace application that you must submit income verification documents and to contact the Marketplace Customer Service Center. You submitted a December 29, 2013 email you received from the Marketplace stating that you have registered a NY.gov ID that can be used for logging in to the NY State of Health. You further testified that you attempted to apply for health insurance through the Marketplace numerous times between December 2013 and May 2014, but received the same message. You also stated that you tried to contact the Marketplace Customer Service Center during this time period, but were unable to because of the telephone wait time.

A special enrollment period can be granted on the basis of “the qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in

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accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide” (45 CFR § 155.420(d)(9)). A special enrollment period can be granted if a systems issue may have prevented a timely application submission or hindered enrollment in the Marketplace during the initial enrollment process. This error may not have been resolved in time to allow enrollment during the open enrollment period.

Here, the record indicates that you had sufficient opportunity to resolve your systems problems in time to enroll in during the open enrollment period. It is reasonable to expect an applicant to contact the Marketplace before March 31, 2014 when he received his first error message during December 2013. Telephone wait time does not, in and of itself, rise to the level of a system error preventing you from filing a timely application and therefore does not constitute a triggering event for a special enrollment.

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 preliminary determination to deny your May 15, 2014 request for a special enrollment period is **AFFIRMED**.

Effective Date of this Decision: December 22, 2014

How this Decision Affects Eligibility

You did not qualify for a special enrollment period.

However, you may enroll in a qualified health plan during the annual open enrollment period, which runs from November 15, 2014 to 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.

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

Summary

The Marketplace's preliminary determination to deny your May 15, 2014 request for a special enrollment period is **AFFIRMED**.

You did not qualify for a special enrollment period.

However, you may enroll in a qualified health plan during the annual open enrollment period, which will begin on November 15, 2014 and will end on February 15, 2015.

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Legal Authority

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A Copy of this Decision Has Been Provided To:

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