



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

Notice of Decision

Decision Date: October 27, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003447

[REDACTED]

Dear [REDACTED],

On October 9, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's June 12, 2015 denial of 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 Code of Federal Regulation (CFR) 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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NY State of Health Number: [REDACTED]
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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, as of June 11, 2015?

Procedural History

On June 11, 2015, the Marketplace received your application for health insurance and prepared a preliminary eligibility determination stating that you were conditionally eligible to purchase a qualified health plan at full cost.

Also on June 11, 2015, you spoke to the Marketplace's Account Review Unit and appealed that preliminary eligibility determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On June 12, 2015, the Marketplace issued a notice of eligibility determination that stated you were conditionally eligible to purchase a qualified health plan at full cost; however, it also stated that you did not qualify to select a health plan outside of the open enrollment period for 2015.

On October 9, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and left open for up to 15 days to provide you an opportunity to submit supporting evidence.

On October 13, 2015, the Marketplace's Appeals Unit received your supporting evidence, which included: proof of termination of your previous insurance coverage with Aetna; a copy of your employment agreement; and a copy of your Certificate of Group Health Insurance Plan Coverage with Emblem Health. These documents were collectively marked as Appellant's Exhibit 1 and incorporated into the record. The record was closed on October 13, 2015.

Findings of Fact

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

- 1) The record reflects that you submitted your initial application for health insurance on June 11, 2015.
- 2) You testified, and provided evidence, that you lost coverage through your domestic partner on February 28, 2015 (Appellant's Exhibit 1, October 13, 2015).
- 3) You testified that your previous employment was terminated in February 2015. You further testified that you began a new job on March 16, 2015.
- 4) You testified, and provided evidence, that you signed an employment agreement with your current employer on March 16, 2015, which included a clause regarding your health insurance benefit. According to this clause, you would be eligible for a standard health insurance plan through your employer following a 3-month probationary period. (Appellant's Exhibit 1, October 13, 2015). You testified that you reasonably relied upon that information.
- 5) You testified that in June 2015, following the 3-month probationary period, you attempted to enroll in an employer-sponsored health insurance plan, but were denied because your 60-day special enrollment period had lapsed. You further testified that both you and your employer were unaware of the 60-day period during which you were permitted to select a health insurance plan.
- 6) You testified that after you were denied enrollment from your employer-sponsored health insurance plan, you attempted to enroll in a health insurance plan through the Marketplace but were also denied a special enrollment period.

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 permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent loses certain health insurance coverage:
 - (a) Health insurance considered to be minimum essential coverage;
 - (b) Enrolled in any non-calendar year health insurance policy that will expire in 2014, 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 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
- (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)).

Legal Analysis

The issue under review is whether the Marketplace properly denied you a special enrollment period as of June 11, 2015.

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 June

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11, 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 testified, and provided evidence, that your previous insurance coverage ended on February 28, 2015, which is considered a triggering life event.

When a triggering life event occurs, the qualified individual has sixty days from the date of that event to select a qualified health plan.

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. The record reflects that your application was not complete until June 11, 2015, which was after your special enrollment period expired.

A special enrollment period can be granted on the basis of “error, misrepresentation, or inaction of an officer, employee, or agent of the [Marketplace] or [the U.S. Department of Health and Human Services], or its instrumentalities as evaluated and determined by the [Marketplace]” You testified, and provided evidence, that you signed an employment contract, which stated that you must wait three months prior to enrolling in an employer-sponsored health insurance plan, and you relied upon that information. However, your employer is not an instrumentality or agent of the Marketplace. Since the record does not indicate that the Marketplace, by action or inaction, made an error or misrepresented information, a special enrollment period cannot be granted.

The credible evidence of record indicates that the open enrollment period closed on February 28, 2015; 60 days from the loss of your health insurance on February 28, 2015 was April 29, 2015, yet your application was not completed until June 11, 2015; and there have not been any other triggering events since April 29, 2015 that would qualify you for a special enrollment period.

Therefore, the Marketplace’s June 12, 2015 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2015 is AFFIRMED.

Decision

The June 12, 2015 eligibility determination is AFFIRMED.

Effective Date of this Decision: October 27, 2015

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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.

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:

- 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 June 12, 2015 eligibility determination is **AFFIRMED**.

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

Legal Authority

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A Copy of this Decision Has Been Provided To:

