



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: AP000000002851

[REDACTED]

Dear [REDACTED],

On July 6, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 5, 2015 and June 2, 2015 notices of eligibility determinations.

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).

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## Decision

Decision Date: October 28, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002851

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## Issue

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?

## Procedural History

On January 30, 2015, 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 March 1, 2015. You were requested to provide documentation confirming your citizenship status before May 1, 2015, or your coverage and/or financial assistance might end.

You were subsequently enrolled in a health insurance plan.

On May 5, 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 disenrolled.

On May 11, 2015, you spoke with the Marketplace's Account Review Unit and appealed the May 5, 2015 determination and subsequent denial of a special enrollment period to enroll in a health plan following your disenrollment.

On June 2, 2015, the Marketplace issued a notice of eligibility determination stating that although you were conditionally eligible to enroll in a plan and to receive advance premium tax credits, you did not qualify to enroll in a health plan outside of the open enrollment period.

On June 6, 2015, a copy of your certificate of naturalization was faxed to the Marketplace.

On July 6, 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 applied for health insurance through the Marketplace on January 29, 2015. You further testified that you were aware of the Marketplace's request for documentation confirming your citizenship at that time.
- 2) You testified that your passport is currently restricted and you were informed by a Marketplace representative that you could not provide the restricted passport as valid proof of your citizenship status.
- 3) You testified that you could not provide your certificate of naturalization on January 29, 2015 because your spouse was out of the county and she had sole access to this documentation. You further testified that you requested a new copy of your certificate of naturalization in mid-March 2015 from your local U.S. Citizenship and Immigration Services (USCIS) office. As of July 6, 2015, you have not received the requested documentation from your local USCIS office.
- 4) You testified that your spouse returned to the United States approximately June 2015, and you were able to submit your certificate of naturalization to the Marketplace. The record reflects that you sent this documentation to the Marketplace via facsimile on June 6, 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 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)).

### Enrollment Periods

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)).

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP (45 CFR § 155.420(c)(1)).

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

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inconsistency. For purposes of verifying citizenship, notice is considered received 5 days after the date on the notice.

In the eligibility determination issued on January 30, 2015, you were advised that your eligibility was only conditional, and that you needed to confirm your citizenship status before May 1, 2015. Since this notice was considered received on February 4, 2015, the May 1, 2015 deadline to submit the requested documentation was 86 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 May 1, 2015, nor was it received before May 5, 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 of Health effective May 31, 2015 because you did not provide the information requested by the Marketplace.

Therefore, the Marketplace's May 5, 2015 eligibility determination is correct and is AFFIRMED.

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

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.

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However, it is noted that you testified that you were married, but that your application from January 29, 2015 indicated that you were single at the time. If you married since the time of your application, this might qualify you for a special enrollment period.

Therefore, your case is returned to the Marketplace for it to contact you about updating your account and determining whether you might be eligible for a special enrollment period on those grounds.

## **Decision**

The May 5, 2015 and June 2, 2015 notices of eligibility determinations are AFFIRMED.

You do not currently qualify for a special enrollment period.

**Effective Date of this Decision:** October 28, 2015

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

This Decision has no effect on any subsequent determinations issued by the Marketplace.

## **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))

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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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Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

The May 5, 2015 and June 2, 2015 notices of eligibility determinations are **AFFIRMED**.

You do not currently qualify for a special enrollment period.

This Decision has no effect on any subsequent determinations issued by the Marketplace.

### **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:**

