



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

## Notice of Decision

Decision Date: August 27, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002154

[REDACTED]

Dear [REDACTED],

On April 23, 2015 you appeared by telephone at a hearing on your March 24, 2015 appeal request due to the 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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## Decision

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NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002154



## 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 (SEP)?

## Procedural History

On January 14, 2015, the Marketplace received your 2015 application for health insurance.

On January 15, 2015, the Marketplace issued a notice of eligibility determination, which stated that you are eligible to receive advance premium tax credits and cost-sharing reductions to help pay for the cost of health coverage, effective February 1, 2015. The notice further stated “you will be able to change your plan at any time during the open enrollment period. If you missed the deadline to enroll in a plan for 2015, you may not be able to enroll in a health insurance plan through New York State of Health until the next open enrollment period, unless you qualify for a special enrollment period.”

On March 22, 2015, the Marketplace issued a notice of eligibility redetermination, which stated that you are eligible to receive advance premium tax credits and cost-sharing reductions to help pay for the cost of health coverage. The notice further stated “you will be able to change your plan at any time during the open enrollment period. If you missed the deadline to enroll in a plan for 2015, you may not be able to enroll in a health insurance plan through New York State of

Health until the next open enrollment period, unless you qualify for a special enrollment period.”

On March 25, 2015, the Marketplace issued a notice stating that on March 24, 2015 you requested a telephone hearing to review the issue of your denial of a Special Enrollment Period (SEP).

On April 23, 2015 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) You testified, and the record reflects, that you submitted your 2015 application for health insurance on January 14, 2015. You further testified that you were unemployed at the time you submitted the January 14, 2015 application; and you did not select a health plan at that time.
- 2) You testified that you began a new job on February 2, 2015. You further testified that you began as a temporary employee but believed that you were going to be made a permanent employee.
- 3) You testified that you were not aware of the open enrollment period, and that nothing prevented you from picking a health plan during the open enrollment period.
- 4) You testified that you did not pick a plan during the open enrollment period because you believed that you would become a permanent employee and, therefore, would be eligible to purchase a health insurance policy through your employer. You further testified that you have not become a permanent employee as of the April 23, 2015 hearing.
- 5) The record indicates that you contacted the Marketplace on March 21, 2015 and requested a special enrollment period because you were given misinformation about your employment status by your employer and missed the open enrollment period to enroll in a health insurance plan through the Marketplace.
- 6) On or around March 23, 2015, a Marketplace representative contacted you to notify you that your request for a special enrollment period had been denied. No notice of eligibility determination has been issued by the Marketplace in response to your request for a special enrollment period.

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-in-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 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

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- (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 March 21, 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 25, 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 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 25, 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.

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 were properly denied a special enrollment period.

The Marketplace provided an open enrollment period 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 you submitted your application on January 14, 2015 and a determination was made based on that application. However, you did not choose a health plan at that time. The record further reflects that you did not attempt to pick a plan until March 21, 2015.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered in the Marketplace. In order to qualify for a special enrollment period, a person must experience a triggering life event. Here, you requested a special enrollment period on, or around, March 21, 2015 in order to enroll in a health insurance plan through the Marketplace.

You testified that you did not pick a plan prior to February 28, 2015 because you were under the belief that you would become a permanent employee and, therefore, would be eligible to purchase health insurance through your employer.

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 §

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155.420(d)(4)). Here, the record indicates that the misrepresentation regarding your employment status, which led to your inaction to pick a plan, was made by your employer. There is no evidence to indicate that your employer acted as an officer, employee, or agent of the Marketplace or the U.S. Department of Health and Human Services, or its instrumentalities, as your employer is a private entity. Therefore, you do not qualify to receive a special enrollment period on this basis.

The credible evidence of record indicates that, no other triggering events have occurred that would qualify you for a special enrollment period.

The Marketplace's determination to deny your request for a special enrollment period is **AFFIRMED**.

## **Decision**

The Marketplace's determination to deny your request for a special enrollment period is **AFFIRMED**.

**Effective Date of this Decision:** August 27, 2015

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

You do not qualify for a special enrollment period.

## **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)).

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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 your request for a special enrollment period is **AFFIRMED**.

You do not qualify for a special enrollment period.

### **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:**

