



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

Notice of Decision

Decision Date: October 28, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003613

[REDACTED]

Dear [REDACTED],

On September 3, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 3, 2015 eligibility determination and May 4, 2015 disenrollment notice.

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).

This page intentionally left blank.



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

Decision

Decision Date: October 28, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003613

[REDACTED]

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 through the Marketplace, effective May 31, 2015?

Did the Marketplace properly disenroll you from your bronze-level qualified health plan, effective May 31, 2015?

Did the Marketplace properly deny you a special enrollment period?

Procedural History

On December 31, 2014, the Marketplace issued a notice of eligibility determination stating that you were conditionally eligible to receive advance premium tax credits and cost sharing reductions, effective January 1, 2015. The notice further requested that you provide documentation confirming your citizenship status before April 1, 2015; and that if you failed to submit the documentation your eligibility to remain enrolled in health insurance through the Marketplace or to receive financial assistance might end. In the additional documentation list attached, an I-551 resident alien card (green card) is listed as one of the documents you can submit to confirm your immigration status.

On that same date, the Marketplace issued a notice confirming your enrollment in bronze-level qualified health plan.

On January 16, 2015, the Marketplace issued a notice that additional information is required to confirm your citizenship status. In the additional documentation list

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).

attached, an I-551 resident alien card (green card) is listed as one of the documents you can submit to confirm your immigration status.

On May 3, 2015, the Marketplace issued a notice of eligibility redetermination 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 ended effective May 31, 2015.

On May 4, 2015, the Marketplace issued a notice that stated your enrollment in your qualified health plan was terminated effective May 31, 2015.

On June 23, 2015, you spoke with the Marketplace's Account Review Unit and appealed the May 3, 2015 determination insofar as you were determined to be ineligible to remain enrolled in a qualified health plan, were disenrolled effective May 31, 2015, and were verbally denied a special enrollment period on June 23, 2015.

On June 24, 2015, the Marketplace issued a notice confirming your request for a telephone hearing on the issue of "Denial of Special Enrollment Period (SEP)."

On September 3, 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 up to fifteen days to allow you to submit the front and back of your permanent resident card.

On September 8, 2015, the Appeals Unit received a one page fax from you, which was a copy of the front and back of your permanent resident card. This one page fax was made part of the record as "Appellant's Exhibit B."

Since this was the only documentation you were required to produce, the record was closed that same day.

Findings of Fact

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

- 1) According to your Marketplace account, you elected to receive notices from the Marketplace via regular mail.
- 2) According to your December 30, 2014 application, you indicated that you were a United States citizen.
- 3) According to your Marketplace account, on January 11, 2015, you faxed to the Marketplace a copy of the front of your permanent resident card, which was uploaded to your Marketplace account on January 14, 2015 (Appellant's Exhibit A).

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).

- 4) According to your Marketplace account, on January 16, 2015, the front of your permanent resident card was deemed not to be valid proof of citizenship because the back of the card was also needed and was not submitted.
- 5) You testified that you did not receive the Marketplace's January 16, 2015 notice requesting additional documentation confirming your citizenship.
- 6) You testified that you thought by submitting the front of your permanent resident card that you had complied with the requirement to provide proof of your citizenship/immigration status, and since you had already provided your Social Security number on your application, that nothing else was needed. You testified that you did not know you had to submit the back of the card also and would have at the time you submitted the front of the card had you known.
- 7) According to your Marketplace account, on May 2, 2015, the Marketplace was able to verify your citizenship/immigration through federal data sources.
- 8) You testified that you did not receive the Marketplace's May 3, 2015 eligibility redetermination notice or the May 4, 2015 disenrollment notice in the mail.
- 9) You testified that you learned your health insurance had been terminated at a visit to your doctor's office.
- 10) You testified that you contacted your health insurance plan and were referred to the Marketplace. You contacted that Marketplace and stated you were told that "email notices" had been sent to your email account telling you to access your Marketplace account for importance notices about your health insurance.
- 11) You testified that you did not receive the email notices in your regular email account but the notices may have gone to your junk mail, which you do not look at, but you had elected to receive notices through regular mail anyway and did not receive any such notices through regular mail.
- 12) According to your Marketplace account, the Marketplace was able to verify your citizenship and Social Security number on May 2, 2015.
- 13) You submitted to the Appeals Unit via facsimile a copy of the front and back of your permanent resident card on September 8, 2015.
- 14) You are seeking to be granted a special enrollment period to re-enroll in a health plan.

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 expecting 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, from the date the notice of inconsistency is received by the applicant, to provide satisfactory documentary evidence. Notice is considered to have been received five days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the five-day period. (45 CFR § 155.315(c)(3)).

