



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: AP000000002737

[REDACTED]

Dear [REDACTED],

On June 19, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 1, 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 14, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002737

[REDACTED]

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?

Procedural History

On May 1, 2015, the Marketplace issued a notice of eligibility determination stating that you were conditionally eligible to receive an advance premium tax credit of up to \$119.00 per month. The notice further stated that you did not qualify to select a health plan outside of the open enrollment period for 2015.

On May 4, 2015, you spoke with the Marketplace's Account Review Unit and appealed that determination insofar as you were not granted a special enrollment period.

On June 19, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and left open for up to 15 days to provide you an opportunity to submit supporting evidence.

On June 23, 2015, the Marketplace's Appeals Unit received your supporting evidence, which included an airline confirmation of your flight from Ecuador to New York City on January 20, 2015. This evidence was marked as Appellant's Exhibit 1 and incorporated into the record. The record was closed on June 23, 2015.

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Findings of Fact

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

- 1) You testified that you were not insured for the 2014 tax year because you were not in the United States for the entire year. You further testified that you did not incur a tax penalty in 2014 for that reason.
- 2) You testified, and provided evidence, that you returned to the United States on January 20, 2015 (Appellant's Exhibit 1).
- 3) You testified that you applied for health insurance on, or around, February 11, 2015 with the assistance of an application counselor, [REDACTED], who informed you that you must verify your identity before your application can be submitted. The record reflects that your completed Identity Verification Form was uploaded to your Marketplace account on February 17, 2015. The record further reflects that a copy of your New York State license was uploaded to your Marketplace account on February 19, 2015.
- 4) You testified that after your identity verification documents were submitted, you waited for a response from your application counselor. You further testified that you called [REDACTED] in April 2015 to check on the status of your application and were told that your application was not completed.
- 5) The record reflects that your completed application was submitted to the Marketplace on April 30, 2015.

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 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,

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<http://info.nystateofhealth.ny.gov/news/press-release-ny-state-health-implements-%E2%80%98waiting-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

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- (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 Marketplace has 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/>).

Generally, a person has 60 days from the date of a triggering event to select a qualified health plan (45 CFR § 155.420 (c)(1)).

Legal Analysis

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

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. Here, you testified that you began your application on, or around, February 11, 2015 with assistance from a certified application counselor. However, the record reflects that you did not submit your completed application

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for health insurance until April 30, 2015. Therefore, you did not complete your application during the open enrollment period.

Once an 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. In order to qualify for a special enrollment period, a person must experience a triggering event.

The Marketplace granted a special enrollment period, from March 1, 2015 to April 30, 2015, for individuals who were uninsured in 2014 and owed a federal tax penalty.

You credibly testified that you were uninsured in 2014 but did not incur a federal tax penalty. Therefore, you did not qualify for the special enrollment period granted by the Marketplace on this basis.

You testified that you were out of the country during 2014 and returned to New York on January 20, 2015. There is insufficient evidence to support a finding that your return to New York was the result of a permanent move, which would be considered a triggering life event.

Even if your return to New York was the result of a permanent move, when a triggering life event occurs, the qualified individual has 60 days from the date of that event to select a qualified health plan.

Sixty days from January 20, 2015 was March 21, 2015; therefore, you would have been eligible to select a QHP outside of the open enrollment period until March 21, 2015. The record reflects that your application was submitted on April 30, 2015, which was after your special enrollment period would have expired.

The credible evidence of record indicates that, since the open enrollment period closed on February 28, 2015, no other triggering events have occurred that would qualify you for a special enrollment period.

Therefore, the Marketplace's May 1, 2015 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2015 is **AFFIRMED**.

Decision

The May 1, 2015 eligibility determination is **AFFIRMED**.

Effective Date of this Decision: September 14, 2015

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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:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
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- By fax: 1-855-900-5557

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Summary

The May 1, 2015 eligibility determination is AFFIRMED.

You do not qualify for a special enrollment period.

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:

