



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

Notice of Decision

Decision Date: September 3, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002363



Dear [REDACTED],

On May 8, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health 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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Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did the Marketplace properly determine that you and your spouse were not eligible for a special enrollment period to enroll in a qualified health plan?

Procedural History

On November 7, 2014, the Marketplace issued a renewal notice that you and your spouse were re-enrolled in the same health plan you had for 2014, that is, Empire Blue Cross Blue Shield (BCBS) Silver, effective January 1, 2015, and were eligible to share in advance premium tax credits of up to \$615.05 per month and cost sharing reductions.

That notice also stated that your one-year-old child was eligible for Medicaid and enrolled in United Healthcare Community Plan effective January 1, 2015; and your four-year-old child still qualified to get Medicaid, effective January 1, 2015, but needed to pick a plan.

On November 14, 2014, the Marketplace issued a notice that it had reviewed your application and more information was needed about you and your spouse by December 1, 2014, specifically regarding your household income.

On November 15, 2014, the Marketplace issued a disenrollment notice that coverage for you and your spouse will end effective November 30, 2014 because you were no longer eligible to enroll in your current health plan.

On January 14, 2015, the Marketplace issued a notice of eligibility redetermination that, based on a reported household income of \$53,999.84, you and your spouse were eligible for advance premium tax credits of up to \$416.00 per month effective February 1, 2015. The notice also stated that your four-year-old child was eligible to enroll through Child Health Plus (CHP) with a \$15.00 premium per month effective February 1, 2015; and your one-year-old child was no longer eligible for Medicaid, however coverage under Medicaid would continue as of January 1, 2015 until October 31, 2015.

That same day, the Marketplace issued an enrollment notice confirming that your one-year-old child had coverage under Medicaid Fee for Services (FFS) effective January 1, 2015, and with UnitedHealthcare of New York, Inc., a Medicaid Managed Care (MMC) plan, effective March 1, 2014 (should read "2015"). It also stated that you, your spouse, and your four-year-old child have not chosen a health plan and provided plan enrollment information for Child Health Plus and qualified health plans. In the "Enrollment in your Qualified Health Plan" section, the notice stated that the annual open enrollment period for 2015 began November 15, 2014 and will end February 15, 2015, and if you miss the deadline to enroll in a plan, you may not be able to enroll in a health insurance plan through NY State Of Health until the next open enrollment period (November 15, 2014 through February 15, 2015), unless you qualify for a special enrollment period.

On March 3, 2015, the Marketplace issued a notice of eligibility redetermination that, based on a reported household income of \$53,999.84, you and your spouse remain eligible to receive up to \$416.00 per month of advance premium tax credits and, if you select a silver-level qualified health plan, eligible for cost sharing reductions effective April 1, 2015. The notice further stated that your four-year-old child is eligible to enroll through CHP with a \$15.00 premium per month effective April 1, 2015; and your one-year-old child has continuous Medicaid coverage until October 31, 2015.

That same day, the Marketplace issued an enrollment notice confirming that your four-year-old child is enrolled with Healthfirst PHSP, Inc., a CHP plan, and that coverage could start as early as April 1, 2015, after the first month's premium was paid. It also confirmed that your one-year-old child had coverage under Medicaid FFS beginning January 1, 2015 and UnitedHealthcare of New York, Inc. beginning March 1, 2014 (should read "2015"). The notice also stated that you and your spouse had not chosen a plan yet and that, if you missed the open enrollment period for 2015, that is by February 15, 2015, you may not be able to enroll in a health insurance plan through NY State of Health until the next open enrollment period, unless you qualify for a special enrollment period.

On April 10, 2015, you spoke with a representative from the Marketplace's Account Review Unit and appealed being denied a special enrollment period for you and your spouse to enroll in a qualified health plan with tax credits outside the open enrollment period.

On May 8, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. A Japanese Interpreter ([REDACTED]) assisted at the hearing. The record was developed and held open for up to fifteen days to allow you the opportunity to submit supporting documentation.

On May 14, 2015, the Marketplace received an eleven page fax from you. It consisted of (1) A snapshot of "Enrollment in Progress" pages taken from your Marketplace account; (2) A snapshot of "My Documents" page; and, (3) Copies of three paychecks and earnings statements for the months of October, November, and December 2014. This eleven page fax was made part of the record as "Appellants Exhibit A").

Since the requested documents were submitted on May 14, 2015, the record was closed that same day.

Findings of Fact

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

- 1) According to your Marketplace account and your testimony at hearing, you and your spouse were enrolled in a qualified health plan and received advance premium tax credits in 2014.
- 2) You testified that, based on the November 7, 2014 renewal notice, you thought that you and your spouse were automatically re-enrolled for 2015 in the same qualified health plan you had in 2014.
- 3) You testified that you learned that this was not the case when you realized you had to provide proof of income, which according to the "My Documents" snapshot you provided and your Marketplace account, were uploaded to your account on January 13, 2015 (Appellants' Exhibit A, pp. 4-11). You testified that you uploaded these documents to complete your Marketplace application with the assistance of a Navigator named [REDACTED] (Appellants' Exhibit A, p.2).
- 4) According to your Marketplace account, on January 13, 2015 after your uploaded documents were submitted, the Marketplace made a preliminary eligibility redetermination that you and your spouse were eligible to share in APTC of up to \$416.00 per month and cost sharing reductions.
- 5) You provided a copy of the snapshot that you took of your Marketplace account showing that your enrollment was in progress and that you and your spouse had selected Healthfirst Silver Leaf Premier NS INN Family, Dental Dep25 and Family Vision, with a monthly premium responsibility of \$384.75 after the monthly APTC of \$416.00 was deducted. The coverage period is stated as "03/01/2015 – 12/31/2015" (Appellants' Exhibit A, p. 1).

- 6) You testified that when you received the March 3, 2015 notices of eligibility redetermination and enrollment, you became aware for the first time that your enrollment had not been processed and you and your spouse were not enrolled in Healthfirst Silver Leaf Premier.
- 7) You testified that you went back to the Navigator to ask what had happened and he seemed surprised because he, too, thought your enrollment had been processed for coverage to begin March 1, 2015.
- 8) You testified that on March 11, 2015 you contacted the Marketplace to complain that you and your spouse were unable to pick a plan and to request a special enrollment period. This interaction was recorded by the Marketplace in an internal note of that same date.
- 9) According to an internal notes of April 4, 2015 and April 7, 2015, your request for a special enrollment period was not granted because there was no qualifying life event and you had received notices of the need to choose a health plan previously.
- 10) You testified that you are only appealing you and your spouse's ability to qualify for a special enrollment period because your enrollment was not processed by the Marketplace although it had been timely submitted.
- 11) You testified that your projected income for 2015 is now higher and you expect to earn \$60,000.00 from self-employment and will take the self-employment tax deduction of one-half, which is \$600.00 in your case, leaving an adjusted gross income of \$59,400.00.

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).

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

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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 and Special Enrollment Periods

The Marketplace must provide an initial open enrollment period and 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)).

The 2015 annual open enrollment period began November 15, 2014 and extended through February 15, 2015 (45 CFR § 155.410(e)).

For the benefit year beginning January 1, 2015, QHP coverage takes effect on January 1, 2015 for plans selected in the Marketplace on or before December 20, 2014 (45 CFR § 155.410(f)(1); NY State of Health Extends December 15 Enrollment Deadline, <http://info.nystateofhealth.ny.gov/news/press-release-ny-state-health-extends-december-15-enrollment-deadline> [last updated December 12, 2014]).

The Marketplace must ensure coverage is effective on February 1, 2015, for QHP selections received by the Marketplace by January 15, 2015 (45 CFR § 155.410(f)(1)(ii)).

The Marketplace must ensure coverage is effective on March 1, 2015, for QHP selections received by the Marketplace by February 15, 2015 (45 CFR § 155.410(f)(1)(iii)).

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. (45 CFR § 155.420(d)). One triggering event under which this is permitted is when 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... (45 CFR § 155.420(d)(4)).

Legal Analysis

On March 11, 2015, the record reflects that you spoke with Marketplace Accounts Review representative to request a special enrollment period for you and your spouse, which was denied on April 4, 2015. However, the record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period (SEP). The March 3, 2015 notice simply explains the enrollment process in generic

terms and does not specify that you and your spouse do not qualify for a special enrollment. Your Marketplace account does contain an April 11, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issue on appeal as “Denial of Special Enrollment Period.”

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. 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. In addition to the Marketplace’s internal notes on the subject of special enrollment, the text of the April 11, 2015 notice, which acknowledges the appeal on the issue of SEP denial, permits an inference that the Marketplace did deny your SEP request. Since 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.

For purposes of this analysis, your tax household consists of you, your spouse, and your two children, so you are in a four-person tax household.

Qualified health plan (QHP) coverage takes effect March 1, 2015 for plans selected in the Marketplace, during the open enrollment period, or by February 15, 2015. You credibly testified and provided documentary proof that you attempted to choose a health plan through the Marketplace before February 15, 2015, with the assistance of your broker, and you both believed you had successfully selected Healthfirst Silver for you and your spouse with coverage to begin March 1, 2015. Your Marketplace account showed this selection and the coverage period of “03/01/2015 to 12/31/2015” for you and your wife and what your monthly premium would be after your APTC of \$416.00 was deducted, as is evidenced in your Appellants’ Exhibit at Page 1. You further testified that you were unaware that your selection had not been processed until you received the March 3, 2015 eligibility redetermination notice from the Marketplace.

The record as a whole indicates that you first updated your income information on January 13, 2015, and selected a plan for you and your spouse before February 15, 2015, the last day of open enrollment, such that coverage should have begun with Healthfirst Silver on March 1, 2015. However, without explanation, your selection was not processed and by March 2, 2015, when you again contacted the Marketplace, the open enrollment had ended. Since the record establishes your intent to comply and select a health plan for you and your spouse before open enrollment ended on February 15, 2015 and there is no explanation as to why it was not processed, a special enrollment period should have been granted under 45 CFR §155.420(d)(4).

Therefore, the case is returned to the Marketplace to redetermine eligibility for a four-person household with a 2015 annual income of \$59,400.00 for health insurance coverage for a couple in Queens County, New York.

The scrivener's errors in the March 3, 2015 enrollment notice stating MMC coverage with UnitedHealthcare of New York, Inc. for both of your children are changed from "2014" to read "2015."

Decision

The April 4, 2015 and April 7, 2015 denials of a special enrollment period are RESCINDED.

Your case is RETURNED to the Marketplace to redetermine your and your spouse's eligibility for financial assistance using a four-person household with an expected income of \$59,400.00 in 2015 for coverage for a couple residing in Queens County, New York.

Effective Date of this Decision: September 3, 2015

How this Decision Affects Your Eligibility

This decision is not a final determination of your and your spouse's eligibility for financial assistance.

Your case is returned to the Marketplace to redetermine your and your spouse's eligibility for financial assistance. The Marketplace will issue a determination based on a four-person household with an expected income of \$59,400.00 in 2015 for coverage for a couple residing in Queens County, New York.

You and your spouse are granted a special enrollment period of 60 days thereafter in which to confirm your selection and enrollment in a qualified health plan through the Marketplace.

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.

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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 April 4, 2015 and April 7, 2015 denials of a special enrollment period are RESCINDED.

This decision is not a final determination of your and your spouse's eligibility for financial assistance.

Your case is returned to the Marketplace to redetermine your and your spouse's eligibility for financial assistance. The Marketplace will issue a determination based on a four-person household with an expected income of \$59,400.00 in 2015 for coverage for a couple residing in Queens County, New York.

You and your spouse are granted a special enrollment period of 60 days thereafter in which to confirm your selection and enrollment in a qualified health plan through the Marketplace.

Legal Authority

We are sending you this notice in accordance with federal regulation 45 CFR § 155.545(a).

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A Copy of this Decision Has Been Provided To:

