



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

Notice of Decision

Decision Date: June 12, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001485

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On February 17, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace’s January 13, 2015 eligibility determination.

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 NY State of Health is:

Did the Marketplace properly determine that, effective November 30, 2014, you were no longer eligible to remain enrolled in a qualified health plan through the Marketplace as of November 3, 2014?

Procedural History

The Marketplace received your initial application for health coverage on October 8, 2013. On October 20, 2013, it issued a notice of eligibility determination that you are eligible to enroll in a qualified health plan through the Marketplace. During 2014, you were enrolled in a silver-level qualified health plan, Fidelis Care Silver.

On October 20, 2013, the Marketplace sent you a letter confirming that you had chosen to receive all information electronically.

On November 3, 2014, the Marketplace issued a Notice of Annual Open Enrollment, which stated: "We cannot enroll you in your current health plan. You need to select a different health plan if you want coverage in 2015" and "Your dental plan will be discontinued next year. Please choose another plan." It also stated that you now qualify for health coverage under Medicaid effective January 1, 2015.

On November 27, 2014, the Marketplace redetermined your eligibility and issued a notice that you remain eligible for Medicaid as of November 1, 2014.

On December 14, 2014, you updated your income on your Marketplace account.

That same day, the Marketplace issued an eligibility redetermination notice that you are no longer eligible for Medicaid but your coverage will continue until October 31, 2015.

That same day, the Marketplace issued a letter confirming your insurance coverage through Medicaid as of January 1, 2015 and enrollment with UnitedHealthCare of New York, Inc. beginning January 1, 2015.

On December 16, 2014, the Marketplace issued a notice of eligibility redetermination that said you were newly eligible to receive advance premium tax credits and cost sharing reductions as of January 1, 2015.

That same day, the Marketplace issued a cancellation notice that your 2015 coverage with UnitedHealthCare of New York, Inc. will end effective January 1, 2015.

On January 13, 2015, the Marketplace sent you a letter requesting that you provide proof of income by January 30, 2015.

That same day, the Marketplace issued a disenrollment notice that said your health insurance with Fidelis Care Silver will end effective January 31, 2015.

On January 15, 2015, you spoke with the Marketplace's Account Review Unit and appealed having your coverage with Fidelis Care Silver terminated for the month of December 2014.

On February 17, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and was closed at the end of the hearing.

On February 7 and 18, 2015 and March 9, 2015, you updated your account and uploaded proof of income.

Findings of Fact

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

- 1) You enrolled in a silver-level qualified health plan, effective January 1, 2014.

- 2) You testified that you believed you had health insurance with Fidelis Care Silver for the full year in 2014.
- 3) You testified that you paid your premium for December 2014 on November 10, 2014.
- 4) You testified that you had a doctor's appointment on December 10, 2014, and believed your visit would be covered under your health insurance.
- 5) You testified that you did not receive any emails or notices from the Marketplace in November and December 2014, and did not realize you had been automatically enrolled in Medicaid because you did not actively accept nor enroll in that program.
- 6) You testified that you made several calls to the Marketplace before your December 10, 2014 doctor's appointment and were never told you are enrolled in Medicaid or that your health insurance with Fidelis Care Silver had been cancelled.
- 7) You are being billed directly for \$1,000.00 for your December 10, 2014 doctor's appointment.
- 8) You want your coverage with Fidelis Care Silver reinstated for the month of December 2014 to cover the cost of your doctor's visit.
- 9) You have been covered under Medicaid since January 1, 2015.
- 10) The record contains proof of your income as of February 7 and 18, 2015 and March 9, 2015.
- 11) When you initially enrolled in the Marketplace, you chose to receive all notices electronically.
- 12) You testified that you did not receive a cancellation notice from your health plan or from the Marketplace stating your health insurance with Fidelis Care Silver was cancelled or terminated as of November 30, 2014.

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

Applicable Law and Regulations

Timely Notice of Eligibility Determination:

The Marketplace must determine an applicant's eligibility promptly and without undue delay. The Marketplace must then provide a timely written notice to an applicant of any eligibility determination made (45 CFR § 155.310(e), (g); 45 CFR § 155.330(e)).

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 post notices to the individual's electronic account within 1 business day of notice generation; send "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

On October 20, 2013, the Marketplace sent you a letter confirming that you had chosen to receive all information electronically.

On November 6, 2014, the Marketplace issued a notice regarding coverage for 2015. It stated that you could not remain in your current plans and were Medicaid eligible as of January 1, 2015. You credibly testified that you did not receive this notice.

On December 16, 2014, the Marketplace issued a notice that your health coverage under Medicaid will begin January 1, 2015 and it has. So the only matter at issue is a one-month coverage gap in December 2014.

On January 13, 2015, the Marketplace issued a disenrollment notice regarding your coverage with Fidelis Care Silver, which said it would be terminated as of January 31, 2015.

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.

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 suggests that, due to non-receipt of emails and/or notices, you may not have received all necessary notices in a timely manner. It also indicates that when you realized there was a problem with your coverage, you promptly spoke with Marketplace Customer Service and uploaded proof of your income to substantiate that you qualify for Medicaid. The record further suggests that the Marketplace issued a number of eligibility redeterminations that were contradictory or incorrect and none of which gave you notice that your health coverage under Fidelis Care Silver had been cancelled during the month of December 2014. Even the January 13, 2015 disenrollment notice misstates the date of disenrollment as January 31, 2015.

The record does not contain any evidence on behalf of the Marketplace addressing whether 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.

Accordingly, the January 13, 2015 disenrollment notice must be MODIFIED to state that your Fidelis Care Silver plan terminated on December 31, 2014, not January 31, 2015.

Because your qualified health plan (QHP) coverage was in effect during December 2014, you must pay the carrier the premium for that month of coverage, which you testified you have already done.

Decision

The January 13, 2015 disenrollment notice is MODIFIED to state that your 2014 qualified health plan terminated on December 31, 2014.

Effective Date of this Decision: June 12, 2015

How this Decision Affects Your Eligibility

Your qualified health plan was in effect during December 2014.

You owe the carrier the premium for that month of coverage, which you testified you have already paid.

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

The January 13, 2015 disenrollment notice is MODIFIED to state that your 2014 qualified health plan terminated on December 31, 2014.

Your qualified health plan was in effect during December 2014.

You owe the carrier the premium for that month of coverage, which you testified you have already done.

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]