



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

Notice of Decision

Decision Date: October 22, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003251

[REDACTED]

Dear [REDACTED]

On October 5, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 6, 2015 eligibility determination denying you 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).

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 22, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003251

[REDACTED]

Issue

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

Did the Marketplace properly determine on that you were not eligible for a special enrollment period as of April 29, 2015?

Procedural History

On April 29, 2015, the Marketplace received your application for health insurance.

On April 30, 2015, the Marketplace issued an eligibility determination notice stating that you were conditionally eligible to receive an advance premium tax credit (APTC) of up to \$166.00 per month, effective June 1, 2015. This notice requested that you provide income documentation before July 28, 2015 to confirm your eligibility. It did not make a decision on whether you qualified to select a health plan outside of the open enrollment period for 2015.

On May 1, 2015, the Marketplace received a notice issued by UnitedHealthcare, dated March 15, 2015, confirming that your health coverage with that insurance carrier ended effective February 28, 2015.

On May 6, 2015, the Marketplace issued an eligibility redetermination notice stating that you were conditionally eligible to receive an advance premium tax credit (APTC) of up to \$166.00 per month, effective June 1, 2015. This notice requested that you provide income documentation before August 27, 2015 to

confirm your eligibility. The notice further stated that you did not qualify to select a health plan outside of the open enrollment period for 2015.

On June 2, 2015, you spoke to the Marketplace's Account Review Unit and appealed that eligibility determination insofar as you were determined to be ineligible to enroll in a health plan outside of the open enrollment period.

On October 5, 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

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

- 1) The record reflects that you submitted your application for health insurance on April 29, 2015.
- 2) The record reflects that you did not select a health plan through the Marketplace as of April 29, 2015.
- 3) You testified that you lost your position with your employer around the same time that your insurance with UnitedHealthcare was terminated.
- 4) On May 1, 2015, you provided a letter issued by UnitedHealthcare reflecting that your coverage with that insurance carrier ended effective February 28, 2015.
- 5) You testified that you believed you had 90 days to apply to enroll in a health plan through the Marketplace after have lost your insurance through the Marketplace.
- 6) You testified that you were seeking to enroll in a plan for the remainder of the 2015 plan year.

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

Applicable Law and Regulations

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-in-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 generally permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent involuntarily loses certain health insurance coverage:
 - (a) Health insurance considered to be minimum essential coverage;
 - (b) Enrolled in any non-calendar year health insurance policy, 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 has a 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 is an Indian, as defined by section 4 of the Indian Health Care Improvement Act, and 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)).

The Marketplace provided a special enrollment period for individuals who were uninsured in 2014 and owed a federal tax penalty ("Special Enrollment Periods," <http://info.nystateofhealth.ny.gov/SpecialEnrollmentPeriods>). For those who qualify, the SEP began on March 1, 2015 and ended at 11:59 p.m. on April 30, 2015 (*id*). However, individuals who owe a fee for not having coverage in 2014, but are already enrolled in coverage through the Marketplace for 2015, cannot use the special enrollment period to switch plans ("Owe a fee for not having health coverage in 2014? You may still be able to get coverage for 2015,"

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<https://www.healthcare.gov/blog/tax-penalty-special-enrollment-period-for-2015-health-coverage/>).

Legal Analysis

The issue under review is whether the Marketplace properly denied you a special enrollment period.

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 you submitted a complete application on April 29, 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.

You credibly testified and provided documentation showing that you lost your health coverage under your UnitedHealthcare plan as of February 28, 2015. As of that date, you were entitled to a 60-day special enrollment period to allow you to enroll in a health plan through the Marketplace.

Sixty days from February 28, 2015 was April 29, 2015; therefore, you would have qualified to select a qualified health plan outside of the open enrollment period until April 29, 2015. While your application was submitted and complete on April 29, 2015, the credible evidence of record reflects that you did not attempt to select a plan at that time.

No evidence has been offered, or argument made, to support granting of a special enrollment period under the remaining provisions of CFR § 155.420(d).

Since the credible evidence of record confirms that you were ineligible for special enrollment period after April 29, 2015, the denial of a special enrollment period under the May 6, 2015 eligibility determination is **AFFIRMED**.

However, the Marketplace's open enrollment period for 2016 insurance plans runs from November 15, 2015 to February 15, 2016. For more information on open enrollment, consult the New York State of Health website (<https://nystateofhealth.ny.gov>).

Decision

The May 6, 2015 eligibility determination is AFFIRMED.

Effective Date of this Decision: October 22, 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.

However, the Marketplace's open enrollment period for 2016 insurance plans runs from November 15, 2015 to February 15, 2016. For more information on open enrollment, consult the New York State of Health website (<https://nystateofhealth.ny.gov>).

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:

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Summary

The May 6, 2015 eligibility determination is **AFFIRMED**.

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

However, the Marketplace's open enrollment period for 2016 insurance plans runs from November 15, 2015 to February 15, 2016. For more information on open enrollment, consult the New York State of Health website (<https://nystateofhealth.ny.gov>).

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:

