



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

Notice of Decision

Decision Date: August 18, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000001983

[REDACTED]

Dear [REDACTED],

On April 15, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's 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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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 determine that you were not eligible for a special enrollment period to enroll in a qualified health plan?

Procedural History

On November 27, 2014, the Marketplace issued a notice stating that, based on your November 20, 2014 application, you and your spouse were eligible to enroll in a qualified health plan (QHP); eligible to receive an advance premium tax credit (APTC) of up to \$685.00 per month; and, if you selected a silver-level plan, eligible for cost-sharing reductions (CSR). This eligibility was effective January 1, 2015. This determination was based, in part, on an annual household income of \$23,200.00.

On December 9, 2014, the Marketplace issued a notice confirming your enrollment in the Oscar Edge Silver plan.

On February 27, 2015 and March 7, 2015, the Marketplace received revised applications, each of which reflected an increase of income to \$49,012.00.

In response to these applications, the Marketplace issued notices of eligibility determination on February 28, 2015 and March 8, 2015 stating that while you and your spouse continued to be eligible for an APTC, although in a decreased amount of \$370.00 per month, you were no longer eligible for CSR.

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On March 1, 2015 and March 7, 2015, the Marketplace issued notices confirming your continued enrollment in the Oscar Edge Silver plan.

On March 10, 2015, the Marketplace issued a notice stating that on March 9, 2015 you requested a telephone hearing to review the issue of your denial of a Special Enrollment Period (SEP).

On April 15, 2105, 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) The notice of eligibility determination reflects that you were entitled to receive an APTC of up to \$685.00 per month and cost-sharing reductions effective January 1, 2015.
- 2) You testified that you and your spouse enrolled in an Oscar Care Silver plan for coverage beginning January 1, 2015.
- 3) You testified that you revised your application on February 27, 2015 and March 7, 2015 to include the \$2,151.00 per month your spouse receives from his social security benefits. This changed the total income referenced in your original application submitted on November 20, 2015 of \$23,200.00 to \$49,012.00.
- 4) You testified that you only attempted to change your plan after you realized that because of the new determinations you would no longer be eligible to receive cost-sharing reductions.
- 5) You testified that when you made the changes to your account you were not presented with an opportunity to select a new plan. You further testified that told the Marketplace that you would like to select a new plan, but were instructed that this would require you to qualify for a special enrollment period.
- 6) On April 2, 2015, the Marketplace verbally granted you and your spouse a special enrollment period to enroll in a new plan.

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)).

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>).

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 their enrollment to another plan. This is permitted when a triggering event occurs. When an enrollee or enrollee’s dependent is newly eligible or ineligible for advance payments of the premium tax credit, or a change in eligibility for cost-sharing reductions is considered a triggering event. (45 CFR § 155.420(d)(6)).

Legal Analysis

On March 9, 2015, you spoke with Marketplace’s Account Review Unit and requested a special enrollment to select a new health plan. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period. It does contain a March 10, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies one of the issues on appeal as “Denial of Special Enrollment Period (SEP).”

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

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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 10, 2015 notice, which acknowledges the appeal on the issue of special enrollment denial, permits an inference that the Marketplace did deny your special enrollment request.

Since the Appeals Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued. Therefore, the issue under review is whether you and your spouse were properly denied a special enrollment period.

The Marketplace provided an open enrollment from November 15, 2014 until February 15, 2015, and later extended the open enrollment period to February 28, 2015 for people who could not complete their application by the February 15, 2015 deadline. The record indicates that on December 9, 2014, the Marketplace issued a notice confirming you and your spouse's enrollment in the Oscar Edge Silver plan 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 in order to change your plan as the result of having lost your eligibility for cost-sharing reductions after having updated your application on February 27, 2015 and March 7, 2015.

When an enrollee's eligibility for cost-sharing reductions changes, it is considered a triggering event for a special enrollment period.

We note that the Marketplace awarded you a special enrollment period on April 2, 2015. However, no notice was issued to you notifying you of this award. Therefore, you and your spouse are granted a special enrollment period of 60 days from the date of this Decision to allow you to change health plans.

Decision

Your case is RETURNED to the Marketplace to grant you and your spouse a special enrollment period of 60 days from the date of this Decision to change health plans.

Effective Date of this Decision: August 18, 2015

How this Decision Affects Your Eligibility

You have 60 days from the date of this decision to select a new health plan for you and your spouse.

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:
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Summary

Your case is RETURNED to the Marketplace to grant you and your spouse a special enrollment period of 60 days from the date of this Decision to change health plans.

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:

