



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

Notice of Decision

Decision Date: January 21, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001025

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

Dear [REDACTED]

On October 20, 2014, you appeared by telephone at a hearing on the denial of your 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).

This page intentionally left blank.



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

Decision

Decision Date: January 21, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001025

[REDACTED]
[REDACTED]
[REDACTED]

Issue

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

Did [REDACTED] qualify for a special enrollment period as of September 26, 2014?

Procedural History

The Marketplace initially received your application for health insurance on February 5, 2014, which you filed with the help of a Navigator from Fidelis Care.

You [REDACTED] were enrolled in a Fidelis Care Gold plan, but this coverage was terminated for nonpayment of premiums.

On September 26, 2014, you spoke with the Marketplace's Account Review Unit and requested a hearing.

On September 27, 2014, the Marketplace issued a notice stating that the reason for your request for a telephone hearing was a denial of a Special Enrollment Period (SEP).

On September 29, 2014, you faxed in documentation in support of your appeal.

On October 20, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed and it was closed at the end of the hearing.

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).

Findings of Fact

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

- 1) You testified that the first complaint you had filed with the Marketplace on April 24, 2014 was resolved, and you that you had been able to reenroll with Fidelis Care in June.
- 2) You testified that your daughter was able to pay the backdated insurance premiums by credit card in May.
- 3) You testified that Fidelis said that this payment by credit card resulted in an overpayment credit in your Fidelis account that would be applied to your premium payments going forward.
- 4) You testified that this resulted in a technical error on your Fidelis Care account that resulted in you being blocked from making payments online in June, July, August, and September. You further testified that you did not think this was an issue because you were told by Fidelis that there was a payment credit on your account.
- 5) You testified and provided evidence that you were out of the country from July 1, 2014 to September 12, 2014. You further testified that while you were out of the country, you checked your online account and spoke with Fidelis Care customer service multiple times to ensure that no premium payments were missed.
- 6) You testified that Fidelis claims that you missed the premium payments for June, July, August, and September.
- 7) You provided evidence that as of July 22, 2014, there were no billable accounts or invoices due in your Fidelis Care account, in the form of a print-out from your on-line account with Fidelis from that day.
- 8) You testified that you were unaware that your coverage had been terminated until your wife went for medical care in September and she was told her insurance card was declined.

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 §

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).

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 occur:

- 1) The qualified individual or his or her dependent loses certain health insurance coverage:
 - (a) Health insurance considered to be minimum essential coverage;
 - (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

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).

- 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 or about September 26, 2014, you spoke with the Marketplace Customer Service Unit and requested that your family be reenrolled in a Fidelis Care insurance plan. The ability to enroll in a plan outside of the open enrollment window is known as a request for a special enrollment period (SEP). The record does not contain a notice of eligibility determination or redetermination on the issue of SEP. It does contain a September 27, 2014 notice in which the Marketplace acknowledges receipt of an appeal request on September 26, 2014 and identifies the issue on appeal as "Denial of Special Enrollment Period."

This 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 the Marketplace's failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the September 27, 2014 notice, which acknowledges the appeal on the issue of SEP denial, permits an inference that the Marketplace did deny your SEP request.

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).

Additionally, 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 even had it been issued.

The Marketplace provided an open enrollment from October 1, 2013 until March 31, 2014. The record indicates that [REDACTED] first enrolled in the Fidelis Care Silver plan and then later switched to the Fidelis Care Gold 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 enroll in a health plan offered in the Marketplace. Here, you requested a special enrollment period on or about September 26, 2014 in order to reenroll yourself, [REDACTED], in the Fidelis Care Gold plan you were terminated from.

When an applicant'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 Marketplace or its instrumentalities, a special enrollment period may be granted. Such an SEP may also be granted if an enrollee adequately demonstrates to the Exchange that the QHP in which he is enrolled substantially violated a material provision of its contract in relation to the enrollee.

You credibly testified that your non-enrollment in Fidelis Care as of September 2014 was a result of technical errors by Fidelis Care. You testified that during June, July, August, and September that you attempted to pay your insurance premium again. However, you were told by Fidelis both verbally and electronically that there were no payments due or invoices available. You testified that you were unaware there was anything wrong with your insurance until [REDACTED] was unable to use the insurance card during a medical check-up. You testified that Fidelis stated that your insurance coverage had been terminated again as a result of non-payments of premiums even though you were willing and able to pay the premiums if you had known they were due.

The credible evidence of record confirms that you, [REDACTED] qualified for the special enrollment period that you requested.

The record as currently developed indicates that you, [REDACTED] subsequently were permitted to re-enroll in your Fidelis Care plan, with coverage effective as of September 1, 2014. Although the Marketplace did not issue a notice confirming that the special enrollment period had been granted, it clearly was properly granted and implemented.

Accordingly, the only action needed at this point is to rescind (cancel) the earlier, incorrect decision to deny you 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).

Decision

The Marketplace's preliminary determination to deny you, [REDACTED] a special enrollment period during September 2014 is **RESCINDED**.

Effective Date of this Decision: January 21, 2015

How this Decision Affects Your Eligibility

This decision does not change your eligibility.

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.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months after the date of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the U.S. Department of Health and Human Services. This must be done within 30 days of the date of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c))

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.

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

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).

P.O. Box 11729
Albany, NY 12211

- By fax: 1-855-900-5557

Summary

The Marketplace's preliminary determination to deny you, [REDACTED] a special enrollment period during September 2014 is RESCINDED.

This decision does not change your eligibility.

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]