



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

## Notice of Decision

Decision Date: October 15, 2015

NY State of Health Number: [REDACTED]

[REDACTED]

Dear [REDACTED],

On July 23, 2015 your authorized representative appeared by telephone at a hearing on your request for 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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DEPARTMENT OF HEALTH  
P.O. Box 11729  
Albany, NY 12211

## Decision

Decision Date: October 15, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002801



## Issue

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

Did the Marketplace properly determine that you were not eligible for a special enrollment period?

Did the Marketplace properly determine that your nineteen-year-old daughter was not eligible for a special enrollment period?

## Procedural History

On January 13, 2015, the Marketplace issued an eligibility determination notice that you were conditionally eligible and your nineteen-year-old daughter eligible to receive up to \$123.00 monthly in advance premium tax credits (APTC). The Marketplace requested additional citizenship status documentation from you by April 14, 2015 to confirm your eligibility.

On the same day the Marketplace issued an enrollment notice that you and your nineteen-year-old have been enrolled in Fidelis Care Gold ST INN Pediatric Dental Dep25 and could start as early as February 1, 2015.

On May 3, 2015, the Marketplace issued an eligibility determination notice that you are not eligible for financial assistance or cannot enroll in a qualified health plan (QHP) at full cost through NY State of Health.

On May 4, 2015, the Marketplace issued a disenrollment notice stating that you and your nineteen-year-old daughter's coverage through Fidelis Care Gold ST INN Pediatric Dental Dep25 will end effective May 31, 2015. The notice states that you are "no longer eligible to enroll in health insurance through New York State of Health," and your nineteen-year-old daughter is "no longer eligible to remain enrolled in their **current** health insurance."

On May 8, 2015, the Marketplace issued a notice confirming that you requested a telephone hearing to review you and your nineteen-year-old daughter being denied a special enrollment period.

On May 8, 2015, the Marketplace received an Authorized Representative Designation Form designating your spouse as your authorized representative for all matters related to your account.

On July 23, 2015 your authorized representative, [REDACTED], 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. On January 13, 2015, the Marketplace determined you conditionally eligible and your nineteen-year-old daughter eligible to receive up to \$123.00 monthly in advance premium tax credits. The Marketplace requested additional citizenship status documentation from you by April 14, 2015 to confirm your eligibility.
2. You and your nineteen-year-old were enrolled in Fidelis Care Gold ST INN Pediatric Dental Dep25 and was effective February 1, 2015.
3. The Marketplace determined you not eligible for financial assistance or eligible to enroll in a qualified health plan at full cost effective May 31, 2015, for failing to provide additional citizenship status documentation.
4. You and your nineteen-year-old daughter's coverage through Fidelis Care Gold ST INN Pediatric Dental Dep25 was terminated effective May 31, 2015.

5. Your authorized representative testified that you currently do not have any outstanding medical bills.
6. On May 8, 2015, you mailed your U.S. Passport to the Marketplace.
7. No notice of eligibility determination has been issued by the Marketplace for denying you a special enrollment period.

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

## **Applicable Law and Regulations**

The Marketplace Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “*De novo review* means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

The Marketplace is required to provide “timely written notice to an applicant of any eligibility determination” made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual Marketplace (45 CFR § 155.310(g)). An applicant or enrollee has the right to appeal an eligibility determination or redetermination or a failure by the Marketplace to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

The Marketplace must provide an annual open enrollment period during which 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 benefit year beginning on January 1, 2015 during which a qualified individual may enroll in a QHP and enrollees may change QHPs begins on November 15, 2014 and extends through February 15, 2015 (45 CFR § 155.410(e)).

After each open enrollment period ends, the Marketplace provides special enrollment periods (SEP) to qualified individuals. During a SEP, a qualified individual may enroll in a QHP and an enrollee may change to another QHP. A SEP 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 2015, even if they have the option to renew the policy

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- 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 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, 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)).

When an individual or his or her dependent loses minimum essential coverage, the date of the loss of coverage is the last day the consumer would have coverage under their previous plan (45 CFR § 155.420(d)(1)(i)).

A qualified individual or his or her dependent loses minimum essential coverage has 60 days before and after the triggering event to select a QHP (45 CFR § 155.420(c)(2)).

## **Legal Analysis**

The record does not contain a notice of eligibility determination or redetermination on the issue of a special enrollment period (SEP). It does, however, contain a May 8, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issue on appeal as “Denial of Special Enrollment Period.”

The lack of a notice of eligibility determination on the issue of SEP does not prevent the Appeals Unit from reaching the merits of the case. Under 45 CFR § 155.505(b), you are as entitled to appeal Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the May 8, 2015 notice, which acknowledges the appeal on the issue of SEP denial, permits an inference that the Marketplace did deny your SEP request. Since the Appeal Unit review of Marketplace determinations is performed on a *de novo* basis, no deference would have been granted to the notice of eligibility determination had it been issued.

The first issue is whether the Marketplace properly determined that you are not eligible for a SEP.

The Marketplace provided an open enrollment from November 15, 2014 until February 15, 2015. The record indicates that during the open enrollment period you and your nineteen-year-old daughter enrolled in Fidelis Care Gold ST INN Pediatric Dental Dep25 and could start as early as February 1, 2015.

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 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.

The record supports that you were conditionally eligible to receive up to \$123.00 monthly in advance premium tax credits. However, the Marketplace requested additional citizenship status documentation from you by April 14, 2015 to confirm your

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eligibility. The Marketplace did not receive any citizenship status documentation from you by this date.

The Marketplace determined you not eligible for financial assistance or eligible to enroll in a qualified health plan at full cost effective May 31, 2015, for failing to provide additional citizenship status documentation.

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 a failure to provide requested documents to support a person's eligibility a voluntary action. Therefore, the Marketplace correctly denied you a special enrollment period.

The second issue is whether the Marketplace properly determined that your nineteen-year-old daughter is not eligible for a special enrollment period.

On January 13, 2015, the Marketplace determined your nineteen-year-old daughter eligible to receive up to \$123.00 monthly in advance premium tax credits. Subsequently, she was enrolled in Fidelis Care Gold ST INN Pediatric Dental Dep25 with an effective date of February 1, 2015.

On May 4, 2015, the Marketplace issued a disenrollment notice stating that your nineteen-year-old daughter's coverage through Fidelis Care Gold ST INN Pediatric Dental Dep25 will end effective May 31, 2015. The notice states that your nineteen-year-old daughter is "no longer eligible to remain enrolled in their **current** health insurance."

When an individual or his or her dependent loses minimum essential coverage, the date of the loss of coverage is the last day the consumer would have coverage under their previous plan. Once your daughter's health plan terminated, she was eligible to re-enroll in another health within a 60-day period after the disenrollment date, May 31, 2015.

Therefore, the Marketplace improperly denied your nineteen-year-old daughter a special enrollment period.

## **Decision**

The Marketplace's determination to deny you a special enrollment is **AFFIRMED**.

The Marketplace's determination to deny your nineteen-year-old daughter a special enrollment period is **RESCINDED**.

**Effective Date of this Decision:** October 15, 2015

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

Your nineteen-year-old daughter has 60 days from the date of this decision to enroll in a qualified health plan.

## **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

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## **Summary**

The Marketplace's determination to deny you a special enrollment is **AFFIRMED**.

The Marketplace's determination to deny your nineteen-year-old daughter a special enrollment period is **RESCINDED**.

Your nineteen-year-old daughter has 60 days from the date of this decision to enroll in a qualified health plan.

## **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**

[REDACTED]

[REDACTED]