



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

Notice of Decision

Decision Date: January 08, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003393

[REDACTED]

Dear [REDACTED],

On October 13, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's September 19, 2015 disenrollment notice, the denial of a special enrollment period, and your eligibility for a health insurance exemption for 2015.

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 and the NY State of Health number at the top of this notice.

Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545(b).

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NY State of Health Number: [REDACTED]
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Issues

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

Does the Appeals Unit have the authority to review your objection to the termination of your enrollment in your qualified health plan effective May 31, 2015 because of non-payment of premiums?

Did the Marketplace properly determine on that you were not eligible for a special enrollment period?

Based on your interactions with the NY State of Health, could you qualify for a health insurance exemption for 2015?

Procedural History

On January 22, 2015, the Marketplace issued a notice in response to your January 21, 2015 application, stating that you, [REDACTED], might be eligible for health insurance through NY State of Health; however, more information was needed before a determination could be made, because the information you submitted did not match information obtained through state and federal data sources. The notice requested that you provide income documentation by February 8, 2015 to confirm the information you provided in your application was accurate.

On February 1, 2015, the Marketplace received a payroll register issued by [REDACTED] reflecting income you received from January 1, 2015 to January 31, 2015.

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On February 5, 2015, the Marketplace received two revised applications; in the first, you attested to an expected yearly income of between \$21,926.71 and in the second you attested to income of \$28,688.12.

On February 6, 2015, the Marketplace issued an eligibility determination notice based on the information contained in your final application submitted on February 5, 2015, in which you attested to an expected yearly income of \$28,688.12. The notice stated that you were eligible to receive advance payments of premium tax credit (APTC) of up to \$153.00 per month; eligible for cost-sharing reductions (CSR), provided you selected a silver-level plan; and ineligible for Medicaid. This eligibility determination was effective March 1, 2015.

Also on February 6, 2015, the Marketplace issued a notice confirming your personal enrollment in Fidelis Care Silver, with a monthly premium responsibility of \$208.02 after applying the maximum APTC of \$153.00. The notice further stated that your coverage could begin as early as March 1, 2015 if you paid your first month's premium.

On April 15, 2015, the Marketplace issued a notice reconfirming your enrollment in Fidelis Care Silver, with a monthly premium responsibility of \$208.02 after applying the maximum APTC of \$153.00. Again, the notice further stated that your coverage could begin as soon as March 1, 2015 if you paid your first month's premium.

There is nothing in your account that would indicate the first month's premium had been paid.

On April 20, 2015, the Marketplace received a revised application in which you attested to an expected yearly income of \$28,688.12. You also indicated in your application that you had incurred a tax penalty on your 2014 tax return because you did not have health insurance during 2014, and were seeking to enroll in health insurance during 2015 in order to avoid or lower any tax penalty for 2015.

On April 21, 2015, the Marketplace issued an eligibility redetermination notice based on the information contained in the April 20, 2015 application. The notice stated that you were still eligible to receive up to \$153.00 per month in APTC; eligible for CSR, provided you selected a silver-level plan; and ineligible for Medicaid. The notice further stated that you qualified to select a health plan outside of the open enrollment period, and stated that you needed to select a plan no later than April 30, 2015, or you might not be able to enroll until the next open enrollment period. This eligibility determination was effective June 1, 2015.

Also on April 21, 2015, the Marketplace issued a notice confirming that you had selected a plan, and that your premium responsibility would be \$208.02 after the maximum APTC was applied.

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On June 9, 2015, you spoke to the Marketplace's Account Review Unit and appealed that eligibility determination in so far as you were not eligible to enroll in a health plan outside of the open enrollment period, and were seeking to avoid paying a tax penalty for not having health insurance for a portion of 2015.

On September 19, 2015, the Marketplace issued a disenrollment notice confirming that your coverage with Fidelis Care Silver has been terminated effective May 31, 2015 for non-payment of premium amounts.

On October 13, 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 support the following findings of fact:

- 1) According to your account, you elected to receive notices from the Marketplace by regular mail.
- 2) On February 6, 2015, the Marketplace found you eligible for an advance premium tax credit (APTC) of up to \$153.00 per month; eligible for cost-sharing reductions (CSR), provided you enrolled in a silver-level plan, effective March 1, 2015.
- 3) On February 6, 2015, the Marketplace issued a notice confirming your enrollment in a Fidelis Care silver-level plan on February 5, 2015. Your coverage with this plan began March 1, 2015. Under this plan, your premium responsibility was \$208.02 per month. The Marketplace issued an additional notice on April 15, 2015 reconfirming your enrollment in the Fidelis Care silver-level plan on March 28, 2015, with such coverage to begin on March 1, 2015.
- 4) You testified that you incurred a tax penalty on your 2014 taxes for not having health insurance for at least part of the year.
- 5) You revised your application on April 20, 2015 and attested that you had incurred a tax penalty on your 2014 tax return because you did not have health insurance during 2014, and were seeking to enroll in health insurance during 2015 in order to avoid or lower any tax penalty for 2015.
- 6) You were disenrolled from the Fidelis Care silver-level plan for non-payment of premium amounts, effective May 31, 2015.

