



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

Notice of Decision

Decision Date: August 7, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001403

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On February 13, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace’s December 25, 2014 enrollment confirmation notice.

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).

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Decision

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NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001403

[REDACTED]
[REDACTED]
[REDACTED]

Issue

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

Did the Marketplace properly terminate the enrollment for you and your wife with CoreConnect EPO Gold ST INN Pediatric Dental Dep 25 effective January 1, 2015, before enrolling you and your wife in CareConnect EPO Platinum ST INN Pediatric Dental Dep 25 effective February 1, 2015, thereby resulting in a gap in coverage for January 2015?

Procedural History

On November 8, 2014, the Marketplace sent you a notice, which stated that it was time to renew your health coverage for 2015 for you and your spouse. It also stated that if you want to keep your present health plan with CareConnect EPO Platinum ST INN Pediatric Dental Dep 25, and the information in your application is still accurate, the Marketplace will re-enroll you and your wife in the same health plan for another year effective January 1, 2015, and you do not have to do anything more.

On November 20, 2014, the Marketplace sent you the same renewal notice, which stated that you and your wife will be re-enrolled in your current health plan with CareConnect EPO Platinum ST INN Pediatric Dental Dep 25 effective January 1, 2015.

On December 10, 2014, the Marketplace sent you a notice confirming enrollment for you and your wife, as of November 22, 2014, with CareConnect EPO

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Platinum ST INN Pediatric Dental Dep 25. It also stated that if you pay your first month's premium, your coverage could start as early as January 1, 2015.

On December 16, 2014, the Marketplace received your modified application for health insurance for you and your wife.

On December 17, 2014, the Marketplace issued an eligibility determination that you and your wife are eligible to receive an advance premium tax credit of up to \$355.00 per month based on a household income of \$59,800.00. It also stated that this eligibility is effective as of January 1, 2015.

On December 19, 2014, the Marketplace sent you a notice confirming enrollment for you and your wife, as of December 16, 2014, with CareConnect EPO Gold ST INN Pediatric Dental Dep 25. It also stated that if you pay your first month's premium, your coverage could start as early as January 1, 2015.

On December 19, 2014, the Marketplace also sent you a cancellation notice confirming your request to cancel the insurance coverage for you and your wife with CareConnect EPO Platinum ST INN Pediatric Dental Dep 25. It also stated that your request to cancel this coverage made on December 16, 2014 was processed, which means that you will not have coverage with CareConnect EPO Platinum ST INN Pediatric Dental Dep 25.

On December 25, 2014, the Marketplace sent you a cancellation notice confirming your request to cancel the insurance coverage for you and your wife with CareConnect EOP Gold ST INN Pediatric Dental Dep 25. It also stated that your request to cancel this coverage made on December 24, 2014 was processed, which means that you will not have coverage with CareConnect EPO Gold ST INN Pediatric Dental Dep 25.

On December 25, 2014, the Marketplace also sent you a notice confirming enrollment for you and your wife, as of December 24, 2014, with CareConnect EPO Platinum ST INN Pediatric Dental Dep 25. It also stated that if you pay your first month's premium, your coverage could start as early as February 1, 2015.

On December 26, 2014, the Marketplace sent you a notice that your health insurance for you and your wife with North Shore-LIJ CareConnect Platinum EPO will end effective December 31, 2014. It also stated that you and your wife will automatically renewed in the same plan for 2015 and another notice with your new coverage information will be sent to you shortly.

On, or around, January 8, 2015, you spoke with the Marketplace's Account Review Unit and appealed the December 25, 2014 enrollment confirmation notice insofar as it began your health insurance coverage with CareConnect EPO Platinum ST INN Pediatric Dental Dep 25 for you and your wife effective February 1, 2015, instead of January 1, 2015.

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On February 13, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. 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) You testified, and the record reflects, that you applied and renewed your application for health insurance through NY State of Health with the assistance of a broker. According to the record, your authorized broker is [REDACTED].
- 2) The record reflects that the Marketplace sent you a notice that it was time for you and your spouse to renew your health insurance for 2015. This notice also stated that if you were satisfied with your current health insurance plan with CareConnect EOP Platinum ST INN Pediatric Dental Dep 25 ("CareConnect EPO Platinum"), then the Marketplace will re-enroll you for another year and you do not have to do anything further. You testified that you received this notice.
- 3) The record reflects that the Marketplace's system automatically re-enrolled you and your wife, in CareConnect EPO Platinum on November 22, 2014.
- 4) The record reflects that the Marketplace sent you an enrollment confirmation notice on December 10, 2014, stating that your enrollment in CareConnect EPO Platinum could begin as early as January 1, 2015, if you pay your first month's premium.
- 5) You testified that you waited to receive something in the mail from the Marketplace regarding your renewal but, when you did not receive further information, you called your broker. You further testified that your broker told you that you needed to renew your application for health insurance coverage effective January 1, 2015. You testified that you told your broker you would like a platinum-level plan.
- 6) The record reflects that your application was updated and your eligibility was ran on December 16, 2014. The record reflects that these actions were initiated by [REDACTED]."
- 7) The record reflects that enrollments for you and your wife were deleted and new enrollments were added on December 16, 2014. The record reflects that these actions were initiated by "[REDACTED]."

- 8) According to the Marketplace system, your enrollment with CareConnect EPO Platinum for you and your wife was cancelled on December 16, 2014. The Marketplace system also reflects that you and your wife were enrolled in CareConnect EPO Gold ST INN Pediatric Dental Dep 25 ("CareConnect EPO Gold") effective January 1, 2015 on December 16, 2014.
- 9) You testified that after you spoke with your broker and updated your application, you did not receive any further information from the Marketplace in the mail. You further testified that you spoke with your broker again, who informed you that your health insurance coverage was going to be effective.
- 10) You testified that you spoke with the Marketplace and the representative informed you that you and your wife were enrolled in CareConnect EPO Gold. You further testified that you were not satisfied with that plan and you had the representative switch your plan back to CareConnect EPO Platinum. You testified that you were never told that your insurance would be effective February 1, 2015.
- 11) According to the Marketplace system, your enrollment with CareConnect EPO Gold for you and your wife was cancelled on December 24, 2014. The Marketplace system also reflects that you and your wife were enrolled in CareConnect EPO Platinum effective February 1, 2015 on December 24, 2014. The Marketplace system reflects that these actions were initiated by "[REDACTED]".
- 12) You testified that you paid your January 2015 premium in late December 2014 under the belief that you would have health insurance coverage effective January 1, 2015.
- 13) You testified that you were not aware that you and your wife did not have health insurance coverage for January 2015 until she went to the hospital in mid-January 2015.
- 14) You testified that you called North Shore-LIJ CareConnect Insurance Company, Inc. after you found out that you did not have health insurance coverage and they informed you that your coverage was terminated for January 2015. You further testified that you have not been reimbursed for your January 2015 premium payment made in December 2014.
- 15) You testified that you would like your coverage reinstated for January 2015.

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

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Applicable Law and Regulations

Open Enrollment Period for 2015

The Marketplace must provide an initial open enrollment period and annual open enrollment periods during which qualified individuals may enroll in a Qualified Health Plan (QHP) and enrollees may change QHPs (45 CFR §155.410(a)).

The 2015 annual open enrollment period began November 15, 2014 and extended through February 15, 2015. (45 CFR §155.410(e)).

For the benefit year beginning on January 1, 2015, the Marketplace must ensure coverage is effective on January 1, 2015 for QHP selections made on or before December 15, 2014 (45 CFR §155.410(f)(1)). The New York State of Health extended the December 15, 2014 deadline to December 20, 2014, for coverage beginning January 1, 2015 (NY State Department of Health Press Release, December 12, 2014).

The Marketplace must ensure coverage is effective on February 1, 2015, for QHP selections received by the Marketplace from December 16, 2014 through January 15, 2015. (45 CFR §155.410(f)(2)). However, as New York State of Health extended the December 15, 2014 deadline to December 20, 2014, for coverage beginning January 1, 2015, the Marketplace must ensure coverage is effective on February 1, 2015, for QHP selections received by the Marketplace from December 21, 2014 through January 15, 2015 (NY State Department of Health Press Release, December 12, 2014).

Special Enrollment Periods

During a special enrollment period, a qualified individual may enroll in a QHP and an enrollee may change to another QHP. A special enrollment period may be permitted when 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 (45 CFR §155.420(d)(4)). In such cases, the Exchange may take such action as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction (45 CFR §155.420(d)(4)).

In the case of an enrollee who is eligible for this type of special enrollment period, the Marketplace must ensure that coverage is effective on an appropriate date based on the circumstances of the special enrollment period (45 CFR §155.420(b)(2)(iii)).

Legal Analysis

The issue under review is whether the Marketplace properly terminated your coverage for you and your spouse with CareConnect EPO Gold ST INN Pediatric Dental Dep 25 (“CareConnect EPO Gold”) and enrolled you in CareConnect EPO Platinum ST INN Pediatric Dental Dep 25 (“CareConnect EPO Platinum”) effective February 1, 2015, without informing you that there would be a gap in coverage for January 2015.

According to the record, the Marketplace sent you notices on November 8, 2014 and November 20, 2014, stating that it was time to renew your health insurance coverage for 2015. These notices also stated that if you were satisfied with your present health plan with CareConnect EPO Platinum, and the information in your application was still accurate, the Marketplace would re-enroll you and your wife in the same health plan for another year, effective January 1, 2015, and you did not have to do anything more.

The record reflects that the Marketplace then re-enrolled you and your wife in CareConnect EPO Platinum on November 22, 2014, effective January 1, 2015.

The record also reflects that the Marketplace sent you a notice on December 10, 2014 confirming your enrollment for you and your wife with CareConnect EPO Platinum.

You testified that you received the renewal notice stating that you would be automatically re-enrolled in your current health plan but, since you did not receive any other information regarding your re-enrollment, you called your broker to check the status of your account. You further testified that your broker told you that you must update your application to complete your enrollment for coverage effective January 1, 2015.

The record reflects that your application was modified on December 16, 2014, by your broker. The record also reflects that your broker cancelled the enrollments for you and your wife and added new enrollments for you and your wife on December 16, 2014. The Marketplace’s system reflects that your enrollment with CareConnect EPO Platinum was cancelled on December 16, 2014 and an enrollment was added with CareConnect EPO Gold on December 16, 2014.

On December 17, 2014, the Marketplace issued a notice that you and your wife are eligible to receive an advance premium tax credit of up to \$355.00 per month, and your eligibility is effective January 1, 2015.

The Marketplace guarantees a coverage effective date of January 1, 2015 for any enrollee who selects a qualified health plan (QHP) on or before December 15, 2014. The Marketplace extended this deadline to December 20, 2014.

Since your enrollment with CareConnect EPO Gold was completed on December 16, 2014, before the December 20, 2014 deadline, the Marketplace properly guaranteed that your coverage was effective January 1, 2015.

You testified that you did not receive notice of your eligibility for January 1, 2015 coverage and you called the Marketplace on December 24, 2014 to inquire about the status of your enrollment. You testified that you were told that you and your wife were enrolled in CareConnect EPO Gold, effective January 1, 2015. You further testified that you were unhappy with this metal-level, as you wanted to remain enrolled in CareConnect EPO Platinum.

The record reflects that your enrollment was changed on December 24, 2014 from CareConnect EPO Gold to CareConnect EPO Platinum. This enrollment, however, was effective February 1, 2015. You credibly testified that you were not informed by the Marketplace representative who completed your enrollment that you and your wife would not have health insurance coverage for January 2015. You further testified that you paid your health insurance premium for January 2015 as you believed that your coverage was effective for that month.

You testified that you were not made aware that you and your wife did not have health insurance coverage for January 2015 until she went to the hospital in mid-January.

The Marketplace must allow an enrollee, and his dependent, to enroll in or change from one QHP to another if his 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.

When you called the Marketplace on December 24, 2014 to discuss your enrollment status, you spoke with a Marketplace representative, who is an employee of the Marketplace. According to the Marketplace's system, this Marketplace representative ("██████████") initiated your change in enrollment from CareConnect EPO Gold to CareConnect EPO Platinum.

Since your change in enrollment was initiated by a Marketplace employee, and because you credibly testified that you changed your enrollment believing that you would have coverage effective January 1, 2015, the credible evidence of record indicates that the Marketplace Representative's misrepresentation of your coverage start date would qualify you for a special enrollment period.

In cases where a Special Enrollment Period is triggered due to a misrepresentation by an employee or agent of the Exchange, the Exchange may take such action as may be necessary to correct or eliminate the effects of such misrepresentation and must ensure that coverage is effective on an appropriate date based on the circumstances of the special enrollment period.

Since you credibly testified that you paid your January 2015 health insurance premium in late-December 2014, and since you credibly testified that you have not been reimbursed for this premium payment, your case is being RETURNED to the Marketplace to reinstate your coverage with CareConnect EPO Gold effective January 1, 2015 to January 31, 2015. This reinstatement corresponds with your prior enrollment initiated on December 16, 2014 for health insurance coverage effective January 1, 2015.

For enrollees who select a plan between December 21, 2014 and January 15, 2015, the Marketplace guarantees a coverage effective date of February 1, 2015. Since you changed your enrollment from CareConnect EPO Gold to CareConnect EPO Platinum on December 24, 2014, within this period, the Marketplace properly guaranteed your coverage with CareConnect EPO Platinum effective February 1, 2015. The credible evidence of record does not warrant backdating this coverage effective January 1, 2015 as your gap in coverage for January 2015 is properly corrected by reinstating your previous enrollment due to misrepresentation.

Any changes in your enrollment due to errors made by your broker cannot be addressed by the Marketplace's Appeals Unit as he is neither an officer, employee, nor agent of the Exchange.

Decision

You and your wife are eligible for a Special Enrollment Period to correct your effective date of coverage for January 2015 due to a misrepresentation by an employee of the Marketplace.

Your case is RETURNED to the Marketplace to reinstate your coverage with CareConnect EPO Gold ST INN Pediatric Dental Dep 25 effective January 1, 2015 to January 31, 2015.

Effective Date of this Decision: August 7, 2015

How this Decision Affects Your Eligibility

You and your wife are eligible for a Special Enrollment Period to reinstate your coverage for January 2015 with CareConnect EPO Gold ST INN Pediatric Dental Dep 25.

You are responsible for any premium balance due for January 2015.

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).

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

Summary

You and your wife are eligible for a Special Enrollment Period to correct your effective date of coverage for January 2015 due to a misrepresentation by an employee of the Marketplace.

Your case is RETURNED to the Marketplace to reinstate your coverage with CareConnect EPO Gold ST INN Pediatric Dental Dep 25 effective January 1, 2015 to January 31, 2015.

You and your wife are eligible for a Special Enrollment Period to reinstate your coverage for January 2015 with CareConnect EPO Gold ST INN Pediatric Dental Dep 25.

You are responsible for any premium balance due for January 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]