



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: AP000000002086

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On April 28, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's April 1, 2014 disenrollment from your health plan through NY State of Health.

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 on April 1, 2014, that you and your spouse were disenrolled from a silver-level qualified health plan, effective April 30, 2015?

Procedural History

On December 23, 2013, the Marketplace issued a notice of eligibility determination that you and your spouse are temporarily eligible to receive up to \$191.00 per month of advance premium tax credits (APTC) and are not eligible for cost-sharing reductions or Medicaid because the household income you provided of \$50,265.00 is over the allowable income limit for each of these programs. That notice also confirmed your enrollment in MVP Premier Silver.

According to your Marketplace account, your enrollment in MVP Premier Silver was deleted on April 1, 2014. There is no corresponding notice to this effect in your account.

On April 2, 2014, the Marketplace issued a notice of eligibility redetermination that you and your spouse are no longer eligible for an APTC but are eligible to purchase a qualified health plan (QHP) at full cost through NY State of Health.

On January 21, 2015, the Marketplace issued a 2014 Form 1095-A, Health Insurance Marketplace Statement. It states that you and your spouse received APTC of \$191.00 in 2014 for the months of January, February, March, and April.

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).

On March 17, 2015, you spoke to a representative from the Marketplace's Account Review Unit and appealed being disenrolled from your MVP Silver Plan effective April 30, 2014 instead of March 31, 2014, and being charged for APTC of \$191.00 for that month as stated on your 2014 Form 1095-A provided by the Marketplace.

On April 28, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and held open for up to fifteen days to allow you the opportunity to submit proof of third party health insurance effective April 1, 2014.

On May 4, 2015, the Marketplace's Appeals Unit received a five page fax from you consisting of: (1) A cover page; (2) Two blank pages (3) A copy of an August 1, 2014 email confirming your and your spouse's 2014 in your employer's HRA health plan; and (4) A second cover page. This five page fax was made part of the record as "Appellant's Exhibit A."

Since the requested evidence was received on May 4, 2015, the record was closed that same day.

Findings of Fact

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

- 1) According to your Marketplace account and your testimony, you and your spouse were originally enrolled in MVP Premier Silver effective January 1, 2014 and received \$191.00 per month in advance premium tax credit (APTC).
- 2) You testified that you started a new job on March 3, 2014 and your new employer provided health coverage for you and your spouse with CDPHP as of April 1, 2014 (Appellant's Exhibit A. p. 3).
- 3) You testified that you did not know you had to request cancellation of your coverage with MVP and thought your new employer's insurance plan would notify them of your coverage with CDPHP as of April 1, 2014.
- 4) According to your Marketplace account and your testimony, you contacted the Marketplace on April 1, 2014 to report having health insurance coverage through your employer effective April 1, 2014 and to cancel your enrollment in MVP Premier Silver and assumed it was processed that same day.
- 5) According to your Marketplace account, your disenrollment from MVP Premier Silver was effectuated on April 1, 2014.

- 6) You testified that you did not receive a bill from MVP for the April 2014 premium, did not pay the premium that month because you had health insurance through your employer, and did not use the MVP Premier Silver plan in April 2014.
- 7) You testified that you received your 2014 Form 1095-A in the mail in late January 2015, which said you received APTC for April 2014, when you did not.
- 8) You further testified that you received a collection notice from MVP for the April 2014 premium, which triggered you to contact MVP. You stated you were told by an MVP representative that you needed to contact NY State of Health to get it straightened out.
- 9) You testified that the Marketplace told you it could not backdate cancellation of your coverage to March 31, 2014, and that you had to file an appeal to try and resolve this problem.
- 10) You testified that you want your cancellation of MVP Premier Silver to be made effective March 31, 2014 and your 2014 Form 1095-A corrected and reissued with APTC of \$191.00 received for January, February, and March 2014 and not April 2014.

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

Applicable Law and Regulations

De Novo Review

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)).

Termination of Coverage

The Marketplace may initiate termination of an enrollee's coverage in a qualified health plan and must permit a qualified health plan issuer to terminate such coverage: (1) When the enrollee is no longer eligible for coverage in a qualified health plan through the Marketplace; or (2) The enrollee's coverage is cancelled due to non-payment of premiums (45 CFR § 155.430(b)(2)(i) and (ii)).

Minimum Essential Coverage

Generally, an individual will be treated as eligible for minimum essential coverage if the individual may enroll in an eligible employer-sponsored plan that is affordable and provides minimum value (26 CFR §§ 1.36B-2(c)(3)(v)(A) & (C)). A person who has an employer-sponsored health insurance plan that provides minimum essential coverage is not entitled to APTC (26 CFR § 1.36B-2(c)(1)).

"Minimum essential coverage" is defined in section 5000A(f) of the Internal Revenue Code and the regulations issued under that section. As described in that section, eligible employer-sponsored plans are considered minimum essential coverage (26 CFR § 1.36B-2(c)(1)).

Legal Analysis

The record reflects that on April 1, 2014, you spoke with Marketplace Customer Service and your request to have your coverage with MVP Premier Silver cancellation was effectuated. However, the record does not contain a disenrollment notice informing you of the effective date of cancellation, which you credibly testified you assumed would be immediate. It does contain an April 1, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issue on appeal as "Other" and describes the appeal as "he would like for his coverage end date to be retroactive to 3/31/2014 as he had ESI as of 4/1/2014."

In this particular case, the lack of a notice on the issue of the effective date of disenrollment from your MVP Premier Silver plan 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 April 1, 2015 notice, which acknowledges the appeal on the issue of the effective date of disenrollment, permits an inference that the Marketplace disenrolled you and your spouse from your MVP Premier Silver plan effective April 30, 2014. Since Appeal Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to the notice had it been issued.

The Marketplace may initiate termination of coverage and must permit a qualified health plan issuer to terminate coverage when an enrollee is no longer eligible for coverage in a qualified health plan through the Marketplace. Here, you testified that you started a new job and your employer provided health insurance as of April 1, 2015 with CDPHP, which you confirmed by providing a copy of an email from your employer indicating your coverage began then. Since the record supports that you had minimum essential coverage outside the Marketplace as of April 1, 2015, you were no longer eligible for coverage in a qualified health plan as of that date.

In addition, you credibly testified that you did not use the MVP Premier Silver plan during April 2014 because you had coverage with CDPHP, your employer's group health plan. Since you did not want nor use the MVP Premier Silver plan in April 2014, you do not want to be responsible for paying the April 2014 premium to MVP.

Since you had health insurance coverage through your employer's group health plan for April 1, 2014 and, therefore, had minimum essential coverage outside the Marketplace, and did not use the MVP Premier Silver plan through the Marketplace that month, coverage under that silver plan should be cancelled effective March 31, 2014.

For this reason, your and your spouse's disenrollment from MVP Premier Silver through the Marketplace is effective March 31, 2014. The Marketplace is directed to change the effective disenrollment date in your Marketplace account from April 30, 2014 to March 31, 2014.

The Marketplace is also directed to issue a corrected 2014 Form 1095-A to show that you received APTC for the months of January, February, and March 2014, and not April 2014.

Decision

Your and your spouse's disenrollment from MVP Premier Silver through the Marketplace is effective March 31, 2014.

Effective Date of this Decision: July 8, 2015

How this Decision Affects Your Eligibility

Your coverage with MVP Premier Silver through the Marketplace is cancelled effective March 31, 2014.

The Marketplace is directed to change the effective disenrollment date in your Marketplace account from April 30, 2014 to March 31, 2014.

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).

You do not owe any premium payment to MVP for April 2014.

You do not have health insurance coverage through the Marketplace as of April 1, 2014.

The Marketplace is directed to issue a corrected 2014 Form 1095-A to show that you and your spouse received an advance premium tax credit (APTC) of \$191.00 per month in January, February, and March 2014, and not April 2014.

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

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Summary

Your and your spouse's disenrollment from MVP Premier Silver through the Marketplace is effective March 31, 2014.

Your coverage with MVP Premier Silver through the Marketplace is cancelled effective March 31, 2014.

The Marketplace is directed to change the effective disenrollment date in your Marketplace account from April 30, 2014 to March 31, 2014.

You do not owe any premium payment to MVP for April 2014.

You do not have health insurance coverage through the Marketplace as of April 1, 2014.

The Marketplace is directed to issue a corrected 2014 Form 1095-A to show that you and your spouse received an advance premium tax credit (APTC) of \$191.00 per month in January, February, and March 2014, and not April 2014.

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]