- 7) You testified that you were no longer seeking for a reinstatement of your plan coverage to June 1, 2015 since it would be cost prohibitive to you, but rather to enroll in a plan going forward during 2015. You also testified that you were seeking an acknowledgement from the Marketplace that they made an error in not allowing you to select a plan for coverage beginning June 1, 2015 in order to avoid incurring a penalty for not having coverage on your 2015 tax return when you file.

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

Applicable Law and Regulations

Appealable Issues

An applicant has the right to appeal: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination and (5) a denial of a request to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

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%99waiting-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 permitted when one of the following triggering events occur:

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- (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 who is an Indian 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

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

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

- (1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or
- (2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128”

(45 CFR § 155.420(e)).

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 HHS for an exemption application that is submitted before the start of open enrollment for 2016 (45 CFR § 155.625(b)).

Legal Analysis

The first issue under review is whether the Appeals Unit has the authority to review your objection to the termination of your enrollment in your qualified health plan effective May 31, 2015 because of non-payment of premiums.

On September 19, 2015, the Marketplace issued a disenrollment notice stating that your coverage with Fidelis Care Silver is terminated effective May 31, 2015 because of non-payment of premiums.

You testified that that you attempted to enroll in a Fidelis Care Silver plan on February 5, 2015. You further testified that you were never enrolled in the plan on that date, and attempted to enroll again on April 21, 2015. You testified that you were seeking to enroll in a qualified health plan with a June 1, 2015 start date as a result of the Marketplace's error in not previously permitting you to enroll in a plan.

However, a review of your account indicates that you were in fact enrolled in a plan, which was eventually cancelled due to a failure to pay premiums.

The New York State of Health Appeals Unit only has the authority to review issues related to the following: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination and (5) a denial of a request to vacate dismissal made by the New York State of Health Appeals Unit.

Since the Appeals Unit is not given the authority to review termination of enrollment due to non-payment of premiums, we cannot reach the merits as to whether or not you were properly terminated from your health plan for non-payment of premiums. Therefore, your appeal of the September 19, 2015 disenrollment notice is **DISMISSED** as a non-appealable issue.

The second 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 February 5, 2015. Therefore, you did 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.

The Marketplace granted a special enrollment period, from March 1, 2015 to April 30, 2015, for individuals who were uninsured in 2014 and owed a federal tax penalty.

You testified, and your application reflects, that you incurred a federal tax penalty for being uninsured in 2014. Therefore, you qualified for the special enrollment period granted by the Marketplace on this basis, which extended from March 1, 2015 and ended at 11:59 p.m. on April 30, 2015.

The credible evidence of record reflects that you had remained enrolled in the Fidelis Care Silver plan at that time, and that you were again found eligible to enroll in a plan at that time. You were previously enrolled in a plan, and even if that coverage had been cancelled due to a failure to pay premiums, you were further granted an additional enrollment period based on your statement that you had owed a penalty for the 2014 tax year.

Generally, the loss of health insurance coverage is considered a triggering event. Here, your enrollment was terminated effective May 31, 2015 because you did not pay your premiums to your health plan on time. The Marketplace considers the failure to pay premiums a voluntary action causing the termination of your coverage; therefore, you would not be entitled to an additional special enrollment period in which to enroll in new coverage on this basis. As discussed above, the Appeals Unit does not have the authority to decide whether or not your premiums were in fact made on time.

The credible evidence of record indicates that, since the open enrollment period closed on February 28, 2015, and your special enrollment period you were eligible for based on paying a tax penalty during 2014 lapsed on April 30, 2015, no other triggering events have occurred that would qualify you for a special enrollment period.

Therefore, the denial of an additional special enrollment period is **AFFIRMED**.

The third issue under review is whether you qualify for a health insurance exemption for 2015.

Based on the facts in the record and the Appellant's testimony, the Appeals Unit finds that the NY State of Health Marketplace did not err in preventing the processing of the health plan selection for the Appellant prior to April 30, 2015, and did not fail to issue a timely enrollment notice. In order for you to have selected a plan after your special enrollment period concluded on April 30, 2015, you would have to have qualified for a special enrollment period. We find there is sufficient evidence that you did not qualify to select a plan after the special enrollment period concluded on April 30, 2015.

Therefore, there is no basis to find that you were prevented from enrolling in a plan because of special circumstances.

Decision

Your appeal of the September 19, 2015 disenrollment notice is **DISMISSED** as a non-appealable issue.

The denial of an additional special enrollment period is **AFFIRMED**

There is no basis to grant an exemption.

Effective Date of this Decision: January 08, 2016

How this Decision Affects Your Eligibility

Your eligibility is unchanged.

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.

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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):

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- 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

Your appeal of the September 19, 2015 disenrollment notice is **DISMISSED** as a non-appealable issue.

The denial of a special enrollment period is **AFFIRMED**

The Marketplace did not err did not err in preventing the processing of the health plan selection for the Appellant prior to April 30, 2015, and did not fail to issue a timely enrollment notice.

Your eligibility is unchanged.

Legal Authority

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

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A Copy of this Decision Has Been Provided To:

