



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: AP000000002593

[REDACTED]

Dear [REDACTED],

On June 11, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's April 24, 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).

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Decision Date: September 3, 2015

NY State of Health Number: [REDACTED]
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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?

Procedural History

The Marketplace received your initial application for health insurance on December 14, 2014.

On December 15, 2014, the Marketplace issued an eligibility determination notice that stated that you were eligible to enroll in a qualified health plan (QHP) at full cost, effective January 1, 2015.

That same day, the Marketplace issued a notice confirming your enrollment in an Empire health plan. The notice further stated that your coverage could start as early as January 1, 2015 if you pay your first month's premium.

On April 8, 2015, the Marketplace issued a disenrollment notice stating that your Empire plan was terminated effective January 31, 2015 because your premiums payment(s) had not been received.

On April 24, 2015, you updated your account.

Also on April 24, 2015, the Marketplace issued a notice of eligibility determination that stated you were eligible to enroll in a QHP at full cost. However, it also

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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 this determination insofar as you were found not eligible for a special enrollment period.

On June 11, 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 you enrolled in the Empire plan beginning January 1, 2015.
- 2) You testified that in order to make your premium payments under this plan, you were asked for a credit card number or a checking account number. You further testified that while you were charged for your first month's coverage under this account, you believed that by providing such information you were enrolling in auto-pay for this account to be charged subsequent coverage months.
- 3) On April 8, 2015, the Marketplace issued a disenrollment notice stating that your Empire plan had been terminated effective January 31, 2015 because of failure to pay your premiums.
- 4) You testified that you received a cancellation notice from Empire on or about February 15, 2015, which was too late to do anything about it.
- 5) You testified that your building is currently under renovation, and the delivery of mail has been inconsistent and delayed as a result of this.

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

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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 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)).

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 issue under review is whether you were properly denied a special enrollment period.

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 indicates that during the open enrollment period you enrolled in the Empire plan. However, on April 8, 2015, the Marketplace issued a disenrollment notice stating that your Empire plan was terminated effective January 31, 2015 because your premiums payment had not been received.

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 SEP in order to re-enroll in the Empire plan.

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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.

You testified that you erroneously believed that you began regular payments of your health plan premiums through auto-pay. You further testified that you were issued a notice of disenrollment by your insurance carrier on or about February 15, 2015 that your coverage was terminated as a result of non-payment.

There is no indication you did anything to address the alleged notice of cancellation you received on or about February 15, 2015.

Therefore, since your insurance coverage ended for non-payment of premiums, a non-qualifying event, you are not entitled to a special enrollment period on this basis.

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).

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 24, 2015 eligibility determination is **AFFIRMED**.

Effective Date of this Decision: September 3, 2015

How this Decision Affects Your Eligibility

You do not qualify for a special enrollment period.

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:

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Summary

The April 24, 2015 eligibility determination is **AFFIRMED**.

You do not qualify for a special enrollment period.

Legal Authority

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A Copy of this Decision Has Been Provided To:

