



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

Notice of Decision

Decision Date: October 15, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003043

[REDACTED]

Dear [REDACTED],

On July 28, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 3, 2015 eligibility redetermination notice, May 4, 2015 disenrollment notice, and June 4, 2015 denial of a special enrollment period as stated in the June 6, 2015 notice of eligibility redetermination.

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 45 CFR § 155.545(b).

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Issues

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

Did the Marketplace properly determine on May 3, 2015 that you were no longer eligible for advance premium tax credits and cost-sharing reductions, effective May 31, 2015?

Did the Marketplace properly determine on May 4, 2015 that you were disenrolled from your bronze-level qualified health plan, effective May 31, 2015?

Did the Marketplace properly determine on June 4, 2015 that you did not qualify for a special enrollment period as stated in the June 6, 2015 notice of eligibility redetermination?

Procedural History

On November 7, 2014, the Marketplace issued a notice that it was time to renew your health insurance. That notice stated that based on information from federal and state sources, the Marketplace could not make a decision about whether you would qualify for financial help paying for your health coverage, and that you needed to update your account by December 15, 2014 or you might lose the financial assistance you were currently receiving.

On December 9, 2014, your Marketplace application was updated.

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On December 10, 2014, the Marketplace issued a notice of eligibility redetermination that you were conditionally eligible to receive advance premium tax credits of up to \$247.00 per month and, if you select a silver-level qualified health plan, conditionally eligible for cost sharing reductions, effective January 1, 2015. That notice also requested that you provide additional information/documents concerning your incarceration status by March 11, 2015.

That same day, the Marketplace issued an enrollment notice confirming your enrollment in Fidelis Care Bronze ST INN Pediatric Dental Dep25 (Fidelis Care Bronze) with a monthly premium responsibility of \$58.13 after the monthly APTC amount of \$247.00 was applied. The notice also stated that your health coverage could start as early as January 1, 2015 if you paid the first month's premium on time.

On May 3, 2015, the Marketplace issued a notice of eligibility redetermination that you are not eligible for Medicaid, Child Health Plus, or to receive tax credits or cost sharing reductions and cannot enroll in a qualified health plan at full cost through New York State of Health effective May 31, 2015. The reason stated was because you did not provide information on your incarceration status to confirm your eligibility within the time allowed.

On May 4, 2015, the Marketplace issued a disenrollment notice that your coverage with Fidelis Care Bronze will end effective May 31, 2015.

On May 14, 2015, the Marketplace issued a notice of eligibility redetermination that you were conditionally eligible to receive APTC of up to \$246.00 per month and conditionally eligible for cost sharing reductions, effective June 1, 2015. The notice also requested that you provide additional information/documents concerning your incarceration status by August 11, 2015.

On May 20, 2015, you spoke to the Marketplace's Account Review Unit and appealed the eligibility determination insofar as you were being disenrolled from your Fidelis Care Bronze plan effective May 31, 2015 for failure to provide documents concerning your incarceration status.

On June 4, 2015, the Marketplace issued a notice of eligibility redetermination that you are eligible to receive APTC up to \$246.00 per month and eligible for cost sharing reductions if you select a silver-level qualified health plan, effective July 1, 2015. That notice provided information on how to pick a health plan and stated you can change your plan at any time during the open enrollment period and, if you missed the deadline to enroll in a plan for 2015, you may not be able to enroll in a health insurance plan until the next open enrollment period, unless you qualify for a special enrollment period.

On June 6, 2015, the Marketplace issued another notice of eligibility redetermination that, as of June 4, 2015, you are eligible to receive APTC up to \$246.00 per month and eligible for cost sharing reductions if you select a silver-level qualified health plan, effective July 1, 2015. This notice stated that you do not qualify to select a health plan

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outside of the open enrollment period for 2015 because you have not met any of the requirements.

On July 28, 2015, you 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

- 1) Your Marketplace account indicates that you elected to receive notifications from the Marketplace via electronic mail.
- 2) You testified that you updated your Marketplace application on December 9, 2014 and renewed your health coverage policy with Fidelis Care Bronze with coverage to begin on January 1, 2015, and thought you were all set.
- 3) You testified you did not know that you needed to provide information and/or documents concerning your incarceration status by March 11, 2015 because you did not receive an email notice or written notifications from the Marketplace.
- 4) You testified that it was not until you received the May 4, 2015 disenrollment notice that you learned there was a problem with your incarceration status, which surprised you since you had never been arrested and it would be difficult to prove you had never been incarcerated.
- 5) You testified that you updated the information in your Marketplace Account on May 14, 2015, after speaking with a Marketplace representative, who told you that your account was still showing that you were incarcerated as of May 13, 2015.
- 6) You testified that you checked with the local Sheriff's Department and District Attorney's Office to see if they could provide any information as to why you were showing up on the Marketplace's system as incarcerated, but neither agency was able to help you out.
- 7) You testified that you had your credit report pulled to see if you were a victim of identity theft but there was no evidence of any unauthorized activity to suggest your identity had been stolen.
- 8) According to the four page fax, dated May 14, 2015, that you sent the Marketplace, you have "never been arrested, let alone [] incarcerated." You also provided a copy of your NYS driver license showing it was issued on 6/29/12 and expires on 7/9/20 and provided copies of direct deposit statements showing that you worked from 11/30/2014 – 12/06/2014 and 4/27/2015 – 5/3/2015, as evidence that you were not incarcerated in December 2014 or May 2015

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evidence that you were not incarcerated in December 2014 or May 2015 (Appellant's Exhibit A).

- 9) You testified that you want to be re-enroll in your bronze plan for the remainder of 2015.
- 10) You also expressed concern that you are going to experience the same problem with your incarceration status when it is time to renew your health insurance policy for 2016.

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

Applicable Law and Regulations

Eligibility for Enrollment in a Qualified Health Plan

Generally, an applicant is eligible for enrollment in a qualified health plan (QHP) through the Marketplace if he: (1) is a citizen or national of the United States; (2) is not incarcerated; and (3) is a resident of the state (45 CFR § 155.305(a)(1)-(3)).

The Marketplace must verify an applicant's attestation that the applicant is not incarcerated by either relying on available electronic data sources, or accepting the applicant's attestation when electronic data sources are unavailable (45 CFR § 155.315(e)). However, if an applicant's attestation is not reasonably compatible with information from approved data sources or other information provided by the applicant, the Marketplace must notify the applicant of the inconsistency and provide the applicant with a period of 90 days to present documentation to resolve the inconsistency (45 CFR § 155.315(e)(3); 45 CFR § 155.315(f)(2)(i)-(ii)).

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)).

Electronic Notices

Applicants may choose to receive notices and information from the Marketplace by either electronic or regular mail. If the applicant elects to receive electronic notices, the Marketplace must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant's account (45 CFR § 155.230(d); 42 CFR § 435.918(b)(4)).

Legal Analysis

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The issue under review is whether the Marketplace properly determined that you were no longer eligible to enroll in a qualified health plan through the Marketplace, effective May 31, 2015.

An applicant is eligible to enroll in a qualified health plan (QHP) if he is a citizen or national of the United States, is not incarcerated, and is a resident of New York State. There being no contention regarding your citizenship or residency statuses, they are not addressed here.

If the Marketplace cannot verify information required to determine the applicant's eligibility, the Marketplace must provide the applicant a period of 90 days to resolve the inconsistency.

In the eligibility determination issued on December 10, 2014, you were advised that your eligibility was only conditional, and that you needed to provide proof of your incarceration status before March 11, 2015.

The record reflects that the Marketplace did not receive the requested documentation before the deadline.

However, you testified and the record reflects that you elected to receive your notices from the Marketplace via electronic mail. You credibly testified that you did not receive the December 10, 2014 eligibility determination notice asking you to provide proof of incarceration to the Marketplace. You also credibly testified it was difficult to prove a negative since you had never even been arrested.

Since you did not receive proper notice that there was an inconsistency in your Marketplace account, the May 3, 2015 eligibility redetermination notice and May 4, 2015 disenrollment notice are RESCINDED, as are the June 4, 2015 and June 6, 2015 eligibility redetermination notices.

On May 14, 2015, after you became aware of the inconsistency in your account on May 13, 2015, you provided a written statement that you have never been arrested or incarcerated, a copy of your NYS driver license showing it was issued on 6/29/12 and expires on 7/9/20, and copies of direct deposit statements showing that you worked from 11/30/2014 – 12/06/2014 and 4/27/2015 – 5/3/2015, as evidence that you were not incarcerated in December 2014 or May 2015, despite the Marketplace's sources incorrectly indicating that you were.

To prove an individual's incarceration status, the Marketplace can accept current pay stubs showing employment in society. You provided your direct deposit statements for the period of November 30, 2014 to December 6, 2014 and April 27, 2015 to May 3, 2015 as evidence that you were not incarcerated at either time despite the Marketplace's system showing that you were at both times.

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This evidence permits the inference that the Marketplace's sources provided inaccurate information on you

Therefore, your case is RETURNED to the Marketplace to verify your documentation, redetermine your eligibility for health insurance and, if applicable, reinstate your coverage as of June 1, 2015.

Decision

The May 3, 2015 eligibility redetermination notice and May 4, 2015 disenrollment notice are RESCINDED.

The June 4, 2015 and June 6, 2015 eligibility redetermination notices are RESCINDED.

Your case is RETURNED to the Marketplace to verify your documentation, redetermine your eligibility for health insurance and, if applicable, reinstate your coverage as of June 1, 2015.

Effective Date of this Decision: October 15, 2015

How this Decision Affects Your Eligibility

Your case is being sent back to the Marketplace to verify the documentation you submitted, redetermine your eligibility for health insurance, and, if applicable, reinstate your coverage as of June 1, 2015.

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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- By fax: 1-855-900-5557

Summary

The May 3, 2015 eligibility redetermination notice and May 4, 2015 disenrollment notice are RESCINDED.

The June 4, 2015 and June 6, 2015 eligibility redetermination notices are RESCINDED.

Your case is RETURNED to the Marketplace to verify your documentation, redetermine your eligibility for health insurance and, if applicable, reinstate your coverage as of June 1, 2015.

Your case is being sent back to the Marketplace to verify the documentation you submitted, redetermine your eligibility for health insurance, and, if applicable, reinstate your coverage as of June 1, 2015.

Legal Authority

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A Copy of this Decision Has Been Provided To:

