



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: AP000000002399



Dear [REDACTED],

On July 23, 2015 you appeared by telephone at a hearing of the Marketplace's April 8, 2015 disenrollment notice and April 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).

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 issues presented for review by the Appeals Unit of the NY State of Health are:

Was your insurance through Empire HMO 0 ST INN Pediatric Dental Dep 25 properly terminated effective January 31, 2015?

Did the Marketplace properly determine that you did not qualify for a special enrollment period as of April 17, 2015?

Procedural History

On December 14, 2014 the Marketplace issued a notice confirming that coverage could start as early as January 1, 2015 in Empire HMO 0 Platinum ST INN Pediatric Dental Dep 25 (Empire) if you pay your first months premium.

On April 8, 2015 the Marketplace issued a disenrollment notice that your Empire plan is terminated effective January 31, 2015 because Empire had not received payment for health insurance premiums.

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On April 14, 2015 you spoke to the Marketplace Account Review Unit and requested an appeal insofar as the termination of your coverage and denial of a special enrollment period.

On April 17, 2015 the Marketplace issued an eligibility determination notice that you are eligible to purchase a qualified health plan through the Marketplace. However, you do not qualify to select a health plan outside of the open enrollment period.

On July 23, 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 were enrolled in Empire HMO 0 Platinum ST INN Pediatric Dental Dep 25 (Empire) on November 18, 2014.
- 2) The Marketplace issued a disenrollment notice of your Empire plan on April 8, 2015 for failure to pay health insurance premiums.
- 3) You testified that you became aware that your plan was cancelled in March or April 2015 when you were no longer eligible for discounts on your prescriptions.
- 4) You testified that you contacted Empire and was notified by an automated message that you were terminated for failure to pay health insurance premiums.
- 5) You testified that you were not receiving notices from the Marketplace or the health insurance plan because you moved on January 15, 2015.
- 6) You testified that your current address is [REDACTED], and that this is the address you would like your decision mailed to.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

Applicable Law and Regulations

Appealable Issues

An applicant has the right to appeal: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination and (5) a denial of a request to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

Special Enrollment Period

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)).

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
 - i) loses health insurance considered to be minimum essential coverage;
 - ii) is enrolled in a non-calendar-year health insurance policy that will expire in 2015, even if they have the option to renew the policy;
 - iii) loses pregnancy-related coverage; or
 - iv) 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; 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 loss of minimum essential coverage by a qualified individual or a dependent as a result of a failure to pay premiums on a timely basis, including COBRA premiums prior to the expiration of coverage, is not a sufficient basis to be awarded a special enrollment period (45 CFR § 155.420(e)).

Legal Analysis

The first issue is whether or not your Empire health insurance coverage was terminated as of January 31, 2015.

An applicant has the right to appeal: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the

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premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination and (5) a denial of a request to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

Since the issue of termination for failure to pay health insurance premiums is not one that the NY State of Health Appeals Unit is authorized to address, we must dismiss that basis of your appeal request.

However, Empire may be able to help you with your request for coverage. If you have not already been assisted with your current coverage issue, please contact Empire at 1-855-748-1806.

In addition, since your issue concerns a health insurer and/or payment, reimbursement, coverage, benefits, rates and premiums, you can contact NY Department of Financial Services at their Consumer Hotline at (800) 342-3736 (Monday through Friday, 8:30 AM to 4:30 PM); or locally to (212) 480-6400; or you can file a complaint at <http://www.dfs.ny.gov/consumer/fileacomplaint.htm>

The Marketplace provided an open enrollment period from November 15, 2014 until February 15, 2015. The record indicates that during the open enrollment period you enrolled in Empire HMO 0 Platinum ST INN Pediatric Dental Dep 25 (Empire) on November 18, 2014. As a result of nonpayment of premiums, your coverage ended on January 31, 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 plan or to change to another health plan offered in the Marketplace.

In certain circumstances a special enrollment period is granted to individuals so that they may enroll in a qualified health plan outside of the open enrollment period if the individual experiences a triggering event. Loss of insurance coverage may be considered a triggering event for purposes of being granted a special enrollment period. However, loss of insurance coverage as a result of failing to pay insurance premiums on a timely basis is not considered a triggering event to support approval of a special enrollment period.

Therefore, since your insurance coverage ended for non-payment of premiums, a non-qualifying event, you are not entitled to a special enrollment period under 45 CFR § 155.420(d)(1).

No evidence has been offered, or argument made, to support granting of a special enrollment period under the remaining provisions of CFR § 155.420(d).

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Since the credible evidence of record confirms that you were ineligible for a special enrollment period, the denial of a special enrollment period is AFFIRMED.

Decision

The April 17, 2015 Marketplace's determination to deny you a special enrollment is AFFIRMED.

This decision does not address your termination of coverage. It informs you of contact information if you choose to pursue your complaint further.

Effective Date of this Decision: September 3, 2015

How this Decision Affects Your Eligibility

This decision does not change your eligibility.

You do not qualify for a special enrollment period to enroll in a qualified health plan for 2015 health insurance coverage.

If you believe you made your premium payment within the required timeframe, please contact your plan directly at 1-855-748-1806.

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)).

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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

Summary

The April 17, 2015 Marketplace's determination to deny you a special enrollment is **AFFIRMED**.

You did not qualify for a special enrollment period to enroll or in a qualified health plan for 2015 health insurance coverage.

If you believe you made your premium payment within the required timeframe, please contact your plan directly at 1-855-748-1806.

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

