



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

Notice of Decision

Decision Date: October 10, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002256

[REDACTED]

Dear [REDACTED],

On August 10, 2015, you appeared by telephone at a hearing regarding the NY State of Health Marketplace's determination on your March 31, 2015 request for 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 Date: October 10, 2015

NY State of Health Number: [REDACTED]
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[REDACTED]

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 to change your qualified health plan?

Procedural History

The Marketplace received your initial application for health insurance on February 13, 2015.

On February 14, 2015, the Marketplace issued an eligibility determination notice based on your February 13, 2015 application. It stated, in relevant part, that you were eligible to enroll in a qualified health plan (QHP) at full cost, effective March 1, 2015. The notice also stated that you were not eligible for Medicaid, Child Health Plus, cost-sharing reductions (CSR) or tax credit to help pay for the cost of coverage since the income you provided in your application was greater than that allowable income limit for those programs.

On that same day, the Marketplace issued a notice confirming your enrollment in a Fidelis Care Gold ST INN Pediatric Dental Dep25 plan and a Dentegra Dental PPO Family Basic Plan, stand-alone dental plan at a combined premium cost of \$505.22. The notice further stated that if you paid your first month's premium, your coverage could begin as early as March 1, 2015.

On April 1, 2015, the Marketplace issued a notice acknowledging your appeal request on March 31, 2015. The notice stated that the reason for the appeal is

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“[c]onsumer does not meet the requirement for an SEP and is requesting the ability to select a plan outside of open enrollment.”

On April 2, 2015, the Marketplace issued a notice reconfirming your enrollment in a Fidelis Care gold-level medical plan and a Dentegra stand-alone dental plan at a combined premium cost of \$505.22. The notice further stated that if you paid your first month's premium, your coverage could begin as early as March 1, 2015.

On August 10, 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 submitted your initial application to the Marketplace on February 13, 2015. You were found eligible to select a qualified health plan at full cost, effective March 1, 2015.
- 2) You testified, and your enrollment details reflect, that you selected, for your coverage, a Fidelis Care gold-level medical plan on February 13, 2015, with such coverage beginning March 1, 2015.
- 3) You testified that you selected that plan based on the Marketplace website options available after including your request to pick a plan that was a gold-level plan and was a plan accepted by your gynecologist.
- 4) You testified that you did not previously confirm with your gynecologist that he or she actually accepted the Fidelis Care gold-level medical plan.
- 5) You testified that after trying to make an appointment with your gynecologist, you were informed that he or she did not accept the Fidelis Care gold-level medical plan.
- 6) You testified that during late March or early April of 2015, you attempted to change your plan and were prevented from doing so.
- 7) You testified that you also wanted to change your plan because you live in New Rochelle, New York and the majority of doctors who accept the Fidelis Care gold-level plan are located in the Bronx, New York.
- 8) No written notice was issued by the Marketplace confirming that you were denied a special enrollment period. However, the Marketplace did issue a

notice acknowledging your appeal request on March 31, 2015. The notice also stated that the reason for your appeal was that the “[c]onsumer does not meet the requirement for a SEP and is requesting the ability to select a plan outside of open enrollment.”

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).

Marketplace Eligibility Determinations

When an individual applies for insurance through the Marketplace, the Marketplace must determine that person’s eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 FR § 435.1200(b)(3)(iii)).

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)).

Open Enrollment Periods

The Marketplace must provide an annual open enrollment period during which qualified individuals may enroll in a qualified health plan (QHP) and enrollees may change QHPs (45 CFR § 155.410(a)). The open enrollment period for the benefit year beginning on January 1, 2015 during which a qualified individual may enroll in a QHP and enrollees may change QHPs begins on November 15, 2014 and extends through February 15, 2015 (45 CFR § 155.410(e)).

However, the open enrollment period was 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>).

Special Enrollment Periods

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 QHP. A special enrollment period may be permitted when one of the following triggering events occurs:

- 1) The qualified individual or his or her dependent
 - a. loses health insurance considered to be minimum essential coverage
 - b. is enrolled in a non-calendar-year health insurance policy that will expire in 2014, even if they have the option to renew the policy
 - c. loses pregnancy-related coverage
 - d. loses 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,
- 3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status,
- 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,
- 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,
- 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,

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- 7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move,
- 8) The qualified individual who is an Indian may enroll in a QHP or change from one QHP to another one time per month,
- 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 31, 2015, you spoke with Marketplace Customer Service and requested a special enrollment period (SEP). The record does not contain a notice of eligibility determination or redetermination on the issue of the SEP. 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 “[c]onsumer does not meet the requirement for an SEP and is requesting the ability to select a plan outside of open enrollment.”

In this particular case, the lack of a notice of eligibility determination on the issue of 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 Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Second, the text of the April 1, 2015 notice, which acknowledges the appeal on the issue of SEP denial, permits an inference that the Marketplace did deny your SEP request. Third, since 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.

The Marketplace provided an open enrollment from November 15, 2014 until February 15, 2015, or February 28, 2015 if you had taken the necessary steps to apply for coverage on or before the February 15, 2015 deadline but were unable to complete the enrollment process. The record shows that you enrolled in the

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Fidelis Care gold-level health plan on February 13, 2015, with such coverage to take effect on March 1, 2015.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in a health plan or to change health plans offered through the Marketplace.

You testified that you selected the Fidelis Care gold-level medical plan based on the Marketplace website options available to you after including your request to pick a plan that was a gold-level plan and was a plan accepted by your gynecologist. However, you also testified that you did not independently confirm with your gynecologist that he or she accepted Fidelis Care gold-level medical plan.

By the time you contacted the Marketplace during late March or early April to switch health plans, you were informed that the open enrollment period had lapsed and that you had been denied a special enrollment period

The facts as set out in the record do not suggest that any triggering event described in 45 CFR § 155.420(d) has occurred.

Therefore, the Marketplace's determination to deny a SEP is AFFIRMED.

Decision

The Marketplace's decision to deny your March 31, 2015 request for a special enrollment period is AFFIRMED.

Effective Date of this Decision: October 10, 2015

How this Decision Affects Your Eligibility

You may remain enrolled in Fidelis Care gold-level medical plan with an authorized start date of March 1, 2015.

You may change your plan during the annual open enrollment period, which will begin on November 15, 2015 and will end on February 15, 2016.

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:
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Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The Marketplace's decision to deny your March 31, 2015 request for a special enrollment period is **AFFIRMED**.

You may remain enrolled in Fidelis Care gold-level medical plan with an authorized start date of March 1, 2015.

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You may change your plan during the annual open enrollment period, which will begin on November 15, 2015 and will end on February 15, 2016.

Legal Authority

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A Copy of this Decision Has Been Provided To:

