



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

Notice of Decision

Decision Date: June 30, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002316

[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 November 17, 2014 notice of disenrollment and March 17, 2015 eligibility determination.

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).

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[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 disenroll your wife from coverage effective November 30, 2104?

Did the Marketplace properly determine that your wife's reenrollment was effective no earlier than January 1, 2015?

Procedural History

Your wife was initially enrolled in a health insurance plan through the Marketplace effective February 1, 2014.

On June 29, 2014, the Marketplace issued a notice stating that it required information regarding proof of immigration and proof of Social Security number for your wife. It stated that if the information was not provided before September 29, 2014, it might not be able to continue to provide you with insurance coverage.

Your wife was subsequently enrolled in a different qualified health plan, initially effective from August 1, 2014 to December 31, 2014.

On November 6, 2014 and November 16, 2014, the Marketplace issued renewal notices, stating that additional information was needed in order to determine whether you and your spouse would qualify for financial assistance in paying for health insurance coverage. The notices also stated that you should update your account by December 15, 2014, or your financial assistance might end. The

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notices did not indicate that your spouse's eligibility to enroll in health insurance through the Marketplace might also end. The notices also did not specify what information was needed.

On November 17, 2014, the Marketplace issued a notice of disenrollment stating that your wife's coverage was terminated effective November 30, 2014, because she was no longer eligible to enroll in health insurance through the Marketplace. The notice did not explain why she was no longer eligible to enroll.

On December 21, 2014 and December 22, 2014, the Marketplace issued eligibility determinations stating that you were eligible, and your wife conditionally eligible, to enroll in coverage through the Marketplace at full cost. The notice stated that you needed to submit information regarding your wife's immigration status and her Social Security number before March 22, 2015.

On December 21, 2014, the Marketplace issued a notice confirming that you and your wife were enrolled in the PrimarySelect Gold plan. The notice stated that if you paid your premium, the plan could be effective as early as January 1, 2015. The notice also stated that you still needed to submit information regarding your wife's immigration status and her Social Security number before March 22, 2015, or the Marketplace would use the information currently on the record to finalize your eligibility determination. This might result in losing financial assistance or the cancellation of your coverage.

On December 28, 2014, the Marketplace issued a notice stating that you individually would be disenrolled from your plan effective December 31, 2014. No explanation was provided as to why you were disenrolled.

Also on December 28, 2014, the Marketplace issued a notice stating that your wife would be disenrolled from your plan effective December 31, 2014, because she was no longer eligible to enroll in coverage through the Marketplace. No explanation was provided as to why your wife was no longer eligible to enroll.

On January 3, 2015, the Marketplace issued a notice stating that you and your wife were again enrolled in PrimarySelect Gold Plan. If you paid the first month's premium, your coverage could be effective as early as January 1, 2015.

Also on January 3, 2015, the Marketplace issued an eligibility determination notice stating that you were eligible, and your wife conditionally eligible, to enroll in coverage through the Marketplace at full cost, effective February 1, 2015. The Marketplace again asked for information regarding your wife's immigration status and Social Security number.

On January 27, 2015, the Marketplace issued an eligibility determination stating notice that you were eligible, and your wife conditionally eligible, to enroll in coverage through the Marketplace, effective March 1, 2015, and to receive

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advance premium tax credits (APTC) to help pay for the cost of insurance. Your infant daughter was found conditionally eligible for Child Health Plus, with a \$60.00 per month premium, effective March 1, 2015. The Marketplace asked for information regarding your wife's immigration status and Social Security number and your daughter's citizenship status and her Social Security number. It requested the information by April 28, 2015.

On February 20, 2015, the Marketplace issued an eligibility determination stating that you were eligible, and your wife conditionally eligible, to enroll in coverage through the Marketplace, and to receive APTC, effective March 1, 2015. Your infant daughter was found conditionally eligible for Child Health Plus, with a \$60.00 per month premium, effective March 1, 2015. The Marketplace asked for information regarding your wife's immigration status and Social Security number and your daughter's citizenship status and her Social Security number. It requested the information by April 28, 2015.

On March 17, 2015, the Marketplace issued an eligibility determination stating that you were eligible, and your wife conditionally eligible, to enroll in coverage through the Marketplace, and to receive APTC, effective May 1, 2015. Your infant daughter was found eligible for Child Health Plus, with a \$45.00 per month premium, effective May 1, 2015. The Marketplace asked for information regarding your wife's immigration status and Social Security number. It requested the information by May 20, 2015.

On April 7, 2015, you requested an appeal regarding the gap in coverage for your wife and the unpaid medical bills for your wife and your daughter.

On May 15, 2015, the Marketplace issued a notice advising you that additional information was still needed to confirm your wife's eligibility. The only additional information this notice requested was, "Proof of Immigration." The notice stated that a non-immigrant visa holder could produce a US visa to show her status.

On May 19, 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) On February 28, 2014, various documents were uploaded to your Marketplace account, including a copy of your marriage license, a copy of your wife's passport from India, and a copy of a US visa.

- 2) Your wife's passport number is [REDACTED], and it is valid from October 19, 2010 to October 18, 2020. It contains a visa for entry into the United States, which is effective from February 10, 2014 to October 1, 2015 and accompanied by a stamp from US Customs and Border patrol, showing she entered the United States on February 16, 2014. It is a class H4 visa.
- 3) You testified that you are planning on obtaining an extension of your wife's visa when it expires.
- 4) You testified that as far as you knew, you had already submitted all the necessary documentation in February 2014.
- 5) In a notice issued on May 15, 2015 (Appellant's Exhibit 1), the Marketplace told you that in order to demonstrate your wife's status in this country, she could produce her US visa, which allowed her legally into the country. Copies of her passport and her visa had been provided to the Marketplace on February 28, 2014.
- 6) You testified that your wife gave birth to your daughter on [REDACTED], and that medical bills for both your wife and your daughter have not been paid.
- 7) The November 6, 2014 and November 16, 2014, notices did not state that your wife's eligibility to enroll in a qualified health plan through the Marketplace might be in jeopardy if you failed to submit the required information before December 15, 2015.
- 8) Before the December 15, 2015 deadline, you received a notice stating that your wife's coverage would terminate effective November 30, 2014.
- 9) You testified that you plan on filing your 2015 tax return as married, filing jointly.

Applicable Law and Regulations

Annual Eligibility Redetermination

The Marketplace must redetermine the eligibility for health insurance and financial assistance to help pay for that health insurance of a qualified individual on an annual basis by either obtaining information from federal data sources or by allowing the individual to update changes in their income and family size (45 CFR § 155.335(a), (b), (e)).

The Marketplace must notify the qualified individual of the projected eligibility (45 CFR § 155.335(c)).

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For the benefit year beginning January 1, 2015, the Marketplace must ensure coverage is effective on January 1, 2015 for qualified health plan (QHP) selections made on or before December 15, 2014 (45 CFR § 155.410(f)(1)). The New York State of Health extended the December 15, 2014 deadline to December 20, 2014, for coverage beginning January 1, 2015 (NY State Department of Health Press Release, December 12, 2014).

Citizenship / Immigration Status

To enroll in a QHP through the Marketplace, an applicant must be a citizen or national of the United States or a noncitizen who is lawfully present in the United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1)).

The Marketplace must verify or obtain information in order to determine that an applicant is eligible for enrollment in a QHP, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

An H-1B visa is a non-immigrant visa for the United States under the Immigration and Nationality Act (8 USC § 1101(a)(15)(H)). It allows United States employers to temporarily employ foreign workers in specialty occupations. An H-4 visa is issued to immediate family members (spouse and children under 21 years of age) of H-1B visa holders.

Legal Analysis

This first issue under review is whether the Marketplace properly determined that your wife's coverage was terminated effective November 30, 2014.

The Marketplace is required to redetermine eligibility for health insurance and financial assistance to help pay for that health insurance every year. It was therefore appropriate that the Marketplace sent out the November 6, 2014 and November 16, 2014 renewal notices, which requested additional information.

However, those notices were required to inform you of your family's projected eligibility, and there was no indication in either notice that your wife's eligibility to enroll in the Marketplace was in jeopardy. The notices only stated that you might not be eligible for financial assistance.

The first indication that your then pregnant wife might lose her eligibility to remain enrolled in her health insurance plan was the November 17, 2014 notice, which stated that her enrollment would end on November 30, 2014, without further explanation.

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Further, evidence of your wife's legal entry into the United States was submitted to the Marketplace on February 28, 2014. The passport has not expired, nor has your wife's visa. Additionally, you credibly testified that you plan on requesting an extension of your wife's visa when it expires.

There has been no explanation in any of the notices regarding why the documentation of your wife's legal presence in the United States might be insufficient.

Therefore, in the absence of any evidence or even allegation to the contrary, it is found that your wife was and is legally present in the United States. Since the latest notice that the Marketplace sent to you includes no other basis for a determination that your wife was not eligible to enroll in a qualified health plan (QHP) at full cost through the Marketplace, it is found that she was and has remained eligible to enroll in a QHP through the Marketplace, and she should not have been disenrolled from coverage effective November 30, 2014.

Because it has been determined that your wife should not have been disenrolled from coverage, it is no longer necessary to reach the issue of the appropriate reenrollment date.

It is further found that in the event that the actual issue is the lack of a Social Security or tax identification number, the Marketplace has failed to make that clear to you and should do so immediately. For the purpose of providing due process, you are provided with an extended period in which to submit such information to the Marketplace, extending to 90 days after the Marketplace specifies that it is necessary for you to do so.

Decision

The November 17, 2014 notice of disenrollment is **RESCINDED**, and the matter is restored to the Marketplace to effectuate continuous coverage for your wife after November 30, 2014, as well as the appropriate coverage for your infant daughter from her birth onwards. To the extent that any subsequent eligibility determination references any gap in coverage, it is **MODIFIED** to reflect that your wife's coverage has been in effect continuously to date.

The matter is returned to the Marketplace to put this finding into effect, and to address issues regarding unpaid medical bills.

Effective Date of this Decision: June 30, 2015

How this Decision Affects Your Eligibility

Your wife's coverage is deemed to have been in effect continuously to date. The matter is returned to the Marketplace to effectuate this change and to address any unpaid medical bills.

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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- By fax: 1-855-900-5557

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Summary

The November 17, 2014 notice of disenrollment is RESCINDED, and the matter is restored to the Marketplace to effectuate continuous coverage for your wife after November 30, 2014, as well as the appropriate coverage for your infant daughter from her birth onwards. To the extent that any subsequent eligibility determination references any gap in coverage, it is MODIFIED to reflect that your wife's coverage has been in effect continuously to date.

The matter is returned to the Marketplace to put this finding into effect, and to address issues regarding unpaid medical bills.

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]