



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

Notice of Decision

Decision Date: October 28, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002819

[REDACTED]

Dear [REDACTED],

On July 2, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 3, 2015 eligibility determination and subsequent 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 Code of Federal Regulation (CFR) 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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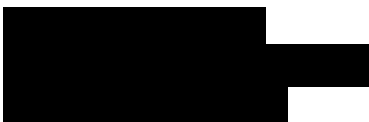


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Decision

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Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did the Marketplace properly determine that you were no longer eligible to enroll in a health insurance plan through NY State of Health, effective May 31, 2015?

Did the Marketplace properly determine that you were not eligible for a Special Enrollment Period (SEP)?

Procedural History

On December 14, 2014, the Marketplace issued a notice of eligibility determination stating that you were conditionally eligible to receive advance premium tax credits and cost sharing reductions, effective January 1, 2015. You were requested to provide documentation confirming your citizenship status before March 14, 2015.

You were subsequently enrolled in a health insurance plan.

On May 3, 2015, the Marketplace issued a notice of eligibility redetermination stating that you were no longer eligible to enroll in health insurance through the Marketplace because you had not confirmed your citizenship status. Your eligibility for coverage ended effective May 31, 2015 and you were subsequently disenrolled.

On May 15, 2015, you spoke with the Marketplace's Account Review Unit and appealed the May 3, 2015 determination and subsequent denial of a special enrollment period to enroll in a health plan following your disenrollment.

On May 27, 2015, a copy of your certificate of naturalization was uploaded to your Marketplace account.

On July 2, 2015, you had a telephone hearing with a Hearing Officer from the Appeals Unit of NY State of Health. 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 received the Marketplace's December 14, 2014 notice requesting documentation confirming your citizenship.
- 2) You testified that you mailed a copy of your certificate of naturalization to the Marketplace around January 2015. You further testified that you were not aware that the Marketplace did not receive this document until your insurance coverage was discontinued in May 2015.
- 3) There is no evidence in the record that the Marketplace received your certificate of naturalization before March 14, 2015.
- 4) According to the record, the Marketplace received your certificate of naturalization on May 21, 2015. This document was uploaded to your Marketplace account on May 27, 2015.
- 5) According to the Marketplace's system, your health insurance plan was terminated, effective May 31, 2015.
- 6) You are seeking reinstatement of your health insurance coverage.

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

Applicable Law and Regulations

Citizenship and Immigration Status

To enroll in a qualified health plan through the Marketplace, an applicant must be a citizen or national of the United States, or a non-citizen lawfully present in the

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United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1)).

The Marketplace must verify or obtain information in order to determine that an applicant is eligible for enrollment in a qualified health plan, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

If an applicant attests to citizenship, status as a national, or lawful presence, and the Marketplace is unable to verify such attestation, the Marketplace must provide the applicant 90 days to provide satisfactory documentary evidence, from the date the notice of inconsistency is received by the applicant. Notice is considered received 5 days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the 5 day period. (45 CFR § 155.315(c)(3)).

If the Exchange remains unable to verify the attestation after the 90 day period ends, then it must determine the applicant's eligibility based on the information available in the data sources (45 CFR § 155.315(f)(5)(i)).

De Novo Review

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).

Special Enrollment Period

The Marketplace must provide an annual open enrollment period, 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 2015 began November 15, 2014 and ended February 15, 2015 (45 CFR § 155.410(e)(1)).

After each open enrollment period ends, the Marketplace provides special enrollment periods (SEP) to qualified individuals. During an SEP, a qualified individual may enroll in a QHP and an enrollee may change to another plan (45 CFR § 155.420(d)).

This is permitted when any one of multiple events occurs, including a qualified individual or his or her dependent loses certain health insurance coverage (45 CFR § 155.420(d)).

However, a loss of coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

(1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or

(2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128” (45 CFR § 155.420(e)).

Legal Analysis

The first issue under review is whether the Marketplace properly determined that you were no longer eligible to enroll in health insurance through the Marketplace, effective May 31, 2015.

The Marketplace is required to determine whether individuals are eligible to enroll in coverage through the Marketplace, and must confirm, among other things, that their citizenship status is satisfactory.

If the Marketplace cannot verify an individual’s citizenship status, it must provide the individual a period of 90 days from the date notice is received to resolve the inconsistency. For purposes of verifying citizenship, notice is considered received 5 days after the date on the notice.

In the eligibility determination issued on December 14, 2014, you were advised that your eligibility was only conditional, and that you needed to confirm your citizenship status before March 14, 2015. Since this notice was considered received on December 19, 2014, the March 14, 2015 deadline to submit the requested documentation was 85 days from the date you were made aware of the inconsistency.

The record reflects that the Marketplace did not receive the requested citizenship documentation before March 14, 2015, nor was it received before March 19, 2015, which was 90 days from the date you were made aware of the inconsistency.

If the Marketplace remains unable to verify the inconsistency after the 90 day period ends, then it must determine the applicant’s eligibility based on the information available in the data sources.

Since the requested citizenship documentation was not received within the 90 day period, the Marketplace was required to redetermine your eligibility without verification of your citizenship status. As a result, the Marketplace properly determined that you could not enroll in a qualified health plan through NY State

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of Health effective May 31, 2015 because you did not provide the information requested by the Marketplace.

Therefore, the Marketplace's May 3, 2015 eligibility determination is correct and is AFFIRMED.

The second issue is whether you were properly denied a special enrollment period.

On May 8, 2015, you spoke with the Marketplace and requested a special enrollment period. The record does not contain a notice of eligibility determination or redetermination on the issue of the special enrollment period. It does contain a May 9, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issue on appeal as "Denial of Special Enrollment Period."

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. 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 9, 2015 notice, which acknowledges the appeal on the issue of the special enrollment period denial, permits an inference that the Marketplace did deny your special enrollment period request.

Currently at issue is whether you were properly denied a special enrollment period as of May 9, 2015. Since Appeals Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to a notice of denial of a special enrollment period had it been issued.

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. Once the 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.

Here, your enrollment was terminated effective May 31, 2015 because you failed to confirm your citizenship status within the required timeframe. The Marketplace considers your failure to provide proof of citizenship as a voluntary action causing the termination of your coverage; therefore, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis.

Therefore, the Marketplace properly denied your request for a special enrollment period.

Decision

The May 3, 2015 eligibility determination is AFFIRMED.

You do not qualify for a special enrollment period.

Effective Date of this Decision: October 28, 2015

How this Decision Affects Your Eligibility

You do not qualify for a special enrollment period at this time.

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

Summary

The May 3, 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 Code of Federal Regulation 45 CFR § 155.545(a).

A Copy of this Decision Has Been Provided To:

