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

# Notice of Decision

Decision Date: July 3, 2015

NY State of Health Number: [redacted]
Appeal Identification Number: AP000000001913

[redacted]

Dear [redacted],

On March 24, 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).

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DEPARTMENT OF HEALTH
P.O. Box 11729
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# Decision

Decision Date: July 3, 2015

NY State of Health Number: [redacted]
Appeal Identification Number: AP000000001913

[redacted]

## Issue

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

> Did you and your spouse qualify for a special enrollment period as of March 2, 2015?

## Procedural History

The Marketplace initially received your non-financial application for health insurance on February 15, 2015, for coverage in 2015 through the Marketplace.

On February 16, 2015, the Marketplace sent you a letter confirming that you and your spouse were enrolled in Empire HMO 2000 Silver ST INN Pediatric Dental Dep 25 (Empire HMO Plan), with a monthly premium responsibility of $942.38. The letter also informed you that your coverage could begin as early as March 1, 2015, if you make your first premium payment on time.

On March 2, 2015, you spoke to the Marketplace's Account Review Unit and requested a hearing to review the denial of your request for a special enrollment period to switch qualified health plans from a silver-level plan to a platinum or gold-level plan within the same insurance company.

On March 3, 2015, 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 March 24, 2015, 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.

## Findings of Fact

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

1) You testified that you enrolled you and your husband in the Empire HMO Plan, a silver-level qualified health plan, but had intended to enroll in a gold-level plan with the same insurance company. Since this was your first time enrolling through the Marketplace, you admitted that you could have made an error in making the wrong selection.

2) You testified that you did not realize your error until you got a bill for the first premium and it was much less than the $1,300.00 premium you thought you would have to pay for a platinum or gold-level plan.

3) You testified that this prompted you to contact Empire, where you feel you were misdirected in that you were told you should just make the payment on the Empire HMO Plan you selected and can change plans later.

4) You testified that a supervisor at the Marketplace told you the only way you could change plans was through the appeal process.

5) You testified that you and your husband would prefer a lesser deductible with a higher-level plan, but that you can live with the wrong choice for this year.

6) According to your Marketplace account, you have not moved, had no change in income, marital status or household size, and have not become eligible for or lost minimum essential coverage.

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 § 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 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)).

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 2015, even if they have the option to renew the expiring noncalendar 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

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 February 15, 2015, you enrolled in the Empire HMO Plan and then about March 2, 2015, you realized that was not the plan you had wanted. You spoke with a representative of the Empire HMO Plan and were lead to believe it could be changed later, but learned from a Marketplace supervisor that you had to qualify for a special enrollment period (SEP), which the Marketplace denied and had to go through the appeal process to try and qualify for a special enrollment period.

The ability to enroll in a plan outside of the open enrollment window is known as a request for a SEP. The record does not contain a notice of eligibility determination or redetermination on the issue of SEP. It does contain a March 3, 2015 notice in which the Marketplace acknowledges receipt of an appeal request on March 2, 2015 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 March 3, 2015 notice, which acknowledges the appeal on the issue of an SEP denial, permits an inference that the Marketplace did deny your SEP request.

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 SEP denial even if one had it been issued.

The Marketplace provided an annual open enrollment from November 15, 2015 until February 15, 2015. The record indicates that you and your spouse enrolled in the Empire HMO Plan the last day of open enrollment.

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 March 2, 2015 in order to reenroll yourself and your spouse in another Empire plan, preferably in a platinum or gold-level plan with the same company.

When an applicant's enrollment or non-enrollment in a qualified health plan (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, an SEP may be granted.

You credibly testified that your enrollment in the Empire HMO Plan may have been your fault because you were not familiar with the Marketplace and the differences between plans and selected the wrong plan. You further testified that you were misinformed or misdirected by an Empire representative who told you to just pay the plan and you could change to another level plan later. However, this action or inaction does not rise to the level of misconduct that would qualify for an SEP being granted.

Further, none of the other triggering events for an SEP are applicable here.

Accordingly, the Marketplace properly determined that an SEP should not be granted.

## Decision

The Marketplace's preliminary determination to deny you and your spouse a special enrollment period on March 2, 2015 is AFFIRMED.

## Effective Date of this Decision: July 3, 2015

## How this Decision Affects Your Eligibility

This decision does not change your eligibility for and enrollment in an Empire HMO Plan, a silver-level qualified health plan, effective March 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 Marketplace's preliminary determination to deny you and your spouse a special enrollment period on March 2, 2015 is AFFIRMED.

This decision does not change your eligibility for and enrollment in an Empire HMO Plan, a silver-level qualified health plan, effective March 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:

[redacted]

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).