



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

## Notice of Decision

Decision Date: July 28, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002130

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED],

On May 19, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's March 17, 2015 eligibility redetermination.

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]  
Appeal Identification Number: AP000000002130

[REDACTED]  
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## Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did the Marketplace properly determine that, effective March 31, 2015, you and your spouse were no longer eligible for Medicaid, Child Health Plus or to receive tax credits or cost-sharing reductions and cannot enroll in qualified health plan through NY State of Health as of March 17, 2015?

Do you and your spouse qualify for a special enrollment period as of March 31, 2015?

## Procedural History

According to your Marketplace account, you and your spouse were enrolled in Medicaid as of January 1, 2014 and disenrolled as of June 30, 2014. On December 16, 2014, the Marketplace reinstated your coverage under Medicaid effective July 1, 2015 as stated in the notice of eligibility redetermination on December 17, 2014.

The corresponding eligibility determination tab in your Marketplace account states that you and your spouse are Medicaid eligible from July 1, 2014 to March 31, 2015.

On February 21, 2015, the Marketplace sent you a notice that it was time to renew your NY State of Health coverage and, based on information from federal and state data sources, a decision about whether or not you and your spouse qualify for financial help could not be made. You were asked to update information on your Marketplace account

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by March 15, 2015 so that a decision could be made. The notice also informed you that, if you miss the deadline, the financial assistance you are now getting may end.

As of March 15, 2015, your Marketplace account was not updated.

On March 17, 2015, the Marketplace issued a notice of eligibility redetermination that you and your spouse are no longer eligible for Medicaid, Child Health Plus, or tax credits and cost-sharing reductions, and cannot enroll in a qualified health plan at full cost through NY State of Health. The reason given was that you did not respond to the renewal notice and did not complete your renewal within the required timeframe. As a result, you and your spouse no longer qualified to receive financial assistance to help pay for your health coverage effective March 31, 2015.

On March 19, 2015, the Marketplace issued a disenrollment notice that your and your spouse's Medicaid Fee-For-Service coverage will be discontinued as of March 31, 2015.

On March 20, 2015, you spoke with the Marketplace's Account Review Unit and appealed your and your spouse's disenrollment from Medicaid.

On March 31, 2015, the Marketplace granted your request for aid to continue under Medicaid from April 1, 2015 through June 30, 2015.

On May 19, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed and held open for up to fifteen days to allow you to submit proof of income.

On June 3, 2015, the Marketplace's Appeals Unit received a two page fax from you consisting of a cover page and the first page of your 2014 Individual Income Tax Return (Form 1040). This two page fax was made part of the record as "Appellant's Exhibit A" and the record was closed.

## **Findings of Fact**

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

- 1) You and your spouse expect to file your 2015 tax return as Married Filing Jointly and will not be claiming any dependents on that tax return.
- 2) You provided proof that your 2014 adjusted gross income was \$32,564.00, and you testified that you expect your 2015 income to be comparable (see Appellant's Exhibit A, p. 2).

- 3) You testified and the Marketplace documented that you spoke with Marketplace representatives on February 10, 2015 and March 13, 2015, and were told you did not need to complete a renewal until sometime in June 2015 as your coverage became effective July 1, 2014.
- 4) You testified that the one of the representatives (ID# [REDACTED]) told you on February 10, 2015, that you and your spouse were enrolled in Medicaid for one year from July 1, 2014 to June 30, 2015, did not need to renew at that time, and could not qualify for advance premium tax credits because you and your spouse were on Medicaid for one year.
- 5) You further testified that you spoke with other Marketplace representatives and supervisors who also stated you did not need to renew your health insurance until June 2015.
- 6) You testified that you were ready, willing, and able to provide the Marketplace with your household income and any other required information each time you spoke with Marketplace personnel before the March 15, 2015 deadline so your and your spouse's eligibility could be redetermined and would have done so but for being told each time that you did not need to renew yet.
- 7) You want to be able to obtain health insurance coverage through the Marketplace.
- 8) You and your spouse currently reside in New York County, New York.

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

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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)).

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

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- 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 10, 2015, you spoke with a Marketplace representative and were told you did not need to renew at that time because your Medicaid coverage began July 1, 2014 and you were on Medicaid for one year from that date. You spoke with another Marketplace representative on March 13, 2015, and were told similar information. Both of these telephone conversations took place before the March 15, 2015 deadline to update information on your Marketplace account. You credibly testified that you would have provided your household income and any other required information during either and both of these calls but were told by the Marketplace representatives that you did not have to renew yet.

The ability to enroll in a plan outside of the open enrollment window is known as a request for a special enrollment period (SEP). The record does not contain a notice of eligibility determination or redetermination on the issue of a SEP. It does contain a March 21, 2015 notice in which the Marketplace acknowledges receipt of an appeal request on March 20, 2015 and identifies the issue on appeal as "Consumer is appealing the date of his renewal."

This lack of a notice of eligibility determination on the issue of a 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 21, 2015 notice, which acknowledges the appeal on the issue of the date of your renewal, permits an inference that, in finding you and your spouse ineligible for any insurance affordability programs or to enroll in a qualified health plan through the Marketplace, you and your spouse were being denied access to health insurance coverage. In your case, the Appeals Unit's review of the Marketplace's determination is performed on a de novo basis.

The Marketplace provided an annual open enrollment from November 15, 2015 until February 15, 2015 and an annual renewal for Medicaid recertification. The record indicates that you contacted the Marketplace on February 20, 2015 and March 13, 2015 before the Medicaid renewal deadline of March 15, 2015, but were told each time that you did not need to renew because your Medicaid was not up until June 30, 2015. As a result of this misinformation, you did not renew your application in time and, as a direct consequence, the Marketplace deemed you and your spouse ineligible for insurance affordability programs or to enroll in a qualified health plan at full cost through the Marketplace.

Since the renewal period for Medicaid recertification and the annual open enrollment for enrollment in a qualified health plan had ended, 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 an appeal of the renewal date and testified that you want to be able to obtain health insurance through the Marketplace.

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, a special enrollment period may be granted.

You credibly testified that your disenrollment from Medicaid was based on misinformation that Marketplace personnel provided you; namely, that you and your spouse were covered under Medicaid until June 30, 2015 and did not need to renew and would not qualify for advance premium tax credits at the time of your February 20, 2015 or March 13, 2015 telephone conversations with Marketplace representatives. You further testified that you would have provided the requisite information during either or both of those telephone conversations had you known that you and your spouse were in jeopardy of losing health coverage altogether through the Marketplace. Since you relied on the misinformation provide by Marketplace representatives and did so to your own determinant, which could have been avoided had the correct information been conveyed, that misinformation provided by the Marketplace was in error such that you would qualify for a special enrollment period.

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Therefore, the Marketplace's March 17, 2015 eligibility redetermination is RESCINDED.

You and your spouse are being granted a special enrollment period. In the interim, you have Medicaid coverage through June 30, 2015.

The Marketplace is directed to redetermine your eligibility based on a two-person household and an expected 2015 annual income of \$32,564.00. The Marketplace will then issue a notice of eligibility redetermination.

If you and your spouse are determined eligible for Medicaid, such coverage shall begin on the first day of the month in which you are determined eligible. If you and your spouse are determined eligible for advance premium tax credits or to enroll in a qualified health plan at full cost, you will be given 60 days from the date that eligibility redetermination is issued to select and confirm a health plan through the Marketplace.

## **Decision**

The Marketplace's March 17, 2015 eligibility redetermination is RESCINDED.

You and your spouse are being granted a special enrollment period based on the Appeals Unit's de novo review.

**Effective Date of this Decision:** July 28, 2015

## **How this Decision Affects Your Eligibility**

You are being granted a special enrollment period.

The Marketplace is directed to redetermine your eligibility based on a two-person household and an expected 2015 annual income of \$32,564.00. The Marketplace will then issue a notice of eligibility redetermination.

If you and your spouse are determined eligible for Medicaid, such coverage shall begin on the first day of the month in which you are determined eligible. If you and your spouse are determined eligible for advance premium tax credits or to enroll in a qualified health plan at full cost, you will be given 60 days from the date that eligibility redetermination is issued to select and confirm a health plan through the Marketplace.

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## **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 March 17, 2015 eligibility redetermination is **RESCINDED**.

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You and your spouse are being granted a special enrollment period based on the Appeals Unit's de novo review.

The Marketplace is directed to redetermine your eligibility based on a two-person household and an expected 2015 annual income of \$32,564.00. The Marketplace will then issue a notice of eligibility redetermination.

If you and your spouse are determined eligible for Medicaid, such coverage shall begin on the first day of the month in which you are determined eligible. If you and your spouse are determined eligible for advance premium tax credits or to enroll in a qualified health plan at full cost, you will be given 60 days from the date that eligibility redetermination is issued to select and confirm a health plan through the Marketplace.

## **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]