



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: AP000000002230

[REDACTED]

Dear [REDACTED],

On April 29, 2015 you appeared by telephone at a hearing on your March 30, 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

Decision Date: August 21, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002230

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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?

Procedural History

On February 15, 2015, you enrolled in Fidelis Care Bronze ST INN Pediatric Dental Dep25 (Fidelis Care Bronze) with coverage effective March 1, 2015.

On February 16, 2015, the Marketplace issued a notice confirming your enrollment with Fidelis Care Bronze. The notice further stated that you would be able to change your plan at any time during the open enrollment period. If you missed the open enrollment period, you might not be able to enroll in a health insurance plan through NY State of Health until the next open enrollment period, unless you qualified for a special enrollment period.

On March 3, 2015, you spoke with the Marketplace's Account Review Unit and attempted to change your health insurance plan to a higher metal level by requesting a special enrollment period.

On March 31, 2015, the Marketplace issued a notice stating that on March 30, 2015 you requested a telephone hearing to review the issue of your denial of a Special Enrollment Period (SEP).

On April 29, 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) The record reflects that you submitted your enrollment with Fidelis Care Bronze on February 15, 2015. The record further reflects that your coverage began effective March 1, 2015.
- 2) You testified that you did not have insurance in 2014 and were concerned that you would incur a tax penalty for 2015 if you did not enroll in health insurance. You further testified that you were not familiar with the insurance application process and picked a plan prior to the end of the open enrollment period.
- 3) You testified that you were not aware of the benefits included with the plan you chose at the time of your enrollment.
- 4) You testified that you require cardiovascular medication and realized that the Fidelis Care Bronze plan did not adequately meet your medical needs without causing a financial burden.
- 5) You testified, and the record reflects that you requested to change your enrollment on March 3, 2015 in order to upgrade your metal level and find a plan that better suited your needs. You testified that you were told your request was late, because the open enrollment period had closed. The record further reflects that your request for a special enrollment period was denied on March 3, 2015 because you did not meet the requirements 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%99waiting-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
 - (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)).

The Marketplace has provided a special enrollment period for individuals who were uninsured in 2014 and owed a federal tax penalty ("Special Enrollment Periods," <http://info.nystateofhealth.ny.gov/SpecialEnrollmentPeriods>). For those who qualified, the SEP began on March 1, 2015 and ended at 11:59 p.m. on April 30, 2015 (*id*). However, individuals who owed a fee for not having coverage in 2014, but were already enrolled in coverage through the Marketplace for 2015, could not use the special enrollment period to switch plans ("Owe a fee for not having health coverage in 2014? You may still be able to get coverage for 2015,"

<https://www.healthcare.gov/blog/tax-penalty-special-enrollment-period-for-2015-health-coverage/>)

Legal Analysis

On March 3, 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 31, 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 31, 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 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 completed your enrollment with Fidelis Care Bronze on February 15, 2015, which was within 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 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 March 3, 2015 in order to switch into a plan that better suited your needs.

The Marketplace granted a special enrollment period, from March 1, 2015 to April 30, 2015, for individuals who were uninsured in 2014 and owed a federal tax penalty. The special enrollment period was not extended to include individuals who were already enrolled in coverage through the Marketplace for 2015 and wanted to switch plans.

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You credibly testified that you were uninsured in 2014 and were concerned about the tax penalty you would incur, however you enrolled in a health insurance plan through the Marketplace for 2015 coverage during the open enrollment period.

Therefore, the credible evidence of record indicates that no 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 21, 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)).

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

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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:

