



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

Notice of Decision

Decision Date: DATE

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003580

[REDACTED]

Dear [REDACTED],

On September 14, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's April 19, 2015 disenrollment notice and the April 21, 2015 denial of a special enrollment period regarding your spouse.

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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
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Decision

Decision Date: October 15, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003580

[REDACTED]

Issues

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

Did the Marketplace properly terminate your spouse's enrollment in her qualified health plan effective February 28, 2015 because of non-payment of premiums?

Did the Marketplace properly determine that your spouse does not qualify for a Special Enrollment Period as of March 1, 2015?

Procedural History

On December 11, 2014 the Marketplace issued an enrollment confirmation notice stating that your spouse was enrolled in a qualified health plan at full cost and her coverage could start as early as January 1, 2015, if her first month's premium was paid.

On April 19, 2015 the Marketplace issued a disenrollment notice stating that your spouse's coverage in her qualified health plan was terminated effective February 28, 2015 because a premium payment was not received by the plan. The notice further stated that you must pay the premium responsibility within the required timeframe in order to maintain her health coverage.

On April 20, 2015, the Marketplace reran your household's eligibility for health insurance. On April 21, 2015 the Marketplace issued a notice starting in relevant part that as of March 1, 2015, your spouse does not qualify to select a health plan outside of the open enrollment period because the requirements to qualify for a special enrollment period had not been met.

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On June 20, 2015, you spoke with the Marketplace's Account Review Unit and appealed your spouse's disenrollment from her health plan and subsequent denial of a special enrollment period to reenroll into a health plan following her disenrollment.

On September 14, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and held open for 15 days to allow you the opportunity to submit letters you received from your health plan and payment records.

On September 17, 2015 the Appeals Unit received a one page fax from you that showed posting dates of transactions you had with Empire Blue Cross. This one page fax was made part of the record as "Appellant's Exhibit A."

Since no other documents were received from you by September 29, 2015, the record is closed that same day.

Findings of Fact

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

- 1) You testified that you are only appealing your spouse's disenrollment from her health plan due to non-payment of premium and her inability to re-enroll in a health plan through the Marketplace in 2015.
- 2) You testified that you paid your spouse's January 2015 premium in December 2015, and did not pay the February 2015 premium.
- 3) You testified that by March 9, 2015, you paid what you believed to be the full outstanding balance according to the billing statement you received from her health plan, including the March 2015 premium and any balance for February 2015.
- 4) You testified that you received a notice from your spouse's health plan regarding non-payment in early March 2015, which notice stated it could be disregarded if you recently made payment. You testified that since you had made what you believed to be full payment by March 9, 2015, you disregarded the notice.
- 5) On April 19, 2015, the Marketplace issued a disenrollment notice stating that your spouse's coverage through her qualified health plan was terminated, effective February 28, 2015 because of non-payment of premiums.
- 6) You submitted a statement of account showing two transactions on March 9, 2015 to Empire Blue Cross with reference numbers and amounts of \$351.52 and

\$178.71 that were posted on March 10, 2015 (Appellant's Exhibit A). There is no corresponding information regarding coverage dates on that statement.

- 7) You testified that, you learned on or about April 19, 2015 and after your spouse was disenrolled, the amount you paid by March 9, 2015 was applied to your spouse's February 2015 premium and that meant you had not paid the March 2015 premium on time so her coverage was cancelled.
- 8) You testified that you find the billing statements issued by the health plan to be misleading and confusing in that a zero balance and other information led you to believe your spouse's premium payments were current by March 9, 2015.

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).

Special Enrollment Period

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

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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

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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)).

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)).

Legal Analysis

The first issue under review is whether the Marketplace properly terminated your spouse’s enrollment in her qualified health plan, effective February 28, 2015, because of non-payment of premiums.

On April 19, 2015 the Marketplace issued a disenrollment notice stating that your spouse’s coverage in her qualified health plan is terminated, effective February 28, 2015, because of non-payment of premiums.

You testified that, based on the statement of account you submitted showing payments totaling \$530.23 to Empire Blue Cross, you believed you had paid the full outstanding balance by March 9, 2015 of your spouse’s premiums due, including the February and March 2015 premiums. However, it appears that the payment you made was applied to her February 2015 premium amount and the March 2015 premium was only partially paid.

You further testified that you found the billing statements and the notice of cancellation confusing and misleading in that the billing statements showed you had a zero balance and the notice indicated that the threat of cancellation could be disregarded if you had recently made payment, as you believed you had, so you disregarded the notice.

You contend that this misleading and confusing information led you to believe that your spouse’s premiums were paid-to-date, when they were not, which resulted in her

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coverage being cancelled. You further contend that there should have been a grace period to allow you to pay the balance of her March 2015 premium after April 19, 2015, such that her policy should not have been cancelled at that time.

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 your spouse was properly terminated from her health plan for non-payment of premiums. Therefore, your appeal of the April 19, 2015 disenrollment notice is **DISMISSED** as a non-appealable issue.

The second issue is whether your spouse was properly denied a special enrollment period as of April 21, 2015.

The Marketplace provided an open enrollment from November 15, 2014 until February 15, 2015, and later extended the open enrollment period to February 28, 2015 for people who could not complete their application by the February 15, 2015 deadline. 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.

Generally, the loss of health insurance coverage is considered a triggering event. Here, your spouse's enrollment was terminated effective February 28, 2015 because her monthly premium to her health plan was not paid on time. The Marketplace considers the failure to pay premiums a voluntary action which causes the termination of health coverage; therefore, your spouse would not be entitled to a 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 her 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 no other triggering events had occurred thereafter that would qualify your spouse for a special enrollment period, she was properly denied a special enrollment period in the April 21, 2015 notice of eligibility redetermination.

Therefore, the April 21, 2015 eligibility determination notice is **AFFIRMED**.

Decision

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

The April 21, 2015 eligibility determination notice is **AFFIRMED**.

This Decision does not affect any subsequent eligibility determinations issued by the Marketplace.

Effective Date of this Decision: October 15, 2015

How this Decision Affects Your Eligibility

Your spouse was not eligible for a special enrolment period to select a qualified health plan through the Marketplace as of the April 21, 2015 eligibility redetermination.

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):

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You can contact us in any of the following ways:

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- By fax: 1-855-900-5557

Summary

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

The April 21, 2015 eligibility determination notice is **AFFIRMED**.

This Decision does not affect any subsequent eligibility determinations issued by the Marketplace.

Your spouse was not eligible for a special enrolment period to select a qualified health plan through the Marketplace as of the April 21, 2015 eligibility redetermination.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

