



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

## Notice of Decision

Decision Date: November 18, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002857

[REDACTED]

Dear [REDACTED],

On July 13, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 2, 2015 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 federal regulation 45 CFR § 155.545(b).

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## Decision

Decision Date: November 18, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002857



## Issue

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

Did the Marketplace fail to provide you timely notice of your eligibility determination?

Did the Marketplace properly determine that you were not eligible for a special enrollment period, effective May 2, 2015?

## Procedural History

On March 18, 2015, the Marketplace received your initial application for health insurance.

On March 19, 2015, the Marketplace sent you a notice stating that, in order for your eligibility to be determined, you needed to submit income documentation by April 5, 2015 to confirm that the information you provided in your application was accurate. The notice specified that you needed to submit paycheck stubs for the last four weeks, as well as a letter from your employer.

On April 7, 2015, copies of your paystubs, issued on February 13, 2015, February 20, 2015, February 27, 2015, March 6, 2015, and March 27, 2015, were available for review in your Marketplace account.

On April 10, 2015, the Marketplace issued a notice stating that the income information you submitted was insufficient to resolve the inconsistency and that

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additional income information was still required to make an eligibility determination possible.

On April 24, 2015 and April 25, 2015, a written statement confirming your employment with [REDACTED] was available for review in your Marketplace account.

On April 28, 2015, the Marketplace issued a notice of eligibility determination that stated you were eligible to receive an advance premium tax credit of up to \$330.00 per month and, if you selected a silver-level plan, for cost-sharing reductions. It further stated that you needed to pick a health plan.

Your account was updated on May 1, 2015, reflecting an attested expected income of \$21,840.00.

On May 2, 2015, the Marketplace issued a notice of eligibility determination that stated that you were eligible to receive an advance premium tax credit of up to \$275.00 per month and, if you selected a silver-level plan, for cost-sharing reductions. It further stated that you did not qualify to select a health plan outside of the open enrollment period for 2015.

On May 11, 2015, you spoke to the Marketplace's Account Review Unit and appealed the Marketplace's failure to timely verify your income information, which resulted in the May 2, 2015 eligibility determination that you were not eligible to enroll in a health plan outside of the open enrollment period.

On July 13, 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 until July 31, 2015, to provide you an opportunity to submit supporting evidence.

On July 21, 2015, the Marketplace's Appeals Unit received the following documents:

- A letter from [REDACTED], confirming that your last date of employment was February 24, 2015;
- A written statement that, as of June 1, 2015, you work 4 hours per day, 3 days per work, and 4 hours per day, 4 days per week, every other week;
- A notice issued by [REDACTED], confirming that your insurance coverage with Cigna Gold Medical Plan ended, effective February 26, 2015;
- A copy of your paystub from [REDACTED], issued on July 8, 2015, indicating total earnings of \$154.60;
- A copy of your paystub from [REDACTED], issued on June 8, 2015, indicating total earnings of \$541.25;

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- A copy of your paystub from [REDACTED], issued on June 23, 2015, indicating total earnings of \$469.45; and
- A copy of your paystub from [REDACTED], issued on May 22, 2015, indicating total earnings of \$304.00

These documents were collectively marked as Appellant's Exhibit 1, and incorporated into the record.

A duplicate copy of Appellant's Exhibit 1 was received by the Marketplace's Appeals Unit on July 28, 2015, but was not marked as a separate exhibit.

Also on July 28, 2015, the Marketplace's Appeals Unit received a duplicate copy of the documents submitted on July 21, 2015, as well as a written statement that, as of July 31, 2015, you expected to work 4 hours per day, two days per week at Home Instead. These documents were collectively marked as Appellant's Exhibit 2, and incorporated into the record.

The record was closed on July 31, 2015.

## **Findings of Fact**

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

- 1) The record reflects that you submitted your initial application for health insurance on March 18, 2015. According to this application, you attested to an expected income of \$15,600.00 for 2015, which included only your income from [REDACTED].
- 2) You testified, and provided evidence, that you separated from your employer, [REDACTED] on February 24, 2015 (Appellant's Exhibit 1, July 21, 2015).
- 3) You testified, and provided evidence, that your employer-sponsored health insurance coverage with Cigna Gold Medical Plan ended on February 26, 2015 (Appellant's Exhibit 1, July 21, 2015).
- 4) The record reflects that you were requested to submit income documentation by April 5, 2015, in order for your eligibility to be determined.
- 5) You testified that you were aware that the Marketplace requested income information. You further testified that you submitted the requested information to the Marketplace on April 1, 2015.

- 6) The record reflects that you submitted copies of your non-consecutive paystubs from [REDACTED] which were issued on February 13, 2015, February 20, 2015, February 27, 2015, March 6, 2015, and March 27, 2015. These documents were available in your Marketplace account on April 7, 2015. The record further reflects that these documents were invalidated on April 10, 2015.
- 7) The record reflects that you submitted a letter from your employer, [REDACTED], on or around April 15, 2015, confirming that you earned \$10.00 per hour and work 30 to 32 hours per week. This document was available in your Marketplace account on April 24, 2015 and April 25, 2015. The record further reflects that this document was validated on April 27, 2015.
- 8) The record reflects that the Marketplace was able to make an initial eligibility determination based on the completed application submitted on April 27, 2015.
- 9) According to the application submitted on May 1, 2015, you attested to an expected income of \$21,840.00, which included \$16,640.00 you expect to earn from your employment with [REDACTED] and \$5,200.00 you expect to earn from your employment with [REDACTED].
- 10) You testified, and provided written statements, that your 2015 expected annual household income no longer reflects your current household income situation (Appellant's Exhibit 2, July 28, 2015).

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

## **Applicable Law and Regulations**

### Verification Process

For all individuals whose income is needed to calculate the household's eligibility, the Marketplace must request data that will allow the Marketplace to verify the household's income (45 CFR § 155.320(c)(1)(i)). If the Marketplace cannot verify the income information required to determine eligibility they must attempt to resolve the inconsistency including giving the applicant the opportunity to submit satisfactory documentary evidence (45 CFR § 155.315(f)).

### Timely Determination

The Marketplace must determine eligibility promptly and without undue delay (45 CFR § 155.310(e)).

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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)).

### 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, <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
- (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)).

## **Legal Analysis**

The first issue is whether the Marketplace failed to provide timely notice of your eligibility determination.

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The Marketplace must determine an applicant's eligibility promptly and without undue delay. However, if the Marketplace is unable to verify the applicant's household income and issue a determination, it must give the applicant an opportunity to submit satisfactory documentation to resolve the inconsistency.

On March 19, 2015, the Marketplace sent you a notice requesting that you submit documentation confirming your income by April 5, 2015, so that an eligibility determination could be made.

You testified that you submitted documentation of your income on April 1, 2015. The record reflects that these documents were found insufficient to resolve the inconsistency on April 10, 2015, because they did not include paycheck stubs from the previous four weeks. The Marketplace issued a notice on April 10, 2015, requesting additional income information to resolve the inconsistency.

Additional income information was sent to the Marketplace on or around April 15, 2015, and was available in your Marketplace account on April 24, 2015 and April 25, 2015. The record reflects that this document was sufficient to resolve the inconsistency and was validated on April 27, 2015, three days from the date it was available for review in your Marketplace account.

The Marketplace issued a notice of eligibility determination on April 28, 2015, which was the day after your income documentation was validated.

Since the Marketplace issued an eligibility determination the day after satisfactory income documentation was validated, the credible evidence does not support a finding that the Marketplace failed to provide you notice of your eligibility determination promptly or that there was undue delay in issuing the decision.

The second issue under review is whether the Marketplace properly denied you a special enrollment period, effective May 2, 2015.

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. The record reflects that applications were submitted on April 27, 2015, and again on May 1, 2015. Therefore, you did not complete your application during the open enrollment period.

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

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You testified, and provided evidence, that your previous insurance coverage ended on February 26, 2015, which is considered a triggering life event.

When a triggering life event occurs, the qualified individual has sixty days from the date of that event to select a qualified health plan.

Sixty days from February 26, 2015 was April 27, 2015; therefore, you would have qualified to select a qualified health plan outside of the open enrollment period until April 27, 2015. The record reflects that your application was not complete until April 27, 2015, which was the final day before your special enrollment period expired.

The record further reflects that you submitted a subsequent application on May 1, 2015, which was after your special enrollment period 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 2, 2015 eligibility determination that you did not qualify to select a health plan outside of the open enrollment period for 2015 is AFFIRMED.

However, you testified, and provided written statements that your 2015 expected annual household income no longer reflects your current household income situation. You submitted a written statement that, as of July 31, 2015, you will be working at [REDACTED] for 4 hours per day, two times per week at a rate of \$9.50 per hour, or approximately \$304.00 every four weeks. You further provided evidence that you earn \$10.00 per hour and work approximately 31 hours per week with [REDACTED], or approximately \$1,240.00 every four weeks. Therefore, you expect to collectively earn approximately \$1,544.00 every four weeks.

According to the May 1, 2015 application, you attested to an expected household income of \$21,840.00 for 2015, or \$1,820.00 every four weeks.

Since your expected monthly income for 2015 is different than the income used by the May 2, 2015 eligibility determination, your case is RETURNED to the Marketplace to verify the expected 2015 income you are claiming and redetermine your eligibility for financial assistance based on an expected monthly income of \$1,544.00, beginning August 1, 2015.

## **Decision**

The May 2, 2015 eligibility determination is AFFIRMED.

Your case is RETURNED to the Marketplace to verify the expected 2015 income you are claiming and redetermine your eligibility for financial assistance based on an expected monthly income of \$1,544.00, beginning August 1, 2015.

**Effective Date of this Decision:** November 18, 2015

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

You do not qualify for a special enrollment period to enroll in a qualified health plan at this time.

This decision does not change your eligibility, but it does direct the Marketplace to reevaluate your eligibility for financial assistance, taking into account the information obtained during and after your hearing

Once a redetermination has been made, the Marketplace will issue you a redetermination notice, which will contain further information.

## **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):**

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

## **Summary**

The May 2, 2015 eligibility determination is **AFFIRMED**.

You do not qualify for a special enrollment period to enroll in a qualified health plan at this time.

Your case is **RETURNED** to the Marketplace to verify the expected 2015 income you are claiming and redetermine your eligibility for financial assistance based on an expected monthly income of \$1,544.00, beginning August 1, 2015.

This decision does not change your eligibility, but it does direct the Marketplace to reevaluate your eligibility for financial assistance, taking into account the information obtained during and after your hearing

Once a redetermination has been made, the Marketplace will issue you a redetermination notice, which will contain further information.

## **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:**

