



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

## Notice of Decision

Decision Date: August 21, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002162

[REDACTED]

Dear [REDACTED],

On April 27, 2015 you appeared by telephone at a hearing on your March 24, 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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## Decision

Decision Date: August 21, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002162

[REDACTED]

## 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?

## Procedural History

On December 29, 2014 the Marketplace received your updated application for health insurance. You requested insurance only for yourself.

On December 30, 2014 the Marketplace issued an eligibility determination notice, stating that you were eligible to receive up to \$253.00 per month in advance premium tax credits (APTC) and, if you enrolled in silver level health plan, cost-sharing reductions (CSR).

Also on December 30, 2014 the Marketplace issued a letter confirming your enrollment as of December 29, 2014 with Healthfirst Silver.

On March 25, 2015, the Marketplace issued a notice stating that on March 24, 2015 you had requested a telephone hearing to review the issue of the Marketplace's denial of your request for a special enrollment period (SEP).

On April 27, 2015 you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed and it was closed at the end of the hearing.

## Findings of Fact

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

- 1) You testified that in December, before you selected a health plan, you clicked on a link on the Marketplace's website to check what plans your doctors and hospitals accepted.
- 2) You testified that you also checked your doctor's website as to what health plans they accept.
- 3) You testified that Healthfirst was listed as a health plan that was accepted by your doctors so you enrolled into that plan, relying on the information provided by the Marketplace and by your doctor's website.
- 4) You testified in January you realized that the Healthfirst plan that is available through the Marketplace is not accepted by your doctors and that your doctors only accept Healthfirst plans from outside of the Marketplace.
- 5) The record indicates that you contacted the Marketplace at the end of January and submitted a complaint that there were no doctors in your area that accepted Healthfirst. You were advised that you could change the plan but the change would not go into effect until March 1, 2015.
- 6) You testified that you went into your Marketplace account and selected Health Republic as your new plan. However, the record shows that the enrollment was never finalized and you remained enrolled with Healthfirst.
- 7) On March 10, 2015 you contacted the Marketplace and requested a special enrollment period so that you could enroll in Health Republic.
- 8) On or around March 24, 2015 a Marketplace representative contacted you to notify you that you had been denied a special enrollment period. 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).

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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 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

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- (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 10, 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 entitled to appeal Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination.

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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.

Currently at issue is whether you were properly denied a special enrollment period as of March 24, 2015. However, since any Appeal 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.

The Marketplace provided an open enrollment from November 15, 2014 until February 15, 2015; 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 10, 2015 in order to change from Healthfirst Silver to another plan.

You contend that you enrolled in the Healthfirst Silver Plan in reliance upon misinformation through the Marketplace's website that said your doctors and local hospital took that plan. Furthermore, your doctor's website also said they accepted the Healthfirst insurance plan. 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, by action or inaction, made an error or misrepresented information regarding the plan that you selected via their website. You reasonably relied on both the Marketplace and your doctor's web site in selecting your health plan. Therefore, a special enrollment period can be granted under 45 CFR § 155.420(d)(4).

Furthermore, you testified that you attempted to switch plans to Health Republic during the open enrollment period and if that plan had been properly finalized at that time, you would have been enrolled with a new plan prior to the end of the open enrollment period.

Therefore, the Marketplace's determination to deny a special enrollment period is **RESCINDED**.

## **Decision**

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

You are granted a special enrollment period for 60 days as of the date of this decision to change your enrollment in a qualified health plan.

**Effective Date of this Decision:** August 21, 2015

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

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

You have 60 days from the date of this decision to change your enrollment in a qualified health plan.

## **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 **RESCINDED**.

You have 60 days from the date of this decision to change your enrollment in a qualified health plan.

## **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:**

