



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

Notice of Decision

Decision Date: July 8, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001959

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On April 6, 2015, you appeared by telephone at a hearing on your March 5, 2015 appeal request due to a denial of 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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Issue

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

Did the Marketplace properly determine that you were not eligible for a Special Enrollment Period (SEP)?

Procedural History

From May 1, 2014 to December 31, 2014, you were enrolled in Bronze Select, an Excellus Blue Cross Blue Shield (Excellus) plan, and had the maximum advance premium tax credit of \$20.00 applied monthly.

On November 6, 2014, the Marketplace issued a renewal notice that stated, based on information from federal and state sources, it could not make a decision about whether or not you qualify for financial help paying for your health coverage. The notice requested that you update information on your Marketplace account by December 15, 2014 and, if you miss this deadline, the financial assistance you are getting now may end.

On December 22, 2014, the Marketplace issued a notice of eligibility redetermination that you were newly eligible to purchase a qualified health plan at full cost through NY State of Health effective January 1, 2015. It further stated that you are not eligible for (1) Medicaid because the household income you provided of \$44,229.00 was over the allowable income limit for that program, (2) not eligible for an advance premium tax credit (APTC) because the renewal period had passed and income data was not available, and (3) not eligible for cost-sharing reductions (CSR) because you are ineligible for APTC.

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That same day, the Marketplace issued a letter confirming your enrollment in Bronze Select Bronze, an Excellus plan, with a monthly premium responsibility of \$389.90. The letter also informed you that your coverage could start as early as January 1, 2015, if you paid your first month's premium on time.

On December 28, 2014, the Marketplace issued a disenrollment notice stating your coverage with Bronze Select was being terminated as of December 31, 2014. That notice informed you that you needed to log in to your Marketplace account or call the Customer Service Center, prior to the end of your coverage date to update your account information and review plan selection options. It also stated that if you do not update your account information and select a new plan, you may be without health care coverage.

On March 3, 2015, you spoke with a representative from the Marketplace's Account review Unit and appealed being denied a special enrollment period to enroll in a health plan after open enrollment had ended.

Findings of Fact

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

- 1) You testified that you receive correspondence from the Marketplace through regular mail.
- 2) You testified that your county received several feet of snow in November 2014 and over the winter and a lot of your mail was strewn about under the snow that you are just recently finding and picking up.
- 3) You further testified that your mail was being delivered to your neighbor's address for a block of time during which your neighbor was away so you did not get some of your mail from him until February 3, 2015.
- 4) You testified that you did not receive a November 2014 renewal notice from the Marketplace in the mail, which may be attributable to the snow storm in November 2014 or your mail being delivered to your neighbor.
- 5) You testified that you did receive the December 22, 2014 notice of eligibility redetermination and the letter confirming your enrollment, as well as an invoice from Excellus for your January 2015 premium. Even so, you paid that month's premium.
- 6) You testified that you never received the December 22, 2014 disenrollment notice and would have acted on it right away if you had.
- 7) You testified that you also paid your February 2015 premium.

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- 8) You testified that you went to the eye doctor in the first week of March 2015 and were told you did not have insurance through your Excellus Bronze Select plan.
- 9) You testified that this news prompted you contacted Excellus to find out why you were no longer insured and they could not explain why. They told you how to file an appeal with the Marketplace.
- 10) You testified and provided documentary proof that, on March 9, 2015, Excellus issued a check to you for “premium overpayment,” which was a refund check for your January and February 2015 premiums you had already paid.
- 11) You testified that you want to be granted a special enrollment period so that you can enroll in a health insurance plan this year.

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 annual open enrollment periods during which time qualified individuals may enroll in a qualified health plan (QHP) and enrollees may change QHPs (45 CFR §155.410(a)). For the benefit year beginning on January 1, 2015, the annual open enrollment period began on November 15, 2014 and extended through February 15, 2015 (45 CFR §155.410(e)); However, the open enrollment period was further extended to February 28, 2015 for individuals who took steps to apply for coverage on or before the February 15, 2015 deadline, but were unable to complete the enrollment process (Press Release: NY State of Health Implements ‘Waiting in Line’ Provision Ahead of February 15 Open Enrollment Deadline, <http://info.nystateofhealth.ny.gov/news/press-release-ny-state-health-implements-%E2%80%98waiting-line%E2%80%99-provision-ahead-february-15-open>).

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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 2014, even if they have the option to renew the expiring non-calendar 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

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- (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 March 5, 2015, you spoke with the Marketplace and requested a special enrollment period. The record does not contain a notice of eligibility determination or redetermination on the issue of the special enrollment period. It does contain a March 6, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issue on appeal as “Denial of Special Enrollment Period.”

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal Marketplace 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 6, 2015 notice, which acknowledges the appeal on the issue of the special enrollment period denial, permits an inference that the Marketplace did deny your special enrollment period request.

Currently at issue is whether you were properly denied a special enrollment period as of March 6, 2015. Since Appeal Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to a notice of denial of a special enrollment period had it been issued.

The Marketplace provided an open enrollment period from November 15, 2015 until February 15, 2015, which it later extended to February 28, 2015 for people who could not complete their application by the February 15, 2015 deadline. The record indicates that you enrolled in Healthfirst Silver during the open enrollment period.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to change to another health plan offered in the Marketplace. Here, you requested a special enrollment period on around March 6, 2015 in order to enroll in a health plan through the Marketplace.

You contend that you were re-enrolled in the Excellus Bronze Select plan for 2015 but did not know this until you received your mail from your neighbor on or about February 3, 2015. It is at that time, when you read the December 22, 2014 notice of eligibility redetermination and enrollment letter that you realized you had been automatically re-enrolled in the same plan you had in 2014 but at full cost. You credibly testified that you were not aware of being disenrolled as of December 31, 2014 and even paid your January and February 2015 monthly premiums in good faith and you received no notice of cancellation from the Marketplace or Excellus indicating your coverage had been terminated. You further credibly testified that the monthly premium payments you paid were not returned until after you contacted Excellus to get an explanation as to why you were no longer covered under the Bronze Select plan in the first week of March 2015.

A special enrollment period can be granted on the basis of “error, misrepresentation, or inaction of an officer, employee, or agent of the [Marketplace] or [the U.S. Department of Health and Human Services], or its instrumentalities as evaluated and determined by the [Marketplace]” (45 CFR § 155.420(d)(4)). Here, the record indicates that the Marketplace issued a notice of termination of coverage on December 22, 2014, which was mailed and was not returned as undeliverable so it is presumed to have been sent and received. Through no fault of your own or that of the Marketplace, however, you did not receive some of your notices on time and did not receive others at all. Notwithstanding, this does not amount to Marketplace error or misrepresentation of information regarding the termination of your coverage with Excellus Bronze Select, effective December 31, 2014. Nor did you indicate that you experienced any triggering events that would otherwise allow the Marketplace to grant you a special enrollment period. Therefore, a special enrollment period cannot be granted under 45 CFR § 155.420(d)(4).

Therefore, the Marketplace’s determination to deny a special enrollment period is **AFFIRMED**.

Decision

The Marketplace’s determination to deny you a special enrollment period is **AFFIRMED**.

Effective Date of this Decision: July 8, 2015

How this Decision Affects Your Eligibility

You are not eligible for a special enrollment period.

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

The Marketplace's determination to deny you a special enrollment period is **AFFIRMED**.

You are not eligible for a special enrollment period.

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Legal Authority

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(a).

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A Copy of this Decision Has Been Provided To:

[REDACTED]
[REDACTED]
[REDACTED]