



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: AP000000002373

[REDACTED]

Dear [REDACTED]

On July 31, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's April 11, 2015 and May 2, 2015 eligibility determinations.

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 were not eligible for a special enrollment period to enroll in a qualified health plan through the Marketplace?

Procedural History

On March 21, 2015, the Marketplace issued an eligibility determination notice based on your March 20, 2015 application. It stated that you were eligible to enroll in a qualified health plan (QHP) at full cost, effective May 1, 2015. It further stated that you qualified to select a health plan outside of the open enrollment period for 2015, and that you needed to select a plan no later than April 2, 2015.

On April 10, 2015, the Marketplace received your revised application for health insurance.

On April 11, 2015, the Marketplace issued an eligibility determination notice based on your April 10, 2015 application. It stated that you were eligible to enroll in a QHP at full cost, effective May 1, 2015. It did not state whether you had qualified for a further special enrollment period (SEP) in order to enroll in a plan outside of the open enrollment period. You appealed this determination insofar as you were found not to have qualified for an SEP to enroll in a plan outside of the open enrollment period.

That same day, the Marketplace received a copy of letter issued by Empire BlueCross BlueShield (Empire BCBS), dated March 11, 2015, stating that your plan coverage had been terminated effective February 1, 2015 for non-payment of premiums.

On May 2, 2015, the Marketplace issued a notice of eligibility determination based on your May 1, 2015 revised application. It stated that you were eligible to enroll in a QHP at full cost, effective May 1, 2015. However, it also stated that you did not qualify for an SEP to select or change a plan outside of the open enrollment period.

On July 31, 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 testified, and provided documentation reflecting, that your plan coverage under Empire BCBS terminated effective February 1, 2015 for non-payment of premiums. The notice confirming the cancellation of your coverage by Empire BCBS was issued to you on March 11, 2015.
- 2) You testified that you first applied for health insurance through the Marketplace on March 20, 2015. You were found eligible to select a qualified health plan at full cost, effective May 1, 2015.
- 3) The notice issued by the Marketplace on March 21, 2015 stated that you qualified to select a plan outside of the open enrollment period, but must select a plan by April 2, 2015.
- 4) You testified that you did not select a plan on the same date of the March 20, 2015 application since you wanted to confirm with your physician on which plans he accepted.
- 5) You testified that because your physician has limited office hours, you were not able to confirm which plans he accepted until sometime in early April 2015.
- 6) You testified, and your application reflects, that you submitted a revised application on April 10, 2015. You further testified that you attempted to select a plan at that time, but were unable to do so.

- 7) You testified that both you and your Certified Application Counselor must have inadvertently missed the language in the March 21, 2015 regarding the April 2, 2015 deadline by which to select a plan, otherwise you would have selected any plan just to have at least some coverage in place prior to the end of your 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 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 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 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,
- 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)).

Unless stated otherwise, a qualified individual has 60 days from the date of a triggering event to select a QHP (45 CFR § 155.420(c)).

Legal Analysis

The issue only issue under appeal is whether the Marketplace correctly determined that you were not eligible for a special enrollment period (SEP) on April 10, 2015 and May 2, 2015.

Federal regulations provide that a qualified individual has 60 days from the date of a triggering event to select a qualified health plan (QHP) in the Marketplace.

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 did not enroll in a health during the open enrollment period by February 15, 2015 or February 28, 2015.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a SEP in order to enroll in a health plan offered in the Marketplace.

Losing your health insurance coverage as of February 1, 2015 was a triggering event that qualified you for a 60-day SEP. The special enrollment period began on the date of your triggering event. Sixty days from February 1, 2015, that 60-day period expired on April 2, 2015.

You testified that after having been found eligible to enroll in a plan on March 20, 2015, you delayed selecting a plan because you wanted to confirm with your physician on which plans he accepted. You testified, and the record reflects, that you did not attempt to select a plan until April 10, 2015. By the time you contacted the Marketplace to enroll in a health plan, you were informed that the open enrollment period had lapsed.

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 eligibility determinations issued on April 10, 2015 and May 2, 2015 are AFFIRMED.

Effective Date of this Decision: October 10, 2015

How this Decision Affects Your Eligibility

This decision does not change your eligibility.

You did not qualify for a special enrollment period after April 2, 2015.

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
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Summary

The Marketplace's eligibility determinations issued on April 10, 2015 and May 2, 2015 are AFFIRMED.

This decision does not change your eligibility.

You did not qualify for a special enrollment period after April 2, 2015.

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:

