



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

### Notice of Decision

Decision Date: July 22, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001200

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED],

On May 12, 2015, you and your Authorized Representative appeared by telephone at a hearing on your appeal of NY State of Health Marketplace’s November 15, 2014 eligibility redetermination and November 17, 2014 notice of disenrollment.

The attached 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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## Decision

Decision Date: July 22, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000001200

[REDACTED]  
[REDACTED]  
[REDACTED]

## Issues

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

Did the Marketplace properly determine that as of November 15, 2014, you were no longer eligible to enroll in a qualified health plan or receive tax credits?

Did the Marketplace properly disenroll you from your plan coverage effective November 30, 2014?

## Procedural History

The Marketplace received your initial application for health insurance on January 22, 2014 in which you identified yourself as a U.S. Citizen.

On January 22, 2014, the Marketplace prepared a preliminary eligibility determination based on your January 22, 2014 application. It found that you were eligible to receive an advance premium tax credit (APTC) of up to \$84.00 per month beginning March 1, 2014. It did not make a decision on whether you qualified for either cost-sharing reductions (CSR) or Medicaid.

That same day, the enrollment details in your Marketplace account indicate that you enrolled in an EmblemHealth plan with coverage to begin on May 1, 2015.

On January 23, 2014, the Marketplace issued a notice that confirmed you have chosen to receive all information from the New York State of Health electronically. This notice further stated that all important notifications will be sent

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to your Marketplace account, and you be notification of any new information via text message, email, or other electronic communication.

On January 30, 2014, the Marketplace issued a notice of eligibility determination which formalized the findings of the January 22, 2014 preliminary determination in that you were found temporarily eligible to enroll in a qualified health plan (QHP) and receive an APTC of up to \$84.00 per month. This notice also requested that you provide additional information to prove your citizenship status. It further stated that if you did not submit documentation resolve this inconsistency within 90 days, New York State of Health may be unable to continue to provide you with health insurance. This determination also stated that you were not eligible for either CSR or Medicaid.

On March 31, 2014, the Marketplace issued a notice confirmation that you remained temporarily eligible to enroll in a QHP and receive an APTC through the Marketplace; however, additional information was still required to make a final determination on your application. It further stated that "if you do not submit the requested documentation within the required timeframe, you may be found ineligible for health insurance..."

On November 15, 2014, the Marketplace issued a notice of eligibility redetermination. It stated that you were not eligible for Medicaid, Child Health Plus, tax credits or CSR to help pay for the cost of insurance. It further stated that you were also not qualified to enroll in a QHP at full cost through the Marketplace. This determination was made because you did not provide information regarding your citizenship status in order to confirm your eligibility.

On November 17, 2014, the Marketplace issued a notice of disenrollment confirming that your coverage under the EmblemHealth plan would be terminated effective November 30, 2014 since you were no longer eligible to enroll in health insurance through the Marketplace.

On December 3, 2014, the Marketplace received copies of your U.S. Passport, Certificate of Naturalization ( [REDACTED] ) and a reference to your Social Security number.

On December 16, 2014, you spoke with the Marketplace's Account Review Unit to appeal (1) the November 15, 2014 notice of eligibility determination and (2) the November 17, 2014 notice of disenrollment, insofar as you were disenrolled from your EmblemHealth plan coverage effective November 30, 2014.

On January 8, 2015, the Marketplace received a fully executed Release to Disclosed Protected Information and Authorization of Designated Representative in which you authorized [REDACTED] to act as your Authorized Representative.

On May 12, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. Your employer, [REDACTED] also attended the hearing as your Authorized Representative. 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) On January 22, 2014, you submitted your initial application to the Marketplace in which you identified yourself as a U.S. Citizen.
- 2) On January 22, 2014, you enrolled in an EmblemHealth plan with coverage to begin on May 1, 2015.
- 3) On January 23, 2014, the Marketplace issued a notice that confirmed you chose to receive all information from the New York State of Health electronically.
- 4) On January 30, 2014, the Marketplace issued a notice of eligibility determination that stated you were temporarily eligible to enroll in a qualified health plan (QHP) and receive an advance premium tax credit (APTC) of up to \$84.00 per month pending receipt of additional information to prove your citizenship status. It further stated that if you did not submit documentation resolve this inconsistency within 90 days, your coverage could be discontinued.
- 5) Your coverage under the EmblemHealth plan was terminated effective November 30, 2014.
- 6) You testified that while you provided your personal e-mail address to the Marketplace in order to receive notifications electronically, you did not receive any e-mails or written notifications from the Marketplace that you were either required to provide additional documentation to prove your citizenship status or that you had been disenrolled from your EmblemHealth plan coverage.
- 7) You testified that you were admitted to [REDACTED] on December 1, 2014 for an emergency medical procedure.
- 8) You testified that you only became aware that your coverage had been discontinued when you were advised by the hospital staff. You further testified that your father provided copies of your U.S. Passport, Certificate of Naturalization and Social Security number to the

Marketplace on December 3, 2014 in order to correct the apparent error.

- 9) On December 3, 2014, the Marketplace received copies of your U.S. Passport, Certificate of Naturalization as well as a written reference to your Social Security number.

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

## **Applicable Law and Regulations**

### Enrollment - Citizenship

To enroll in a qualified health plan through the Marketplace, an applicant must be a citizen or national of the United States or a noncitizen who is lawfully present in the United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1)).

The Marketplace must verify or obtain information in order to determine that an applicant is eligible for enrollment in a qualified health plan, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

If an applicant attests to citizenship, status as a national, or lawful presence, the Marketplace must verify the attestation through the Social Security Administration or the Department of Homeland Security and must provide the applicant 90 days from the date of notice to provide satisfactory documentary evidence (45 CFR § 155.315(c)(3)).

If the Marketplace cannot verify the required information, then the Marketplace must make a reasonable effort to identify and address any inconsistencies. However, if the Marketplace is unable to resolve the inconsistency, then it must provide notice to the applicant regarding the inconsistency and provide the applicant 90 days from the notice date to present satisfactory documentary evidence to resolve the inconsistency (45 CFR § 155.315(f)(1)-(2)).

### Electronic Notice

The Marketplace must permit individuals a choice to receive notices and information in electronic format or by regular mail and must be permitted to change such election (42 CFR §435.918(a)).

If the individual elects electronic communications, the Marketplace must send

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“an email or other electronic communication alerting the individual that a notice has been posted to his or her account” and send a notice by regulation mail within three business days if the electronic communication cannot be delivered (42 CFR §435.918(b)(4), (5)).

## **Legal Analysis**

Federal regulations require that a person seeking enrollment in a qualified health plan through the Marketplace have United States citizenship or satisfactory or immigration status. These regulations require the Marketplace to obtain or verify a person’s immigration status in order to allow that person enrollment in a qualified health plan.

Federal regulations also require the Marketplace to make reasonable efforts to address any inconsistencies, should one arise. And, if the Marketplace is unable to resolve the inconsistency, it must provide that person notice of the inconsistency and a period of 90 days to provide satisfactory evidence to resolve the inconsistency.

The January 30, 2014 notice of eligibility determination issued by the Marketplace stated that additional documentation was required in order to make a final determination of your eligibility for health insurance through the Marketplace. Specifically, it requested that you provide documentation to prove your citizenship status within 90 days. The Marketplace also issued a notice on March 31, 2014 requesting additional information to confirm your eligibility, but did not specify the documents required or the timeframe by which such documents were to be received.

When the November 15, 2014 eligibility redetermination notice was electronically issued, the record reflects that evidence of your citizenship was not available in your Marketplace file. As a result of this redetermination, the Marketplace issued the November 17, 2014 notice of disenrollment confirming that you had been disenrolled from your HealthRepublic plan coverage effective November 30, 2014.

These notices were uploaded to your account and an e-mail was sent advising you of the notice.

Since you elected to receive communications from the Marketplace electronically, the Marketplace was required to post notices to your electronic account within 1 business day of notice generation. It was also required to send an email or other electronic communication alerting you that a notice has been posted to your account.

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If the electronic communication failed, the Marketplace was required to send a notice by regular mail within three business days of the date of the failed electronic communication if the electronic communication was undeliverable.

The record does not contain any evidence on behalf of the Marketplace as to whether or not the electronic communications were undeliverable. The record also does not contain evidence that the notices were sent by regular mail within three business days of the date of a failed electronic communication. Without evidence on behalf of the Marketplace, that you were given proper electronic notice or proper written notice, the notices in question must be Rescinded and/or Modified.

Therefore, the notice of eligibility redetermination issued by the Marketplace on November 15, 2014 is RESCINDED. The November 17, 2014 notice of disenrollment is MODIFIED to reinstate your enrollment in the HealthRepublic plan for the month of December 2014.

## **Decision**

The November 15, 2014 eligibility redetermination is RESCINDED.

The November 17, 2014 notice of disenrollment is MODIFIED to reinstate your enrollment in the HealthRepublic plan for the month of December 2014.

**Effective Date of this Decision:** July 22, 2015

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

Your coverage under the HealthRepublic plan is reinstated to continue your coverage through December 31, 2014.

This Decision has no effect on any subsequent determinations issued by the Marketplace on or after December 4, 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.

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

### **Summary**

The November 15, 2014 eligibility redetermination is RESCINDED.

The November 17, 2014 notice of disenrollment is MODIFIED to reinstate your enrollment in the HealthRepublic plan for the month of December 2014.

Your coverage under the HealthRepublic plan is reinstated to continue your coverage through December 31, 2014.

This Decision has no effect on any subsequent determinations issued by the Marketplace on or after December 4, 2014.

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## **Legal Authority**

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**A Copy of this Decision Has Been Provided To:**

[REDACTED]  
[REDACTED]  
[REDACTED]

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