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)).

De Novo Review

The Marketplace Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “*De novo review* means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

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)); and 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-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 in the event that a triggering event occurs, such as:

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

45 CFR § 155.420(d)(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, and were disenrolled from your bronze-level qualified health plan as of that date.

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/immigration status is satisfactory.

If the Marketplace cannot verify an individual's citizenship/immigration 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/immigration status, notice is considered received five days after the date on the notice.

In the eligibility determination issued on December 31, 2014, you were advised that your eligibility was only conditional, and that you needed to confirm your citizenship status before April 1, 2015. It appears the reason for the inconsistency is that you listed yourself as a United States citizen on your application, when you are not.

Notwithstanding, the record reflects that you submitted the front of your permanent resident card on January 11, 2015.

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).

However, the Marketplace requires the front and back of permanent resident cards after April 2010, and disenrolled you because you had not provided the back of your permanent resident card by the deadline. However, the record reflects that you elected to receive notices by regular mail and did not receive the January 16, 2015 request for additional information because, according to the Marketplace, you were sent an email notice, which you credibly testified you did not receive. You further testified that you were not aware of this requirement and would have provided the back of your permanent resident card along with the front of the card had you known. As such, you did not receive 90 days' notice of the requirement in accordance with the law.

Further, if the Marketplace was able to verify an applicant's citizenship before the 90 day period ended, it should determine that applicant's eligibility based on the information available in the data sources. Here, according to the federal hub response in your Marketplace account, on May 2, 2015, the Marketplace was able to verify your citizenship and Social Security number, even without the complete citizenship documentation; that is, the front and back of your permanent resident card. As such, the Marketplace should not have 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 to verify your citizenship status, and you should not have been disenrolled.

Therefore, the Marketplace's May 3, 2015 eligibility determination and May 4, 2015 disenrollment notice were incorrect and are **RESCINDED**.

The second issue under review is whether the Marketplace properly denied you a special enrollment period within which to re-enroll in a health plan for the remainder of 2015.

On June 23, 2015, you spoke with the Marketplace and requested a special enrollment period. The record does not contain a notice of eligibility determination or redetermination on the issue of the special enrollment period. It does contain a June 24, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issue on appeal as "Denial of Special Enrollment Period."

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the June 24, 2015 notice, which acknowledges the appeal on the issue of the special enrollment period denial, permits an inference that the Marketplace did deny your special enrollment period request.

Since Appeal Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to a notice of denial of a special

enrollment period had it been issued. Therefore, currently at issue is whether you were properly denied a special enrollment period as of June 23, 2015.

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]” The credible evidence of record indicates that your citizenship was verified using federal hub data sources on May 2, 2015 and, presumably, could have been verified by the Marketplace before the April 1, 2015 deadline, but for its inaction. Since the record indicates that the Marketplace took no action before the deadline when it could have to confirm your citizenship status, a special enrollment period is granted.

Your case is RETURNED to the Marketplace to verify your documentation and redetermine your eligibility for health insurance.

The Marketplace’s June 23, 2015 denial of a special enrollment period is RESCINDED and you are deemed eligible for a special enrollment period of 60 days from the date of this decision.

Decision

The May 3, 2015 eligibility determination and May 4, 2015 disenrollment notice are RESCINDED.

Your case is RETURNED to the Marketplace to verify your documentation and redetermine your eligibility for health insurance.

The Marketplace’s June 23, 2015 denial of a special enrollment period is RESCINDED and you are deemed eligible for a special enrollment period of 60 days from the date of this decision.

Effective Date of this Decision: October 28, 2015

How this Decision Affects Your Eligibility

Your case is being returned to the Marketplace to redetermine your eligibility.

The Marketplace will issue a notice of eligibility redetermination.

Thereafter, you are granted a special enrollment period of 60 days from the date of this decision to select a health plan and confirm your enrollment in that plan.

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).

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 and May 4, 2015 disenrollment notice are **RESCINDED**.

Your case is **RETURNED** to the Marketplace to verify your documentation and redetermine your eligibility for health insurance.

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).

The Marketplace's June 23, 2015 denial of a special enrollment period is **RESCINDED** and you are deemed eligible for a special enrollment period of 60 days from the date of this decision.

Your case is being sent back to the Marketplace to verify the citizenship documentation you submitted and redetermine your eligibility for health insurance, if necessary.

Your case is being returned to the Marketplace to redetermine your eligibility.

The Marketplace will issue a notice of eligibility redetermination.

Thereafter, you are granted a special enrollment period of 60 days from the date of this decision to select a health plan and confirm your enrollment in that plan.

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:

