



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

Notice of Decision

Decision Date: November 13, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002893

[REDACTED]

Dear [REDACTED]

On October 19, 2015, your authorized representative and spouse, [REDACTED], appeared by telephone on her own and your behalf at a hearing on the appeal of your eligibility for a health insurance exemption.

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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Decision

Decision Date: November 13, 2015

NY State of Health Number: [REDACTED]
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[REDACTED]

Issue

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

Based on your and your spouse's interactions with NY State of Health, do you qualify for a health insurance exemption?

Procedural History

On December 15, 2014, the Marketplace issued a notice of eligibility redetermination that, based on your updated application for health insurance in 2015, you were conditionally eligible to share in advance premium tax credits and cost sharing reductions with your spouse, effective January 1, 2015. That notice further informed you that you needed to submit documents to prove your citizenship status by March 16, 2015.

That same day, the Marketplace issued an enrollment notice confirming the silver-level qualified health plan you and your spouse had selected through the Marketplace and that coverage could start as early as January 1, 2015, if you paid your first month's premium.

On May 3, 2015, the Marketplace issued a notice of eligibility redetermination that, effective May 31, 2015, you were no longer eligible to receive financial assistance and could not enroll in a qualified health plan at full cost through the Marketplace because you had not timely provided proof of your citizenship status.

On May 4, 2015, the Marketplace issued a disenrollment notice that stated your and your spouse's coverage through the silver-level qualified health plan you both had been enrolled in would end effective May 31, 2015.

On May 12, 2015, your spouse spoke with a representative from the Marketplace's Account Review Unit and appealed being disenrolled from your current health plan and to get re-instated outside open enrollment.

On May 13, 2015, your Certificate of Naturalization was uploaded to your Marketplace account (Document [REDACTED]).

On September 5, 2015, the Marketplace issued a notice of eligibility redetermination that you and your spouse were eligible to share in advance premium tax credits and cost sharing reductions, effective October 1, 2015. The notice further stated that you and your spouse do not qualify to select a health plan outside of the open enrollment period because the requirements to qualify for a special enrollment period had not been met.

On September 26, 2015, the Marketplace issued a notice of eligibility redetermination that you and your spouse are eligible to share in advance premium tax credits and cost sharing reductions, effective November 1, 2015, and qualify to select a health plan outside the open enrollment period.

That same day, the Marketplace issued an enrollment notice confirming your and your spouse's selection of a couple's silver-level qualified health plan with an enrollment start date of October 1, 2015. That notice also stated that your advance premium tax credit will be applied to your monthly premium, effective October 1, 2015.

On October 19, 2015, your spouse, acting on her own and your behalf, 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) You and your spouse applied for health insurance for 2015 through the Marketplace in December 2014.
- 2) Your spouse testified that, on December 15, 2014, the Marketplace confirmed your health plan selection for couple's coverage through a silver-level qualified health plan, effective January 1, 2015.
- 3) On May 13, 2015, a copy of your Certificate of Naturalization was uploaded to your Marketplace account. The certificate indicated it was issued by the Supreme

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Court, Orange County, New York [REDACTED] (see Document [REDACTED]).

- 4) Your spouse testified that she spoke with Marketplace representatives on several occasions after you were both disenrolled from your silver-level qualified health plan as of May 31, 2015, despite having uploaded a copy of your Certificate of Naturalization on May 13, 2015.
- 5) Your spouse testified that, because of the disenrollment effective May 31, 2015, you both were without health insurance for the period of June 1, 2015 to September 30, 2015.
- 6) According to your Marketplace account, you and your spouse were given a special enrollment period that was facilitated by a Marketplace override on September 28, 2015, and were able to select and enroll in a silver-level qualified health plan, effective October 1, 2015, with advance premium tax credits to be applied as of that date.
- 7) Your spouse testified that you are both satisfied with being able to re-enroll such that you no longer wish to pursue your appeal of being denied special enrollment periods within which to re-enroll in a health plan through the Marketplace.
- 8) Your spouse testified that she wished to go forward with the hearing on the issue of possibly facing a tax penalty by the IRS for not having health insurance from June 1, 2015 to September 30, 2015 due to Marketplace error.

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

Applicable Law and Regulations

Exemptions

A shared responsibility payment may be imposed with respect to a non-exempt individual who does not maintain minimum essential coverage. However, an exemption may relieve an individual from the shared responsibility payment (45 CFR §155.600(a)).

An exemption may be granted to an applicant for at least before, a month or months during which, and the month after, if it is determined the individual(s) experienced circumstances that prevented them from obtaining coverage under a qualified health plan (45 CFR §155.605(g)(1)(iii)).

The Marketplace may adopt an exemption eligibility determination made by the Department of Health and Human Services for an exemption application that is submitted before the start of open enrollment for 2016 (45 CFR §155.625(b)).

Legal Analysis

Withdrawal of Appeal

As to the denial of a special enrollment, your authorized representative/spouse testified under oath at the hearing that this issue was resolved by virtue of the Marketplace's September 26, 2015 notices of eligibility redetermination and enrollment, as well as the Marketplace's September 28, 2015 override and your enrollment in a couple's silver-level qualified health plan, effective October 1, 2015. Since she credibly testified that you both were no longer interested in pursuing your appeal on this issue, your appeal was withdrawn on the record. Accordingly, we are dismissing your appeal on this issue only, pursuant to Code of Federal Regulation (CFR) 45 CFR § 155.530(a)(1).

Tax Penalty Exposure

Also at the hearing, your authorized representative/spouse testified that you were both concerned about the possibility of being exposed to an IRS tax penalty for not having health insurance for the period of June 1, 2015 to September 30, 2015.

Based on the facts in the record and the authorized representative/spouse's testimony, the Appeals Unit finds that the NY State of Health Marketplace erred in disenrolling you, the appellant, and your spouse from your couple's silver-level qualified health plan and failed to issue a timely notice of eligibility redetermination once proof of your citizenship status was provided on May 13, 2015, such that you were without health plan coverage from June 1, 2015 to September 30, 2015. Because of this error and resultant delay in an eligibility redetermination, we also find that you were not able to enroll in a qualified health plan (QHP) during that period. Furthermore, the authorized representative/spouse testified that had NY State of Health Marketplace timely and properly processed your proof of citizenship, you both would not have been without coverage from June 1, 2015 to September 30, 2015.

If this decision could effectuate an earlier 2015 plan year re-enrollment, we would instruct NY State of Health to redetermine your and your spouse's eligibility accordingly. However, NY State of Health cannot redetermine your couple's enrollment retroactively to June 1, 2015 since we are now in November 2015. Further, your authorized representative/spouse testified that neither of you sought medical treatment nor care during the months of June through September 2015. Nevertheless, you and your spouse may have other claims or remedies as a result of a finding that NY State of Health's Marketplace's error caused your disenrollment from your couple's health plan and delayed your ability to re-enroll until September 26, 2015. We therefore issue this decision.

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Sometimes after an appeal decision an appellant can claim an exemption from the requirement to have health insurance. If both of the following applied to you in [2014], you might qualify for a health coverage exemption:

- In 2015 you were disenrolled from coverage in a qualified health plan because of an appealable reason
- Your appeal was eventually successful

If this is accurate, you may not have to pay the penalty for the months you were uncovered. If approved, your exemption generally also covers the month of the Decision itself. It will not cover the month of the Decision itself if the Decision is in the next plan year. For example, you did not enroll during 2015 and we issue a decision in late 2015. In this case, your exemption would cover only the months during 2015 that you were both uncovered.

You must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, the NY State of Health Marketplace cannot and will not accept exemption applications.

You will find all of the information you need to claim the exemption due to an appeal Decision at www.healthcare.gov/exemptions-tool/#/results/details/eligible-based-on-appeal. You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word “pending” in column “c” and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

Decision

Your appeal of the Marketplace’s denial of special enrollment period is dismissed.

This does not grant you and your spouse an exemption for the shared responsibility payment.

You will find all of the information you need to claim the exemption due to an appeal decision at www.healthcare.gov/exemptions-tool/#/results/details/eligible-based-on-appeal. You can also call 1-800-318-2596.

Effective Date of this Decision: November 13, 2015

How this Decision Affects Your Eligibility

This does not grant you and your spouse an exemption for the shared responsibility payment.

You will find all of the information you need to claim the exemption due to an appeal decision at www.healthcare.gov/exemptions-tool/#/results/details/eligible-based-on-appeal. You can also call 1-800-318-2596.

If You Think Your Appeal Should Not Be Dismissed on the Issue of Denial of Special Enrollment Period

If you think your appeal should not be dismissed, you can ask us to vacate (cancel) this dismissal. You must ask us in writing within 30 days after the date on this notice.

The Marketplace's Appeals Unit will review your request. If your request is approved, another hearing will be scheduled for you. If your request is denied, the Marketplace will tell you in writing.

If you do not respond to this notice within 30 days, your appeal will remain dismissed, and the Marketplace will take no further action on your appeal.

If You Otherwise 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.

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).

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

Summary

Your appeal of the Marketplace's denial of special enrollment period is dismissed.

This does not grant you and your spouse an exemption for the shared responsibility payment.

You will find all of the information you need to claim the exemption due to an appeal decision at www.healthcare.gov/exemptions-tool/#/results/details/eligible-based-on-appeal. You can also call 1-800-318-2596.

Legal Authority

We are sending you this notice in accordance with 45 CFR § 155.545(a).

A Copy of this Decision Has Been Provided To:

