



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: AP000000002565

[REDACTED]

Dear Mr. [REDACTED]

On June 11, 2015, you and your Authorized Representative appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's March 10, 2015 eligibility determination denying you 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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## Decision

Decision Date: November 09, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002565

[REDACTED]

## Issue

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

Did the Marketplace properly determine in the March 10, 2015 eligibility determination that you were not eligible for a special enrollment period?

## Procedural History

The Marketplace received your initial non-financial assistance application for health insurance on March 7, 2014.

On March 8, 2014, the Marketplace issued an eligibility determination notice stating that you were eligible to enroll in a qualified health plan (QHP) at full cost. This notice also confirmed your selection of Empire Blue Cross Blue Shield (Empire BCBS) gold plan for your coverage, and that you must pay \$523.36 premium per month. This notice further stated that if you did not pay your premiums on time, you could lose your health insurance.

On October 18, 2014, the Marketplace issued a notice stating that it was time to renew your NY State of Health Coverage for 2015. The notice further stated that based on information about you from state and federal data sources obtained as of October 13, 2014, you were still qualified to buy a health plan at full cost, effective January 1, 2015. Finally, the notice stated that you had been reenrolled in Empire BCBS gold plan for coverage beginning January 1, 2015 at a premium of \$561.95 per month, and cautioned that if you did not pay your premiums on time, you might not be covered at the start of the new coverage year.

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On October 22, 2014, the Marketplace issued a disenrollment notice stating that your coverage under the Empire BCBS gold plan had been terminated effective April 1, 2014 for non-payment of premiums.

On March 10, 2015, the Marketplace issued an eligibility redetermination notice stating that you were eligible to purchase a qualified health plan (QHP) at full cost. However, the notice further stated that you did not qualify to select a health plan outside of the open enrollment period. This eligibility determination was effective January 1, 2015.

On April 23, 2015, you spoke to the Marketplace's Account Review Unit and appealed that eligibility determination insofar as you were determined to be ineligible to enroll in a health plan outside of the open enrollment period.

On June 11, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. Your Authorized Representative, [REDACTED], also attended the hearing at your request. 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 you wanted your [REDACTED] to act as your Authorized Representative during the hearing.
- 2) The record reflects that you submitted your initial non-financial application for health insurance on March 7, 2014.
- 3) You were initially covered under an Empire Blue Cross Blue Shield (Empire BCBS) gold plan during 2014, but that coverage was terminated effective April 1, 2014 for non-payment of premiums.
- 4) You testified that you received the October 18, 2014 eligibility determination notice stating that you had been reenrolled in the Empire BCBS gold plan beginning January 1, 2015, and that you had relied on this notice.
- 5) You testified that it was when you had not received a card from Empire BCBS you became concerned and contacted the Marketplace to inquire as to your coverage. You testified that you contacted the Marketplace at least two more times in March 2015, and were ultimately told that they had no record of you having been enrolled in a plan and it was too late to enroll for 2015.

- 6) You testified that you contacted the Marketplace several times on the status of your special enrollment period (SEP) request, and each time were told that decision had not yet been made and to call back in a few weeks.
- 7) On March 10, 2015, the Marketplace found you eligible to enroll in qualified health plan (QHP), but ineligible to select a QHP since you did not qualify to enroll in a plan outside of the open enrollment period.
- 8) Your Authorized Representative stated that when you called the Marketplace, the representative inadvertently filed a new application, rather than continuing with an existing application.
- 9) The record reflects that you had a separate account through the Marketplace under [REDACTED], which was created in March 2014. There are currently no documents to show that any action was taken in that account; however, there was activity in that account on March 7, 2014, March 13, 2015, and March 27, 2015.
- 10) Your Authorized Representative stated that you were told, when you could not enroll, to request a special enrollment period (SEP). She further stated that the Marketplace representatives stated they had made a mistake and that the SEP would be approved; however, it was not approved.
- 11) There are notes in the Marketplace's records documenting multiple calls made by you to the Marketplace beginning March 13, 2015. You did not provide testimony to the effect that you called the Marketplace during the open-enrollment period, and there is no corroborating evidence in your account or in the Marketplace's records that would show you attempted to enroll during the open enrollment period.

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

## **Applicable Law and Regulations**

### 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

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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 generally permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent involuntarily loses certain health insurance coverage:
  - (a) Health insurance considered to be minimum essential coverage;
  - (b) Enrolled in any non-calendar year health insurance policy, 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 has a 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 is an Indian, as defined by section 4 of the Indian Health Care Improvement Act, and 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)).

The Marketplace provided a special enrollment period for individuals who were uninsured in 2014 and owed a federal tax penalty ("Special Enrollment Periods," <http://info.nystateofhealth.ny.gov/SpecialEnrollmentPeriods>). For those who qualify, the SEP began on March 1, 2015 and ended at 11:59 p.m. on April 30, 2015 (*id*). However, individuals who owe a fee for not having coverage in 2014, but are already enrolled in coverage through the Marketplace for 2015, cannot use the special enrollment period to switch plans ("Owe a fee for not having health coverage in 2014? You may still be able to get coverage for 2015," <https://www.healthcare.gov/blog/tax-penalty-special-enrollment-period-for-2015-health-coverage/>).

The Exchange must not only determine eligibility promptly and without undue delay (45 CFR § 155.310(e), but it must also provide timely written notice to an applicant of any eligibility determination (45 CFR § 155.310(g)).

## Legal Analysis

The issue under review is whether the Marketplace properly denied you a special enrollment period.

The record reflects that the Marketplace issued a notice of eligibility determination on October 18, 2014, which confirmed your reenrollment in the Empire BCBS gold plan beginning January 1, 2015. It stated that if you wanted to keep this plan for the upcoming year, you did not need to do anything more.

However, your reenrollment in that plan never took place because you had previously been disenrolled from that same plan effective April 1, 2014 for non-payment of premiums.

The Marketplace provided an open enrollment period from November 15, 2014 until February 15, 2015, which was later extended to February 28, 2015 for people who could not complete their application by the February 15, 2015 deadline.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll, or change to another health plan offered, in the Marketplace. In order to qualify for a special enrollment period, a person must experience a triggering event.

In the current case, the Marketplace erred in sending you the eligibility determination on October 18, 2014, which stated you would be enrolled in your former plan effective January 1, 2015. Although a later notice told you that your plan for the previous year had been terminated on April 1, 2014 for failure to pay premiums, that notice was not timely. Moreover, that later notice is not inconsistent with the Marketplace allowing you to enroll for a new coverage year, despite having had your coverage end for failing to pay premiums.

In fact, the Marketplace provided a special enrollment period that began on March 1, 2015 and ended at 11:59 p.m. on April 30, 2015, specifically for those people who had incurred a penalty for not having had the appropriate coverage in 2014.

Had the proper notices been sent out when your coverage was terminated, it is reasonable to assume that you would not have been misled by the October 18, 2014 notice and you might have been able to take advantage of the special enrollment period authorized by the federal government.

Therefore, it is determined that you reasonably relied on the October 18, 2014 notice issued by the Marketplace in error, to your detriment, and that you are therefore entitled to a special enrollment period pursuant to 45 CFR § 155.420(d)(4)).

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The Marketplace's March 10, 2015 eligibility determination is MODIFIED to state that you qualify for a special enrollment period, and have 60 days from the Effective Date of this decision to select a QHP for coverage during 2015.

## **Decision**

The March 10, 2015 eligibility determination is MODIFIED to state that you qualify for a special enrollment period, and have 60 days from the Effective Date of this decision to select a QHP for coverage during 2015.

**Effective Date of this Decision:** November 09, 2015

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

You now qualify for a special enrollment period to enroll in a qualified health plan. Your case will be returned to the Marketplace to facilitate your enrollment in a plan.

Please note that the Marketplace's open enrollment period for 2016 insurance plans runs from November 15, 2015 to February 15, 2016. For more information on open enrollment, consult the New York State of Health website (<https://nystateofhealth.ny.gov>).

## **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

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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 March 10, 2015 eligibility determination is MODIFIED to state that you qualify for a special enrollment period (SEP), and have 60 days from the Effective Date referenced herein to select a QHP for coverage during 2015.

You now qualify for a special enrollment period to enroll in a qualified health plan. Your case will be returned to the Marketplace to facilitate your enrollment in a plan.

Please note that the Marketplace's open enrollment period for 2016 insurance plans runs from November 15, 2015 to February 15, 2016. For more information on open enrollment, consult the New York State of Health website (<https://nystateofhealth.ny.gov>).

### **Legal Authority**

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

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

[REDACTED]

[REDACTED]