



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

Notice of Decision

Decision Date: November 24, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003596

[REDACTED]

Dear [REDACTED],

On September 14, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 2, 2015 and June 23, 2015 eligibility determinations.

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).

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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:

Did the Marketplace properly determine that you were no longer eligible to enroll in a qualified health plan, effective May 31, 2015?

Did the Marketplace properly determine, in the June 23, 2015 eligibility determination, that you were not eligible for a special enrollment period?

Procedural History

On December 9, 2014, the Marketplace issued an eligibility determination notice stating that you were conditionally eligible to purchase a qualified health plan (QHP) at full cost effective, effective January 1, 2015. The notice further requested that you provide documentation confirming your citizenship status before March 10, 2015.

Also on December 9, 2014, the Marketplace issued a notice confirming your enrollment in a platinum-level QHP with coverage beginning January 1, 2015. The notice also requested that you provide documentation confirming your citizenship status before March 10, 2015.

On May 2, 2015, the Marketplace issued an eligibility redetermination notice stating that you were no longer eligible to enroll in health insurance through the Marketplace because you had not confirmed your citizenship status. Your eligibility for coverage ended effective May 31, 2015.

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On May 4, 2015, the Marketplace issued a notice that stated your enrollment in the platinum-level QHP was terminated effective May 31, 2015.

On June 18, 2015, the Marketplace received a revised application.

On June 19, 2015, the Marketplace issued an eligibility redetermination notice stating that you were conditionally eligible to purchase a QHP at full cost, effective August 1, 2015. The notice further directed you to provide documentation confirming your citizenship status before September 16, 2015, or you might be found ineligible for health insurance. The notice did not state whether you qualified to select a health plan outside of the open enrollment period.

On June 22, 2015, the Marketplace received a revised application.

On that same date, the Marketplace prepared a preliminary eligibility determination stating you were not eligible for financial assistance, and that you needed to submit documents by the required date in order for your eligibility to be finalized.

Also on June 22, 2015, you spoke with the Marketplace's Account Review Unit and appealed the May 2, 2015 determination insofar as you were not eligible to enroll in a qualified health plan.

On June 23, the Marketplace issued an eligibility redetermination notice stating that you were conditionally eligible to purchase a QHP at full cost, effective August 1, 2015. The notice further requested that you provide documentation confirming your citizenship status before September 20, 2015. The notice finally stated that you did not qualify to select a health plan outside of the open enrollment period.

On July 1, 2015, the Marketplace received a copy of your Certificate of Naturalization.

On July 4, 2015 and July 19, 2015, the Marketplace issued eligibility redetermination notices stating that you were fully eligible to purchase a QHP at full cost, effective August 1, 2015 and September 1, 2015, respectively. These determinations did not state whether you qualify to select a health plan outside of the open enrollment period.

On September 14, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. At your request, a Spanish-language interpreter () also attended the hearing. 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) Your Marketplace account indicates that you elected to receive notifications via electronic mail.
- 2) You testified that you did not receive any notices by regular U.S. Mail from the Marketplace telling you that you needed to submit documentation in order to confirm your citizenship status.
- 3) You testified that you received several e-mail notifications from the Marketplace; however, you did not follow up on those e-mails because they were issued in English and not in Spanish.
- 4) You testified that the e-mail address you provided in your application, [REDACTED] was accurate.
- 5) You testified that the mailing address provided in your application, [REDACTED] was accurate.
- 6) There is no evidence in the record that the Marketplace received your citizenship documentation before March 10, 2015.
- 7) You were disenrolled from your platinum-level qualified health plan (QHP) effective May 31, 2015 for failing to provide documentation to confirm your citizenship status.
- 8) You submitted a copy of your Certificate of Naturalization to the Marketplace on July 3, 2015.
- 9) The June 23, 2015 eligibility determination notice stated that while you were eligible to enroll in a QHP at full cost, it also stated that you did not qualify to enroll in a health plan outside of the open enrollment period.
- 10) You are seeking reinstatement of your health insurance coverage.

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

Applicable Law and Regulations

Citizenship and Immigration Status

To enroll in a qualified health plan through the Marketplace, an applicant must be a citizen or national of the United States, or a non-citizen lawfully present in the United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1)).

The Marketplace must verify or obtain information in order to determine that an applicant is eligible for enrollment in a qualified health plan, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

If an applicant attests to citizenship, status as a national, or lawful presence, and the Marketplace is unable to verify such attestation, the Marketplace must provide the applicant 90 days to provide satisfactory documentary evidence, from the date the notice of inconsistency is received by the applicant. Notice is considered received 5 days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the 5 day period. (45 CFR § 155.315(c)(3)).

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)).

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->

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implements-%E2%80%98waiting-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

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

Legal Analysis

The first 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.

The Marketplace is required to determine whether individuals are eligible to enroll in coverage through the Marketplace, and must confirm, among other things, that their citizenship status is satisfactory.

If the Marketplace cannot verify an individual's citizenship status, it must provide the individual a period of 90 days from the date notice is received to resolve the inconsistency. For purposes of verifying citizenship, notice is considered received 5 days after the date on the notice.

In the eligibility determination issued on December 9, 2014 you were advised that your eligibility was only conditional, and that you needed to confirm your citizenship status before March 10, 2015.

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

The record reflects that you elected to receive your notices from the Marketplace via electronic mail. You testified that while you do not recall receiving an e-mail notification requesting that you provide citizenship documentation to the Marketplace, you did state that you received several e-mail notifications from the Marketplace, albeit in English, which you stated was not your preferred language. The record does not reflect that you took any steps to inquire as to the contents of those emails, even though you acknowledged that they were issued by the Marketplace. Since the credible evidence of record indicates that you in fact received notification directing you to review the notification in your online account, we find that the notices were sufficiently provided to you.

If the Marketplace remains unable to verify the inconsistency after the 90 day period ends, then it must determine the applicant's eligibility based on the information available in the data sources.

Since the requested citizenship documentation was not received within the 90-day period, the Marketplace was required to redetermine your eligibility without verification of your citizenship status. As a result, the Marketplace properly determined that you could not remain enrolled in a qualified health plan through NY State of Health effective May 31, 2015 because you had not provided the information requested by the Marketplace.

Therefore, the Marketplace's May 2, 2015 eligibility determination is correct and is **AFFIRMED**.

The second issued under review is whether the Marketplace properly denied you a special enrollment period, effective August 1, 2015.

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 the record reflects that you were disenrolled from your platinum-level qualified health plan, effective May 31, 2015. However, since you were disenrolled from this plan as a result of not having provided citizenship documentation as requested, such a disenrollment is considered voluntary, and is not a triggering event.

You did not testify, nor offer any argument, that you experienced any of the triggering events described above. Accordingly, you did not qualify for a special enrollment period.

Therefore, the Marketplace's June 23, 2015 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2015 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 2, 2015 eligibility determination is AFFIRMED.

The June 23, 2015 eligibility determination is AFFIRMED.

Effective Date of this Decision: November 24, 2015

How this Decision Affects Your Eligibility

You were properly disenrolled from your platinum-level qualified health plan, effective May 31, 2015.

You are not eligible for a special enrollment period.

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)

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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:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The May 2, 2015 eligibility determination is AFFIRMED.

The June 23, 2015 eligibility determination is AFFIRMED.

You were properly disenrollment from your platinum-level qualified health plan, effective May 31, 2015.

You are not eligible for a special enrollment period.

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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:

