



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

## Notice of Decision

Decision Date: November 25, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000003609

[REDACTED]

Dear [REDACTED]

On September 17, 2015 your spouse appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 3, 2015 and June 20, 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 45 Code of Federal Regulations (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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## Decision

Decision Date: November 25, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000003609



## Issue

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

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 on that you were not eligible for a special enrollment period, effective August 1, 2015?

## Procedural History

On December 9, 2013, the Marketplace received a copy of your spouse's U.S. Passport, which indicated an expiration date of January 16, 2022.

On December 27, 2014, the Marketplace issued an eligibility determination notice stating that your spouse was conditionally eligible to receive advance premium tax credits (APTC) and cost-sharing reductions (CSR), effective February 1, 2015. The notice further requested that you provide documentation confirming your spouse's citizenship status and income before March 28, 2015.

Also on December 27, 2014, the Marketplace issued a notice confirming your spouse's enrollment in a Fidelis Care silver-level plan. This notice also requested that you provide documentation confirming your spouse's citizenship status and income before March 28, 2015.

On May 3, 2015, the Marketplace issued an eligibility redetermination notice stating that you were no longer eligible to enroll in health insurance through the

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Marketplace because you had not confirmed your citizenship status. Your eligibility for coverage ended effective May 31, 2015.

On May 4, 2015 the Marketplace issued a disenrollment notice stating that your enrollment in your Fidelis Care silver-level plan was terminated effective May 31, 2015.

On June 10, 2015, the Marketplace received a revised application.

On June 11, 2015, the Marketplace issued an eligibility redetermination notice stating that your spouse was conditionally eligible to receive an APTC and CSR. This notice also requested that you provide documentation confirming your spouse's citizenship status and income before September 8, 2015.

On June 19, 2015, the Marketplace receive an additional copy of your spouse's U.S. Passport as well as New York State Department of Health Self-Declaration of Income ( [REDACTED] ).

On June 20, 2015, the Marketplace issued an eligibility redetermination notice stating that your spouse was conditionally eligible to receive an APTC and CSR. This notice also requested that you provide documentation confirming your spouse's income before September 17, 2015. However, this notice further stated that you did not qualify to select a health plan outside of the open enrollment period.

On June 23, 2015, you spoke with the Marketplace's Account Review Unit and appealed the May 3, 2015 eligibility determination insofar as you were not eligible to enroll in a qualified health plan and the June 20, 2015 eligibility determination insofar as you were found not to qualify to select a health plan outside of the open enrollment period.

On June 24, 2015, the Marketplace issued an eligibility redetermination notice stating that your spouse was fully eligible to receive an APTC and CSR. There was no reference in this determination on whether you qualified to select a health plan outside of the open enrollment period.

On September 17, 2015, your spouse had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. At your spouse's request, a Spanish-language interpreter [REDACTED] attested 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) Your spouse testified that your e-mail address you provided in your application, [REDACTED] was accurate.
- 3) Your spouse testified that she was not aware of whether you received notifications from the Marketplace telling you that you needed to submit documentation in order to confirm your spouse's citizenship status or income; however, she conceded that she couldn't be sure that the notifications weren't received by you since it was your e-mail address and that you were not available to testify.
- 4) Your account reflects that you provided your spouse's U.S. Passport to the Marketplace on December 9, 2013 and then again on June 19, 2015.
- 5) Your spouse testified that she is seeking reinstatement of her health insurance coverage that was terminated on May 31, 2015.

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

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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)).

## **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 28, 2015.

The record reflects that you elected to receive your notices from the Marketplace via electronic mail. Your spouse credibly testified that she did not recall that you received December 27, 2014 eligibility determination notice asking you to provide your spouse's citizenship and income documentation to the Marketplace; however, she also acknowledged that she wasn't sure that the e-mails weren't delivered since it was your e-mail address and you were not available to testify.

Accordingly, the evidence of record reflects that you were provided the requisite notice to supply the requested documentation before March 28, 2015.

However, the credible evidence of record also reflects that the Marketplace received the requested citizenship documentation on December 9, 2013, long

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before the March 28, 2015 deadline, and then again on June 18, 2015, in response to a subsequent determination issued in your case.

Since the record reflects that you timely submitted your spouse's citizenship documentation to your Marketplace account prior to the March 28, 2015 deadline, as referenced in the December 27, 2014 eligibility determination, the May 3, 2015 eligibility determination is RESCINDED.

As a result of the May 3, 2015 eligibility determination having been rescinded by this Decision, the May 4, 2015 notice of disenrollment must also be RESCINDED since it is no longer supported by the record.

Since this Decision determined that your spouse was improperly disenrolled from her coverage as of May 31, 2015, her coverage should be reinstated as of June 1, 2015. Accordingly, the June 20, 2015 eligibility determination is MODIFIED solely to state that your spouse qualifies to enroll in a qualified health plan outside of the open enrollment period.

## **Decision**

The May 3, 2015 eligibility determination notice is RESCINDED.

The May 4, 2015 disenrollment notice is RESCINDED.

The June 20, 2015 eligibility determination is MODIFIED to state that your spouse qualifies to enroll in a qualified health plan outside of the open enrollment period.

This matter is returned to the Marketplace for it to facilitate your spouse's enrollment in health coverage.

**Effective Date of this Decision:** November 25, 2015

## **How this Decision Affects Your Eligibility**

Your spouse's coverage under the Fidelis Care silver-level plan is reinstated and continues in effect.

To the extent necessary, your spouse qualifies to enroll in a qualified health plan outside of the open enrollment period.

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

## **Summary**

The May 3, 2015 eligibility determination notice is RESCINDED.

The May 4, 2015 disenrollment notice is RESCINDED.



The June 20, 2015 eligibility determination is MODIFIED to state that your spouse qualifies to enroll in a qualified health plan outside of the open enrollment period.

This matter is returned to the Marketplace for it to facilitate your spouse's enrollment in health coverage.

Your spouse's coverage under the Fidelis Care silver-level plan is reinstated and continues in effect.

To the extent necessary, your spouse qualifies to enroll in a qualified health plan outside of the open enrollment period.

### **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:**

