



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

Notice of Decision

Decision Date: September 14, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002612

[REDACTED]

Dear [REDACTED],

On May 28, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's April 28, 2015 notice of its denial of 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 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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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 find that your wife was not eligible for a special enrollment period to enroll in a qualified health plan, after her coverage was terminated effective May 31, 2015?

Procedural History

On April 27, 2015, the Marketplace received your initial application for health insurance for your wife.

That same day, the Marketplace denied your wife a special enrollment period for her to be able to enroll in a qualified health plan outside the open enrollment period.

Also that same day, you spoke with the Marketplace's Account Review Unit and appealed the denial of a special enrollment period for your wife.

On April 28, 2015, the Marketplace issued a notice of eligibility determination that your wife is eligible to enroll in a qualified health plan at full cost, effective June 1, 2015; however, she does not qualify to select a plan outside of the open enrollment period for 2015. The notice further stated that your wife does not qualify for a special enrollment period outside the open enrollment period because she has not met any of the requirements, known as qualifying events.

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On April 29, 2015, issued another notice of eligibility determination that, in relevant part, stated: “[i]f you missed the deadline to enroll in a plan for 2015, you may not be able to enroll in a health insurance plan through New York State of Health until the next open enrollment period, unless you qualify for a special enrollment period. Should you qualify for a special enrollment period, this will allow you to select a new plan within 60 days of a qualifying event.”

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 held open for up to fifteen days to afford you the opportunity to submit a copy of a Family Court Order directing you to provide health insurance for your estranged wife.

As of June 12, 2015, the Appeals Unit did not receive a fax from you but a copy of the Order was uploaded to your Marketplace account shortly thereafter. As such, the Appeals Unit regards your submission as timely and it was made part of the record as “Appellant’s Exhibit A.” The record was then closed.

Findings of Fact

A review of the record supports the following findings of fact:

- 1) You testified that you and your estranged wife were in the midst of divorce proceedings in 2014 and you expected the divorce to be finalized by the end of December 2014.
- 2) You testified that your estranged wife had been covered under your employer-sponsored health insurance with you and your children during 2014.
- 3) You testified that open enrollment through your employer occurred during the month of November 2014, and you opted not to re-enroll your estranged wife for the next coverage period assuming you would be divorced by then.
- 4) You testified that your wife’s health insurance coverage through your employer-sponsored health plan ended effective January 1, 2015.
- 5) You provided a copy of an Order at a Special Term of the Supreme Court of the State of New York, Erie County, dated March 26, 2015, wherein you were ordered to immediately purchase a replacement policy of health insurance coverage for your wife (Appellant’s Exhibit A).

- 6) You testified that the Marketplace denied your special enrollment period because you did not report the qualifying event of her health coverage ending on January 1, 2015 within 60 days.

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

Applicable Law and Regulations

Special Enrollment Period

The Marketplace must provide an initial open enrollment period and 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)). The open enrollment period for the 2015 calendar year began November 15, 2014 and ended on February 15, 2015 (45 CFR § 155.410(e)(1)).

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 2014, even if they have the option to renew the policy
 - iii) loses pregnancy-related coverage
 - 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
- 3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status
- 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

- 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
- 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
- 7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move
- 8) The qualified individual who is an Indian may enroll in a QHP or change from one QHP to another one time per month
- 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
- 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)).

As a general rule, a qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP (45 CFR §155.420(c)(1)). A qualified individual or his or her dependent who loses health insurance considered to be minimum essential coverage has 60 days before or after to loss of eligibility for qualifying coverage in an eligible employer-sponsored plan to select a QHP (45 CFR § 155.420(c)(2)(ii)).

A special enrollment period may be permitted when the qualified individual or his or her dependent loses health insurance considered to be minimum essential coverage, but not if the individual voluntarily ends this coverage (45 CFR § 155.420(d)).

The Marketplace considers that a loss of coverage caused by not re-enrolling in an employer-sponsored health plan during open enrollment is a voluntary

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termination of coverage, and therefore not a basis for eligibility for a special enrollment period.

Legal Analysis

The issue is whether the Marketplace properly determined that your wife was not entitled to a special enrollment period when her coverage was terminated effective January 1, 2015.

Although the Marketplace denied your estranged wife a special enrollment period because you failed to timely report the triggering event, that is, not enrolling her in your employer-sponsored health plan within 60 days of January 1, 2015, when her coverage ended, this is not the primary reason for the denial of a special enrollment period in your case.

Instead, if an individual loses coverage because he or she voluntarily terminated that coverage, there would be no basis for providing a special enrollment period. Additionally, the Marketplace considers intentionally not enrolling your wife during your employer's open enrollment period is considered to be a voluntary action.

Therefore, the Marketplace correctly denied your estranged wife a special enrollment period and both the April 28, 2015 and April 29, 2015 notices of eligibility determination are AFFIRMED.

Decision

The April 28, 2015 and April 29, 2015 eligibility determination notices are AFFIRMED.

Effective Date of this Decision: September 14, 2015

How this Decision Affects Your Eligibility

This decision does not change your estranged wife's QHP eligibility.

Your estranged wife does not qualify for a special enrollment period. Consumers who are QHP eligible but do not qualify for a special enrollment period will be able to enroll in or change health plans during the next open enrollment period beginning November 15, 2015 for coverage effective January 1, 2016.

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

Summary

The April 28, 2015 and April 29, 2015 eligibility determination notices are **AFFIRMED**.

This decision does not change your estranged wife's QHP eligibility.

Your estranged wife does not qualify for a special enrollment period.

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Consumers who are QHP eligible but do not qualify for a special enrollment period will be able to enroll in or change health plans during the next open enrollment period beginning November 15, 2015 for coverage effective January 1, 2016.

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:

