



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

Notice of Decision

Decision Date: November 09, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002535

[REDACTED]

Dear Ms. [REDACTED]

On July 2, 2015, you appeared by telephone at a hearing on the denial of your request for 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 Code of Federal Regulation (CFR) 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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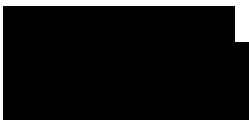


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P.O. Box 11729
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Decision

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Issues

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

Did the Marketplace properly determine that you and your spouse were not eligible for a special enrollment period, as of March 2, 2015?

Did the re-enrollment in a qualified health plan for you and your spouse properly become effective June 1, 2015?

Procedural History

On December 12, 2014, the Marketplace issued a notice confirming enrollment with MVP Premier Gold Gold ST INN Dep25 for you and your spouse. The notice stated that if you paid the premium, coverage could begin as early as January 1, 2015.

On December 16, 2014, the Marketplace issued a notice confirming your request to cancel your insurance coverage with MVP Premier Gold Gold ST INN Dep25, as of December 15, 2014.

Also on December 16, 2014, the Marketplace issued a notice confirming enrollment with EssentialCare Silver ST INN Dep25 for you and your spouse, effective January 1, 2015.

On January 21, 2015, the Marketplace issued a notice confirming enrollment with EssentialCare Silver ST INN Dep25 for you and your spouse, effective January 1, 2015.

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On March 13, 2015, you updated your account.

On April 2, 2015, the Marketplace issued a notice of eligibility determination stating that you and your spouse would “continue to receive services through your current health plan.”

On April 23, 2015, the Marketplace issued a notice stating that, on April 22, 2015, you requested a telephone hearing to review the issue of your denial of a special enrollment period (SEP).

On May 30, 2015, the Marketplace issued a notice of eligibility redetermination stating that you and your spouse were eligible to receive advance premium tax credits and qualify to select a health plan outside of the open enrollment period for 2015. This eligibility was effective June 1, 2015.

On July 2, 2015, you had a telephone hearing with a Hearing Officer from the Appeals Unit of NY State of Health. At that time, Certified Application Counselor [REDACTED] was sworn in and appeared as a witness. 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 the record reflects, that you applied and modified your application for health insurance with the assistance of Certified Application Counselor [REDACTED].
- 2) You testified, and the record reflects, that you enrolled in EssentialCare Silver ST INN Dep25 (EssentialCare Silver) with Health Republic Insurance of New York on December 15, 2014. Your account indicates that this coverage became effective on January 1, 2015.
- 3) You testified that you wanted to switch health plans in January 2015 upon becoming pregnant, because your doctor only accepted plans through MVP Health Care.
- 4) [REDACTED] testified that she attempted to change your plan from EssentialCare Silver to MVP Premier Plus Silver 2 Silver NS INN Dep Acupuncture Home Health Care Three PCP visits covered in full Wellness (MVP Premier Plus Silver) on January 20, 2015. She further testified that she did not disenroll you from the EssentialCare Silver plan before attempting to enroll you in the MVP Premier Plus Silver plan because she was not trained to do that. She further testified that she

believed your enrollment with MVP Premier Plus Silver had been completed.

- 5) [REDACTED] testified she may have erred in attempting to change your enrollment on January 20, 2015, which resulted in maintaining your already existing enrollment with EssentialCare Silver.
- 6) The record reflects that your account was updated on January 20, 2015. The record further reflects that [REDACTED] updated your health plan enrollment multiple times on that same day.
- 7) The Marketplace's records indicate that your Certified Application Counselor contacted the Marketplace on March 2, 2015 regarding what she referred to as an error in our system; that is, that she had attempted to change your enrollment in "late January" and that she had done so incorrectly.
- 8) You testified that you contacted [REDACTED] in March 2015 because you realized that your enrollment had not been changed from EssentialCare Silver to MVP Premier Plus Silver. The record reflects that your application was updated by [REDACTED] on April 1, 2015. You testified that you spoke with a Marketplace Representative on that same day because you were unable to change your plan at that time.
- 9) According to the notes associates with your Marketplace account, you were granted a special enrollment period on May 20, 2015 by "[REDACTED]" (NY State of Health Exhibit 1). The same notes indicate that you and your spouse were enrolled in "MVP product for 6/1" by "[REDACTED]" (NY State of Health Exhibit 1).
- 10) The Marketplace's system reflects that your account was adjusted on May 29, 2015, and that you and your spouse were enrolled in MVP Premier Plus Silver. The Marketplace's system further reflects that your coverage through this plan was effective June 1, 2015.
- 11) You are requesting to retroactively apply your coverage with MVP Premier Plus Silver beginning March 1, 2015.

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).

Special Enrollment Periods

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-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 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 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)).

Misinformation or misrepresentation, as it relates to special enrollment periods, includes, “[m]isconduct by a non-Marketplace enrollment assister (like an insurance company, navigator, certified application counselor, or agent or broker) [that] resulted in [the consumer]:

- Not getting enrolled in a plan
- Being enrolled in the wrong plan
- Not getting the premium tax credit or cost-sharing reduction [they] were eligible for”

(<https://www.healthcare.gov/sep-list/>, retrieved October 23, 2015).

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)).

Legal Analysis

On or around March 2, 2015, your Certified Application Counselor, [REDACTED] [REDACTED] contacted the Marketplace regarding what she referred to as an error in our system, in order to change your health plan enrollment. The record does not contain a notice of eligibility determination or redetermination on the issue of a request for a special enrollment period. It does contain an April 23, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issue on appeal as “Denial of Special Enrollment Period.”

Generally, in the absence of a written eligibility determination, the Appeals Unit would not be able to review your request regarding a special enrollment period (SEP); instead, the matter would be returned to the Marketplace for such a determination to be issued. However, given the circumstances of this particular case, including the length of time since you first requested an SEP, the lack of a notice of eligibility determination on the issue of special enrollment periods will 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. The text of the April 23, 2015 notice, which acknowledges the appeal on the issue of the special enrollment period denial, permits an inference that the Marketplace did deny your special enrollment period request.

Currently at issue is whether the Marketplace properly determined that you did not qualify for an SEP as of March 2, 2015. Since Appeals Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to a notice of denial of a special enrollment period had it been issued.

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).

The Marketplace provided an open enrollment from November 15, 2015 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 submitted your modified application for health insurance on January 20, 2015, which was within the open enrollment period.

You testified, and [REDACTED] confirmed through sworn testimony, that you attempted to switch your health insurance plan from EssentialCare Silver ST INN Dep25 (EssentialCare Silver) to MVP Premier Plus Silver 2 Silver NS INN Dep Acupuncture Home Health Care Three PCP visits covered in full Wellness (MVP Premier Plus Silver) on January 20, 2015. However, an error by Ms. [REDACTED] or the Marketplace itself resulted in your enrollment with EssentialCare Silver remaining unchanged.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered in the Marketplace. Here, the credible evidence of record indicates that Ms. [REDACTED] erred when she failed to switch your enrollment from EssentialCare Silver to MVP Premier Plus Silver on January 20, 2015, due to improper training. This error was corroborated by Ms. [REDACTED] testimony at the hearing. The record further reflects that Ms. [REDACTED] contacted the Marketplace on March 2, 2015 to request a special enrollment period due to her error in failing to properly change your health plan at the end of January 2015.

A special enrollment period may be granted when an applicant's enrollment or non-enrollment in a qualified health plan (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. This includes misconduct by a non-Marketplace enrollment assistor, such as a Certified Application Counselor, that results in the failure to enroll in a plan.

Since the credible evidence of record reflects that your non-enrollment in the MVP Premier Plus Silver plan was the result of your Certified Application Counselor, Ms. [REDACTED] error, as corroborated by her sworn testimony, you qualified for the special enrollment period you requested.

Accordingly, the April 2, 2015 eligibility determination is MODIFIED to state that you and your spouse qualified for a special enrollment period as of March 2, 2015, when your navigator informed the Marketplace of the error.

The record reflects that you and your spouse were granted a special enrollment period on May 20, 2015 and were enrolled in MVP Premier Plus Silver on May 29, 2015, with coverage effective June 1, 2015. However, since you and your spouse qualified for the special enrollment period requested by Ms. [REDACTED] on March 2, 2015, your case is RETURNED to the Marketplace to retroactively

apply your coverage with MVP Premier Plus Silver, effective April 1, 2015, the first of the month following the March 2, 2105 request.

Decision

You and your spouse qualified for a special enrollment period as of March 2, 2015.

The April 2, 2015 eligibility determination is MODIFIED to state that you and your spouse qualified for a special enrollment period.

Your case is RETURNED to the Marketplace to retroactively apply your coverage with MVP Premier Plus Silver, effective April 1, 2015.

Effective Date of this Decision: November 09, 2015

How this Decision Affects Your Eligibility

You and your spouse's enrollment in MVP Premier Plus Silver 2 Silver NS INN Dep Acupuncture Home Health Care Three PCP visits covered in full Wellness, is effective April 1, 2015.

You are responsible for paying the insurance carrier any premiums that are owed beginning April 1, 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)).

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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:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

You and your spouse qualified for a special enrollment period as of March 2, 2015.

The April 2, 2015 eligibility determination is MODIFIED to state that you and your spouse qualified for a special enrollment period.

Your case is RETURNED to the Marketplace to retroactively apply your coverage with MVP Premier Plus Silver, effective April 1, 2015.

You and your spouse's enrollment in MVP Premier Plus Silver 2 Silver NS INN Dep Acupuncture Home Health Care Three PCP visits covered in full Wellness, is effective April 1, 2015.

You are responsible for paying the insurance carrier any premiums that are owed beginning April 1, 2015.

Legal Authority

We are sending you this notice in accordance with Code of Federal Regulation 45 CFR § 155.545(a).

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A Copy of this Decision Has Been Provided To:

