



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: AP000000003023

[REDACTED]

Dear [REDACTED]

On July 29, 2015, you and your Authorized Representative appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 2, 2015 eligibility determination.

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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DEPARTMENT OF HEALTH
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Decision

Decision Date: October 19, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003023

[REDACTED]

Issue

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

Did the Marketplace properly determine that you were not eligible for a special enrollment period to enroll in a qualified health plan as of May 1, 2015?

Procedural History

The Marketplace received your initial application for health insurance on January 5, 2015.

On January 6, 2015, the Marketplace issued an eligibility determination notice based on your January 5, 2015 application. It stated that you were eligible to enroll in a qualified health plan (QHP); eligible to receive an advance premium tax credit (APTC) of up to \$150.00 per month; and, if you selected a silver-level plan, eligible for cost-sharing reductions (CSR), effective February 1, 2015.

On April 28, 2015, the Marketplace received a revised application, in which you were requesting a special enrollment period. In this application, you stated that “[w]hen I filed my 2014 federal tax return I learned that I owed a penalty because I did not have health insurance in 2014. I would like to enroll in health insurance now to avoid or lower any tax penalty for 2015.”

On April 29, 2015, the Marketplace issued an eligibility redetermination notice stating that you were eligible to enroll in a QHP; eligible to receive an APTC of up to \$217.00 per month; eligible for CSR, provided you selected a silver-level plan;

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and, newly eligible for the APTC Premium Assistance Program. This notice further stated that you qualified for a special enrollment period (SEP) to select a health plan outside of the open enrollment period for 2015. It directed you to confirm your plan selection no later than April 30, 2015. This eligibility determination was effective June 1, 2015.

On May 1, 2015, the Marketplace received a further revised application.

On May 2, 2015, the Marketplace issued an eligibility redetermination notice stating that you were eligible to enroll in a QHP; eligible to receive an APTC of up to \$217.00 per month; eligible for CSR, provided you selected a silver-level plan; and, newly eligible for the APTC Premium Assistance Program. The notice did not state whether you qualified for an SEP. This eligibility determination was also effective June 1, 2015. You appealed this determination insofar as you were effectively found not to have qualified for an SEP to enroll in a plan outside of the open enrollment period.

On July 29, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. Your Authorized Representative, [REDACTED], also attended the hearing. 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) In your April 28, 2015 application, you stated that “[w]hen I filed my 2014 federal tax return I learned that I owed a penalty because I did not have health insurance in 2014. I would like to enroll in health insurance now to avoid or lower any tax penalty for 2015.”
- 2) On April 29, 2015, you qualified for a special enrollment period (SEP) to enroll in qualified health plan (QHP) outside of the open enrollment period, but no later than April 30, 2015.
- 3) You testified that you delayed your selection of a plan since you had moved during the year and it wasn't a priority at the time.
- 4) You testified that after having been found eligible to enroll in a plan outside of the open enrollment period, you attempted to enroll in a plan on April 28, 2015 and April 29, 2015, but were unable to do so. You further testified that after applying, when you checked the plan tab to review the available plans, you were unable to select a plan or review their contents.

- 5) You testified that when you attempted to select a plan again on May 1, 2015 or May 2, 2015, you were prevented from doing so because your original SEP had lapsed on April 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).

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 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, 2015 and ended 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 QHP. A special enrollment period may be permitted when one of the following triggering events occurs:

- 1) The qualified individual or his or her dependent
 - a. loses health insurance considered to be minimum essential coverage
 - b. is enrolled in a non-calendar-year health insurance policy that will expire in 2014, even if they have the option to renew the policy
 - c. loses pregnancy-related coverage
 - d. loses 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,
- 3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status,
- 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,
- 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,
- 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,
- 7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move,
- 8) The qualified individual who is an Indian may enroll in a QHP or change from one QHP to another one time per month,
- 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

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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)).

Legal Analysis

You submitted an application on May 1, 2015 and the Marketplace made a preliminary determination that same day. While the Marketplace did issue its written notice of eligibility determination on May 2, 2015, it was silent on whether you had qualified for a special enrollment period (SEP).

Although the Marketplace did not issue a timely notice of eligibility determination addressing whether you qualified for an SEP, this does not prevent the Appeals Unit from reaching the merits of your case on your May 19, 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 you were properly denied an SEP as of May 1, 2015.

The Marketplace provided an open enrollment from November 15, 2014 until February 15, 2015. The record indicates that during the open enrollment period you did not enroll in a qualified health plan (QHP) through the Marketplace.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a SEP in order to change to another health plan offered in the Marketplace. On April 28, 2015, you requested an SEP in order to enroll in a plan through the Marketplace. In the eligibility notice issued on April 29, 2015, you were granted an SEP, which was due to expire on April 30, 2015.

You credibly testified that after having been found eligible to enroll in a plan outside of the open enrollment period, you attempted to enroll in a plan on April 28, 2015 and April 29, 2015, but were unable to do so. You further testified that after applying, when you checked the plan tab to review the available plans, you were unable to select a plan or review their contents.

You further testified that when you attempted to select a plan again on May 1, 2015 or May 2, 2015, you were prevented from doing so because your original SEP had elapsed on April 30, 2015.

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In certain circumstances a SEP is granted to individuals so that they may enroll in a QHP outside of the open enrollment period if the individual experiences a triggering event.

One triggering event occurs when an individual's enrollment or non-enrollment in a QHP is due to an 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.

Since the credible evidence of record reflects that you were prevented from selecting a QHP during your original SEP due to an error of the Marketplace, the May 2, 2015 is MODIFIED to grant you an SEP.

Decision

The Marketplace's eligibility determination issued on May 2, 2015 is MODIFIED to grant you an additional special enrollment period, ending 60 days from the date of this decision.

Effective Date of this Decision: October 19, 2015

How this Decision Affects Your Eligibility

You qualify for an additional special enrollment period.

You have 60 days from the date of this Decision to select a qualified health plan through 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

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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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P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The Marketplace's eligibility determination issued on May 2, 2015 is MODIFIED to grant you an additional special enrollment period, ending 60 days from the date of this decision, ending 60 days from the date of this decision.

You qualify for an additional special enrollment period.

You have 60 days from the date of this Decision to select a qualified health plan through the Marketplace.

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:

[REDACTED]

[REDACTED]