



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

Notice of Decision

Decision Date: August 14, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001715

[REDACTED]

Dear [REDACTED],

On March 13, 2015, you and your Authorized Representative appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 30, 2014 and January 10, 2015 eligibility determinations.

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 Code of Federal Regulation (CFR) 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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Decision Date: August 14, 2015

NY State of Health Number: [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 reenroll you in your plan coverage at full cost beginning January 1, 2015?

Procedural History

During the 2014 plan year, you and your spouse were enrolled in a Fidelis Care Silver plan.

On November 6, 2014 and November 16, 2014, the Marketplace issued notices that stated it was time to renew your health insurance coverage for 2015. The notices stated that based on information from federal and state sources, the Marketplace could not make a decision about whether or not you qualified for continuing financial help in paying for your health coverage in 2015. You were directed to update the information in your NY State of Health account by December 15, 2014, or the financial help you were receiving might end.

No updates were made to your account before December 15, 2014.

The Marketplace did not issue a notice confirming your reenrollment in the Fidelis Care Silver plan for the 2015 plan year, nor were you issued a new notice of eligibility determination regarding either you or your spouse's eligibility for financial assistance after failing to update your account by December 15, 2014.

On December 29, 2014, information in your Marketplace account was updated.

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).

That same day, the Marketplace prepared a preliminary determination based on your December 29, 2014 application. It stated that you and your spouse were eligible to receive an advance premium tax credit (APTC) of up to \$364.00 per month beginning February 1, 2014, but did not make a decision on whether you and your spouse were eligible for either cost-sharing reductions (CSR) or Medicaid. It further stated that your eligibility was conditional pending the receipt of additional documentation to finalize your eligibility.

On December 30, 2014, the Marketplace issued a notice of eligibility determination formalizing the findings of the December 29, 2014 preliminary eligibility determination. It stated that you and your spouse were eligible to enroll in a qualified health plan (QHP); eligible to receive an APTC of up to \$364.00 per month; and, if you selected a silver-level plan, CSR, beginning February 1, 2015, but ineligible for Medicaid. The notice further stated that your eligibility was conditional pending receive of proof of your citizenship status by March 30, 2015.

That same day, the Marketplace issued a notice confirming your and your spouse's enrollment in the Fidelis Care Silver plan as of December 29, 2014. The notice further stated that your premium responsibility would be \$403.08, after applying the maximum APTC of \$364.00, and that your coverage could begin as early as February 1, 2015.

On December 30, 2014, the Marketplace received a revised application.

On December 31, 2014, the Marketplace issued a notice of eligibility determination based on your December 30, 2014 application. The findings issued by the Marketplace under this notice were identical with those of the December 30, 2014 notice of eligibility determination in that you and your spouse were found eligible to enroll in a QHP; eligible to receive an APTC of up to \$364.00 per month; and, if you selected a silver-level plan, CSR, effective February 1, 2015, though you were ineligible for Medicaid. The notice further stated that your eligibility was conditional pending receive of proof of your citizenship status by April 1, 2015.

On January 9, 2015, the Marketplace received several revised applications in which you attested to a decrease of expected annual income.

On January 10, 2015, the Marketplace issued a notice of eligibility determination based on your January 9, 2015 application. The notice stated that you and your spouse remained eligible to enroll in a QHP, and also eligible to receive an APTC of up to \$595.00 per month and CSR, beginning February 1, 2015. The notice also stated that you and your spouse were ineligible for Medicaid. Finally, the notice stated that your eligibility was conditional pending received of proof of your citizenship status by April 11, 2015.

Also on January 10, 2015, the Marketplace issued a notice confirming enrollment for you and your spouse in the Fidelis Care Silver plan as of January 9, 2015. The notice further stated that your premium responsibility would be \$172.08, after applying the maximum APTC of \$595.00, and that your coverage could begin as early as January 1, 2015.

On February 6, 2015, you spoke with the Marketplace's Account Review Unit to appeal (1) your and your spouse's automatic reenrollment for the 2015 plan year at full cost and (2) your ability to receive an APTC no earlier than February 1, 2015.

On March 13, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. At your request, your spouse, [REDACTED], attended the hearing as your Authorized Representative; a Russian-language interpreter (ID # [REDACTED]) was also present. The record was developed during the hearing and remained open for the sole purpose of providing you an opportunity to submit the following additional evidence: (1) your Certificate of Naturalization, and (2) a copy of your billing statement for January 2015. The record was to be closed 15 days after the hearing date, or upon the receipt of the above referenced documents, whichever occurred earlier.

On March 16, 2015, you provided all of the above referenced documents to the Appeals Unit via facsimile. As a result, the record was closed on March 16, 2015.

Findings of Fact

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

- 1) You elected to receive electronic notices from the Marketplace.
- 2) The Marketplace issued notices on November 6, 2014 and November 16, 2014 requesting that you update your account by December 15, 2014 in order to determine your eligibility for financial assistance for the 2015 plan year.
- 3) You testified that you were not sure whether you received these notices; however, you did not receive any email notifications that these notices were in your Marketplace account.
- 4) You testified that you did not update your account by December 15, 2014. You further testified that you updated your account on December 29, 2014 only when you were told by a Fidelis Care representative that you and your spouse were reenrolled for the 2015 plan year, and were not eligible for a tax credit for the month of January 2015.

- 5) The Marketplace did not issue a notice confirming your reenrollment in the Fidelis Care Silver plan for the 2015 plan year, nor were you issued a new notice of eligibility determination regarding either you or your spouse's eligibility for financial assistance after failing to update your account by December 15, 2014.
- 6) On December 29, 2014, the Marketplace issued a notice confirming your and your spouse's reenrollment in the Fidelis Care Silver plan as of December 29, 2014. The notice further stated that your premium responsibility would be \$403.08, after applying the advance premium tax credit (APTC) of \$364.00, and that your coverage could begin as early as February 1, 2015.
- 7) On January 10, 2015, the Marketplace issued a notice confirming you and your spouse's reenrollment in the Fidelis Care Silver plan as of January 9, 2015. The notice further stated that your premium responsibility would be \$172.08, after applying the APTC of \$595.00, and that your coverage could begin as early as January 1, 2015.
- 8) You testified that you received a very large bill for January's coverage and were not able to afford the entire amount.
- 9) You testified that you paid approximately \$172.08 for what you assumed would be for coverage beginning February 1, 2015, but that this amount was ultimately applied for coverage beginning January 1, 2015. You further testified that you were being billed approximately \$403.08 for the month of January 2015.
- 10) You testified that you wanted your coverage to begin on February 1, 2015 so that your APTC award could be applied that month and going forward, since the Fidelis Care Silver premium without any APTC was unaffordable to you and your spouse.
- 11) On March 16, 2015, you provided a copy of your Certificate of Naturalization in order to satisfy the Marketplace's request for additional documentation to prove your citizenship status.

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

Applicable Law and Regulations

Annual Eligibility Redetermination

Generally, the Marketplace must conduct annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, such as tax credits and cost-sharing reductions, Medicaid, or Child Health Plus. In such cases, the Marketplace is required to request that the qualified individual provide updated income and family size information for use in an eligibility redetermination for the upcoming year (see 45 CFR § 155.335(a) and (b)).

The Marketplace must send an annual renewal notice that contains the projected eligibility determination for the following year (45 CFR § 155.335(c)(3)). If a qualified individual does not respond to the notice after a 30-day period, the Marketplace must redetermine that individual's eligibility using the information provided in the annual renewal notice (45 CFR § 155.335(g), (h)).

The Marketplace must ensure this redetermination is effective on the first day of the coverage year or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)). The rules specified in 45 CFR § 155.330(f) are not pertinent here.

If an enrollee remains eligible for enrollment in a qualified health plan (QHP) through the Marketplace upon annual redetermination, and has not selected to terminate coverage, the enrollee's coverage will be renewed in the same plan as the enrollee's current QHP, unless the plan is no longer available (45 CFR § 155.353(j)(1)(i)).

Marketplace Eligibility Determinations

When an individual applies for insurance through the Marketplace, the Marketplace must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 CFR § 435.1200(b)(3)(iii)).

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)).

Legal Analysis

The Marketplace must redetermine a qualified individual's eligibility for health insurance and financial assistance to help pay for that health insurance annually. The Marketplace must issue a renewal notice that contains the projected eligibility determination for the following year. If an individual does not respond to this notice, the Marketplace must issue an eligibility determination for the upcoming coverage year based on the information contained in the renewal notice. If an individual does not respond to this notice, the Marketplace must issue an eligibility determination for the upcoming coverage year based on the information contained in the renewal notice.

On November 6, 2014 and November 16, 2014, the Marketplace issued annual eligibility redetermination notices in your case. Those notices stated that based on information from federal and state sources, the Marketplace could not make a decision about whether or not you qualified for financial help paying for your health coverage in 2015. You were asked to update the information in your NY State of Health account by December 15, 2014 or the financial help you were receiving might end.

Your application indicates that you elected to receive electronic notifications of notices posted to your Marketplace account. You testified that you never received these electronic notices.

The Marketplace did not receive any updated information from you by December 20, 2014. Therefore, the Marketplace was required to use the information that was contained in the November 6, 2014 and November 16, 2014 notices in order to determine your eligibility for coverage beginning January 1, 2015.

However, you testified, and the record reflects, that you elected to receive your notices from the Marketplace via electronic mail. You credibly testified that you had not received any email notices advising you that there were notices in your Marketplace account.

Therefore, it is concluded that the Marketplace failed to give you the proper notice that you needed to update your account.

You renewed your eligibility for financial assistance through the Marketplace for 2015 on December 29, 2014, and therefore we must assume that this is the information that would have been used had you been timely informed of the need to update your account, as stated in the renewal notice.

Therefore, the December 30, 2014 and January 10, 2015 eligibility determinations are MODIFIED to reflect that your eligibility as found in those determinations was effective January 1, 2015.

Decision

The December 30, 2014 and January 10, 2015 eligibility determinations are MODIFIED to reflect that your eligibility as found in those determinations was effective January 1, 2015.

Effective Date of this Decision: August 14, 2015

How this Decision Affects Your Eligibility

You remain eligible for up to \$595.00 per month in advance premium tax credits and (provided you remain enrolled in a silver-level plan) cost-sharing reductions; however, this eligibility is effective January 1, 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.

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 December 30, 2014 and January 10, 2015 eligibility determinations are MODIFIED to reflect that your eligibility as found in those determinations was effective January 1, 2015.

You remain eligible for up to \$595.00 per month in advance premium tax credits and (provided you remain enrolled in a silver-level plan) cost-sharing reductions; however, this eligibility is effective January 1, 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:

