



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

## Notice of Decision

Decision Date: October 19, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002867

[REDACTED]

Dear [REDACTED],

On July 14, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 2, 2015 eligibility determination and May 4, 2015 disenrollment notice regarding your spouse.

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: October 19, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000002867

[REDACTED]

## Issue

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

Did the Marketplace properly find that your spouse was not eligible for a special enrollment period to reenroll in a qualified health plan, after her coverage was terminated effective May 31, 2015?

## Procedural History

On December 14, 2014, the Marketplace issued a notice of eligibility determination that in relevant part stated your spouse is conditionally eligible to share with you up to \$597.00 per month in advance premium tax credits (APTC) and cost sharing reductions (CSR), effective January 1, 2015. That notice stated that your spouse needed to confirm her Social Security number before March 14, 2015.

That same day, the Marketplace issued an enrollment notice confirming your and your spouse's selection of Oscar Edge Plus Silver, with a monthly premium responsibility of \$259.96 after the monthly APTC amount of \$597.00 was deducted, which could start as early as January 1, 2015 if you paid your first month's premium on time.

On January 20, 2015, the Marketplace issued a notice of eligibility redetermination that again stated in relevant part that your spouse is conditionally eligible to share in APTC up to \$596.00 and cost sharing reductions with you, effective March 1, 2015. That notice stated that your spouse needed to confirm her Social Security number before April 21, 2015.

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On January 21, 2015, the Marketplace issued an enrollment notice confirming your and your spouse's selection of Oscar Edge Plus Silver, with a monthly premium responsibility of \$260.96 after the monthly APTC amount of \$596.00 was deducted, which could start as early as January 1, 2015 if you paid your first month's premium on time.

On May 2, 2015, the Marketplace issued a notice of eligibility redetermination that, effective May 31, 2015, your spouse was no longer eligible for Medicaid, Child Health Plus, or to receive APTC or CSR and cannot enroll in a qualified health plan at full cost through New York State of Health because she did not provide her Social Security number on time.

Also, on May 2, 2015, the Marketplace issued a notice of eligibility redetermination that you are eligible to receive APTC of up to \$224.00 per month and CSR.

On May 4, 2015, the Marketplace issued a disenrollment notice that your spouse's coverage with Oscar Edge Plus Silver will end effective May 31, 2015.

Also, on May 4, 2015, the Marketplace issued an enrollment notice confirming your enrollment in Oscar Edge Plus Silver effective June 1, 2015.

On May 12, 2015, the Marketplace issued a letter confirming that, on May 11, 2015, you requested a telephone hearing to review the denial of a special enrollment period for your spouse.

At that time, your request for aid to continue was granted and you and your spouse were reenrolled in Oscar Edge Plus Silver under a couple's plan effective June 1, 2015 to September 30, 2015.

On July 14, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and held open for up to fifteen days to allow you the opportunity to submit your spouse's Social security number.

On July 20, 2015, the Appeals Unit received a two page fax from you, consisting of (1) A cover page; and (2) a copy of your spouse's Social Security card. This two page fax was made part of the record as "Appellant's Exhibit A."

Since the requested documentation was received on July 20, 2015, the record was closed that same day.

## Findings of Fact

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

- 1) According to your Marketplace account, you applied for health insurance through the Marketplace for yourself and your wife on December 12, 2014.
- 2) At that time, your Marketplace application indicated that your spouse had an I-551 Permanent Resident Card (# [REDACTED]) and was in the process of applying for a Social Security number.
- 3) According to your Marketplace account, your and your spouse's insurance coverage through a silver-level qualified health plan (QHP) began January 1, 2015.
- 4) Your spouse was disenrolled from your silver-level QHP on May 31, 2015, for failure to provide her Social Security number.
- 5) You testified that your spouse received her Social Security number and card in the early part of 2015, and you contacted your health plan to inform them of that number around that time.
- 6) Your spouse's Social Security card indicates it was issued on February 10, 2015 (Appellant's Exhibit A, p. 2).
- 7) You testified that at no time were you aware that you had to also notify the Marketplace and, even though you had received notices from the Marketplace, the notices you received tended to come in batches and were confusing to you.
- 8) You testified that you believed the issue was resolved by the time of the hearing, but the Hearing Officer explained that you and your spouse had been granted aid to continue during the appeals process from June 1, 2015 to September 30, 2015.

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

## Applicable Law and Regulations

### 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).

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## Marketplace Eligibility Determinations

When an individual applies for insurance through the Marketplace, the Marketplace must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 FR § 435.1200(b)(3)(iii)).

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)).

## Special Enrollment Period

The Marketplace must provide an initial open enrollment period and 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)). The open enrollment period for the 2015 calendar year began November 15, 2014 and ended on February 15, 2015 (45 CFR § 155.410(e)(1)).

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 to another plan. This is permitted when one of the following triggering events occurs:

(1) The qualified individual or his or her dependent loses certain health insurance coverage:

(a) Health insurance considered to be minimum essential coverage; or

(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

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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 qualified health plan 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 qualified health plan 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 qualified health plans as a result of a permanent move; or

(8) The qualified individual who is an Indian may enroll in a qualified health plan or change from one qualified health plan 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;

10) A qualified individual or enrollee, or his or her dependents, was not enrolled in a qualified health plan 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 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**

As of May 2, 2015, the Marketplace had not received confirmation of your spouse's Social Security number so it issued a notice of eligibility redetermination followed by a May 4, 2015 disenrollment notice. Thereafter, on May 11, 2015, you were denied a special enrollment period for your spouse and were unable to reenroll her in your health

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plan. However, the Marketplace did not issue a written notice denying your request for a special enrollment.

Although the Marketplace did not issue a notice of denial of your request for a special enrollment period for your spouse, this does not prevent the Appeals Unit from reaching the merits of your case on your May 11, 2015 appeal request. Under 45 CFR § 155.505(b), you are as entitled to appeal a Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Also, since the Appeals Unit reviews Marketplace determinations on a de novo basis, no deference would have been granted to that written determination had it been issued before you filed your appeal.

The issue under review is whether the Marketplace properly determined that your spouse was not entitled to a special enrollment period when her coverage was terminated effective May 31, 2015.

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.

On January 20, 2015, the Marketplace issued a notice of eligibility redetermination that stated your spouse was conditionally eligible to share in APTC up to \$596.00 and cost sharing reductions with you, effective March 1, 2015. You were asked by the Marketplace to confirm her Social Security number before April 19, 2015.

You testified that your spouse received her Social Security number and card in the early part of 2015, and you contacted your health plan to inform them of that number around that time. Your spouse's Social Security card indicates it was issued on February 10, 2015 (Appellant's Exhibit A, p. 2).

You testified that at no time were you aware that you had to also notify the Marketplace and, even though you had received notices from the Marketplace, the notices you received tended to come in batches and were confusing to you.

You were asked to submit documentation as proof of your spouse's social security number before April 19, 2015. As of May 2, 2015, the Marketplace had not received confirmation of your spouse's Social Security number. A loss of coverage caused by a failure to submit necessary and requested documentation is a voluntary termination of coverage, and therefore not a basis for eligibility for a special enrollment period.

Therefore, the Marketplace's denial of a special enrollment period is **AFFIRMED**.



## **Decision**

The Marketplace's denial of a special enrollment period is AFFIRMED.

**Effective Date of this Decision:** October 19, 2015

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

Your individual eligibility is not affected by this decision. You remain eligible for advance premium tax credit and cost-sharing reductions without interruption.

## **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

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- By fax: 1-855-900-5557

## **Summary**

The Marketplace's denial of a special enrollment period is **AFFIRMED**.

Your individual eligibility is not affected by this decision. You remain eligible for advance premium tax credit and cost-sharing reductions without interruption.

## **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:**

