



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: AP000000002733

[REDACTED]

Dear [REDACTED],

On June 23, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 5, 2015 disenrollment notice.

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 letter.

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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Decision

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NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002733



Issue

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

Did the Marketplace properly determine on May 5, 2015, that you are disenrolled from a silver-level qualified health plan with advance premium tax credits and cost-sharing reductions, effective May 31, 2015?

Procedural History

On November 4, 2014, the Marketplace issued a renewal notice that, if your information on your account was accurate, we were automatically re-enrolled in your Fidelis Care Silver plan effective January 1, 2015, and would receive up to \$292.92 of advance premium tax credits (APTC) per month.

On December 14, 2014, the Marketplace issued an enrollment notice confirming your enrollment in Fidelis Care Silver and your monthly premium responsibility of \$68.10 after your APTC of \$292.92 was deducted.

On May 4, 2015, you spoke with a Marketplace representative and requested that your coverage be cancelled effective April 30, 2015. You were informed that your coverage could not be cancelled until May 31, 2015, and the cancellation date of your coverage is the basis for the appeal that you filed the same day.

On May 5, 2015, the Marketplace issued a disenrollment notice based on your May 4, 2015 request to end your insurance. The notice indicated that your request had been processed and you will no longer have coverage with Fidelis Care Silver effective May 31, 2015.

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On June 23, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed and held open for up to fifteen days to allow you the opportunity to submit proof of employer-sponsored insurance.

As of July 8, 2015, the Appeals Unit did not receive a fax from you and there were no documents uploaded to and viewable in your Marketplace account. Therefore, the record was closed that day and this decision is based on the information in your Marketplace account and the evidence adducted at hearing.

Findings of Fact

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

- 1) According to your Marketplace account, you were automatically re-enrolled in Fidelis Care Silver plan through the Marketplace as of January 1, 2015.
- 2) You testified that you became employed in 2015 and assumed you should wait for enrollment confirmation from your employer's benefit department before you cancelled your health insurance through the Marketplace.
- 3) You testified that you received an email from your employer's Benefits Department that indicated you would be enrolled in the group health plan effective May 1, 2015.
- 4) You testified that you also received your health insurance identification card showing you had coverage as of May 1, 2015 through your employer, so you contacted the Marketplace to cancel your health insurance with Fidelis Care Silver.
- 5) You testified that you were told by a Marketplace representative that your coverage cancellation date could not be made effective April 30, 2015, because you did not give enough notice, when you were told by Fidelis Care that it could be cancelled effective April 30, 2015.
- 6) You received a bill from Fidelis Care for May 2015 premium in the amount of \$68.10, and you do not want to have to pay it because you had health insurance through your employer that month and did not use nor want health insurance with Fidelis Care in May 2015.

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

Applicable Law and Regulations

Minimum Essential Coverage

Generally, an individual will be treated as eligible for minimum essential coverage if the individual may enroll in an eligible employer-sponsored plan that is affordable and provides minimum value (26 CFR §§ 1.36B-2(c)(3)(v)(A) & (C)). A person who has an employer-sponsored health insurance plan that provides minimum essential coverage is not entitled to advance premium tax credit (26 CFR § 1.36B-2(c)(1)).

“Minimum essential coverage” is defined in section 5000A(f) of the Internal Revenue Code and the regulations issued under that section. As described in that section, eligible employer-sponsored plans are considered minimum essential coverage (26 CFR § 1.36B-2(c)(1)).

Termination of coverage

The Marketplace may initiate termination of an enrollee’s coverage in a qualified health plan (QHP) and must permit a QHP issuer to terminate such coverage: (1) When the enrollee is no longer eligible for coverage in a qualified health plan through the Marketplace; or (2) The enrollee’s coverage is cancelled due to non-payment of premiums (45 CFR § 155.430(b)(2)(i) and (ii)).

The Marketplace must permit an enrollee to terminate his or her coverage with a QHP, including when an enrollee obtains other minimum essential coverage, with appropriate notice to the Marketplace or the qualified health plan (45 CFR § 155.430(b)(1)).

Reasonable notice is defined as at least fourteen days before the requested effective date of termination (45 CFR § 155.430(d)(1)(i)).

When an enrollee initiates termination of coverage with a QHP, the last date of coverage is ---

- (i) The termination date specified by the enrollee, if the enrollee provides reasonable notice;
- (ii) Fourteen days after the termination is requested by the enrollee, if the enrollee does not provide reasonable notice; or
- (iii) On a date on or after the date on which the termination is requested by the enrollee, subject to the determination of the enrollee’s QHP issuer, if the enrollee’s QHP issuer agrees to effectuate termination fewer than fourteen days, and the enrollee requests an earlier termination date.

45 CFR § 155.430(d)(2).

Appealable Issues

An applicant has the right to appeal: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination and (5) a denial of a request to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

Legal Analysis

The first issue under review is when your insurance coverage through your qualified health plan (QHP) should end.

The Marketplace must permit an enrollee to terminate his or her coverage with a QHP with appropriate notice to the Marketplace. If the enrollee has provided reasonable notice, the last day of coverage through their qualified health plan is the day specified provided the enrollee has given 14 days advance notice. In the alternative, if the QHP issuer agrees to terminate coverage in fewer than 14 days and the enrollee requests an earlier termination date, the last day of coverage is the date requested by the enrollee.

In your case, you became newly eligible for employer-sponsored insurance effective May 1, 2015, and credibly testified that you informed both the Marketplace and Fidelis Care on May 4, 2015, such that 14 days' notice was not provided. However, the federal regulation allows for an exception if the QHP issuer, here Fidelis Care, agrees to effectuate termination fewer than 14 days and the enrollee has requested an earlier termination date, as here. Since you did not use Fidelis Care Silver plan for yourself during May 2015, it is up to Fidelis Care to agree to the earlier termination date of April 30, 2015, as you had requested.

Therefore, the coverage termination date of May 31, 2015 is AFFIRMED and you can pursue the earlier cancellation date request with Fidelis Care directly.

Since the second issue of being charged for premium for May 2015 raised on appeal is not one that the NY State of Health Appeals Unit is authorized to address, we must dismiss your appeal request in this regard.

However, Fidelis Care may be able to help you since the second issue is dependent upon the first issue. If you have not already been assisted with your cancellation request and related premium issue, please contact Fidelis Care directly toll-free, 24 hours a day, 7 days a week: 1-888-FIDELIS (1-888-343-3547) or fax at 718-896-6832. TTY users should call 1-800-421-1220 or online at www.fideliscare.org/aboutus/contact.aspx

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).

In addition, since your issue concerns a health insurer and/or payment, reimbursement, coverage, benefits, cancellation of benefits, and/or rates and premiums, you can contact NY Department of Financial Services at their Consumer Hotline at (800) 342-3736 (Monday through Friday, 8:30 AM to 4:30 PM); or locally to (212) 480-6400; or you can file a complaint at <http://www.dfs.ny.gov/consumer/fileacomplaint.htm>

Decision

The Marketplace's May 5, 2015 disenrollment notice is AFFIRMED.

Effective Date of this Decision: September 14, 2015

How this Decision Affects Your Eligibility

This decision does not affect your date of disenrollment.

It simply directs you to take up your request for an earlier date cancellation date of April 30, 2015 with Fidelis Care.

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.

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If You Have Questions about this Decision (Customer Service Resources):

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

Summary

The Marketplace's May 5, 2015 disenrollment notice is AFFIRMED.

This decision does not affect your date of disenrollment.

It simply directs you to take up your request for an earlier date cancellation date of April 30, 2015 with Fidelis Care.

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:

