



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: AP000000002526

[REDACTED]

Dear [REDACTED]

On May 28, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's March 3, 2015 and April 22, 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).

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## Decision

Decision Date: September 3, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002526

[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 enroll in a qualified health plan, after your coverage was voluntarily terminated effective February 28, 2015?

## Procedural History

On December 14, 2014, the Marketplace issued an enrollment confirmation notice that stated you were enrolled in Fidelis Care and that if you paid your first month's premium, your coverage could start as early as January 1, 2015.

On February 17, 2015, the Marketplace issued a notice confirming your request to terminate your coverage with Fidelis Care on February 16, 2015. It stated that your request had been processed and that your coverage would end effective February 28, 2015.

On March 4, 2015 and on April 22, 2015, the Marketplace issued eligibility determination notice. It stated that you were eligible to enroll in a qualified health plan (QHP) and eligible to receive an advance premium tax credit of up to \$71.00 per month and \$93.00 per month, respectively. The notice also stated that you did not qualify for a special enrollment period to select or change a plan outside of the open enrollment period. You appealed both of these determinations insofar as you were found not to have qualified for a special enrollment period to enroll in a plan outside of the open enrollment period.

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On May 28, 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 that during 2014, you enrolled in a Fidelis Care gold-level plan. You further testified that you selected this plan in part because you were eligible for a greater amount of tax credit.
- 2) You testified that after your plan coverage was renewed during 2015, you were found eligible for a much lower level of tax credit, making the Fidelis Care gold-level plan unaffordable.
- 3) You testified that you tried to research different plans on the Marketplace website, but were prevented from doing so since you were currently enrolled in the Fidelis Care gold-level plan.
- 4) You testified that in order to research different plans, you disenrolled from the Fidelis Care gold-level plan around February 16, 2015. You further testified that after having researched different plans through the Marketplace website, you submitted a new application on March 3, 2015, but you were unable to select a plan.
- 5) On February 17, 2015, the Marketplace issued a notice confirming your voluntary disenrollment from your Fidelis Care gold-level plan on February 16, 2015. Your coverage under this plan terminated effective February 28, 2015.
- 6) You testified that you were told that as long as you were looking at a new plan you could enroll in a plan after February 15, 2015. However, you did not state whether this information was provided to you by a Marketplace or a Fidelis Care representative.
- 7) You testified that you may have erroneously relied upon a news article which stated that you could enroll in a new plan after February 15, 2015, but conceded that this policy may not have been applicable to New York State.

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 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)).

For the benefit year beginning on January 1, 2015, the annual open enrollment period 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-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 their enrollment to another plan. This is permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent loses certain health insurance coverage:
  - (a) Health insurance considered to be minimum essential coverage;
  - (b) Enrolled in any non-calendar year health insurance policy that will expire in 2014, even if they have the option to renew the expiring non-calendar year individual health insurance policy; or
  - (c) Pregnancy-related coverage; or
  - (d) 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

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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)).

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP (45 CFR § 155.420(c)(1)).

## **Legal Analysis**

The only issue under review is whether Marketplace properly determined that you were not eligible for a special enrollment period to enroll in a qualified health plan.

The Marketplace provided an open enrollment from November 15, 2014 until February 15, 2015, and later extended the open enrollment period to February 28, 2015 for people who could not complete their application by the February 15, 2015 deadline. The record reflects that you were enrolled into Fidelis Care during the open enrollment period.

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Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to change to another health plan offered in the Marketplace. Here, you requested a special enrollment period in order to select a new plan after having voluntarily terminated your coverage on February 16, 2015.

When an applicant'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 Marketplace or its instrumentalities, a special enrollment period may be granted.

While you testified that you disenrolled from your Fidelis Care gold-level coverage in order to view and research other plans which may have been available to you at a lower cost, the credible evidence of record shows that you took that step voluntarily and not at the direction of a Marketplace representative or an agent of the Marketplace. You testified that you had relied, in part, on an article which seemed to indicate that you were eligible to enroll in a plan outside of the open enrollment period, but conceded this article was not applicable to New York State. You also testified that you were told that as long as you were looking at a new plan you could enroll in a plan after February 15, 2015. However, your testimony was not specific as to when this occurred or whether this information was provided by a Marketplace representative or an agent of the Marketplace. Accordingly, this does not constitute a triggering event for a special enrollment.

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

Therefore, the Marketplace's determination to deny a special enrollment period, as reflected in the March 4, 2015 and April 22, 2015 eligibility determinations, is **AFFIRMED**.

## **Decision**

The March 4, 2015 and April 22, 2015 eligibility determinations are **AFFIRMED**.

**Effective Date of this Decision:** September 3, 2015

## **How this Decision Affects Your Eligibility**

You did not qualify for a special enrollment period.

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## **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 March 4, 2015 and April 22, 2015 eligibility determinations are AFFIRMED.

You did not qualify for a special enrollment period.

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## **Legal Authority**

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**A Copy of this Decision Has Been Provided To:**

