



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: AP000000003715

[REDACTED]

Dear [REDACTED],

On September 16, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 27, 2015 eligibility determination, which in relevant part denied you and your spouse 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 on May 27, 2015 that you and your spouse did not qualify for a special enrollment period?

Procedural History

On May 26, 2015, the Marketplace received your application for health insurance for you and your spouse in 2015.

On May 27, 2015, the Marketplace issued a notice of eligibility determination that stated, based on an annual household income of \$41,570.93, you and your spouse were eligible to share in an advance premium tax credit of up to \$453.00 per month and, if you select a silver-level qualified health plan, eligible for cost sharing reductions, effective July 1, 2015. It further stated that you and your spouse did not qualify to select a health plan outside of the open enrollment period for 2015.

On June 30, 2015, you spoke to the Marketplace's Account Review Unit and appealed that eligibility determination insofar as you and your spouse were not eligible to enroll in a health plan outside of the open enrollment period.

On September 16, 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 the opportunity to submit documents as proof of your insurance cancellation and income.

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On September 18, 2015, the Appeals Unit received a five page fax from you. It consisted of (1) A cover page; (2) Copies of your earning statements for May 2015; and (3) A copy of the notice of cancellation of health insurance for you and your spouse. That same day, this five page was made part of the record as "Appellant's Exhibit A" and the record was closed.

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 May 26, 2015.
- 2) You testified and provided documentary evidence in a "Notice of Decision on Your Medical Assistance" dated March 3, 2015, from New York Health Options regarding your and your spouse's Family Health Plus (FHP) plan. That notice informed you that your coverage would end effective March 13, 2015 (Appellant's Exhibit A. pp. 4-5).
- 3) You testified that you continued to try and work with your Local Department of Social Services (LDSS) to see if there was another plan, such as a step-down plan you had been informed about in the "Notice of Decision on Your Medical Assistance" but your calls were not returned until someone at LDSS finally told you need to go through the NY State of Health Marketplace.
- 4) You testified that you contacted the Marketplace on May 26, 2015 and were denied a special enrollment period because 60 days since your FHP plan was cancelled had elapsed.
- 5) You attested to an annual household income of \$41,570.66, consisting of your salary of \$39,999.70 and additional income of \$1,480.96, and your spouse's March 2015 income of \$90.00.
- 6) You testified and provided copies of earning statements to show that your household income for the month of May 2015 consisted of your salary of \$1,538.46 for a two week period, which you received on May 8, 2015 and May 22, 2015 for a total of \$3,079.92 that month (Appellant's Exhibit A, pp. 2-3).
- 7) You testified that your spouse had no income that month and is a full-time student and care-taker.
- 8) According to your Marketplace account, you and your spouse plan on filing your 2015 federal tax return as Married Filing Jointly and will be claiming your three children as dependents. You testified that this information is still correct.

9) You and your family reside in Niagara County, New York.

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 a triggering event occurs, such as when the qualified individual or his or her dependent involuntarily loses certain health insurance coverage, including health insurance considered to be minimum essential coverage that has a non-calendar year policy term (45 CFR § 155.420(d)(1)(a) and (b)).

Generally, if a triggering 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)).

Medicaid

Medicaid can be provided through the Marketplace to adults who: (1) are age 19 or older and under age 65, (2) are not pregnant, (3) are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act, (4) are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part, and (5) have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)), N.Y. Soc. Serv. Law § 366(1)(b)).

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In an analysis of Medicaid eligibility, the determination is based on the FPL “for the applicable budget period used to determine an individual's eligibility” (42 CFR § 435.4). On the date of your application, that was the 2015 FPL, which is \$28,410.00 for a five-person household (80 Fed. Reg. 3236, 3237).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

An individual is eligible for fee-for-service Medicaid effective on the first day of the month if an individual was eligible any time during that month (42 CFR 435.915(b)).

People who receive or are eligible for Medicaid are not eligible for an Advance Premium Tax Credit (APTC) since they have, or will soon have, active coverage in the system. They will be enrolled or remain in their Medicaid plan for 12 months, with limited exceptions, including entering prison or another facility that provides medical care, moving out of state, failing to provide a valid social security number, or having third party health insurance (N.Y. Soc. Serv. Law § 366(4)(c)).

Legal Analysis

The issue under review is whether the Marketplace properly denied you and your spouse a special enrollment period on May 27, 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 May 26, 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 or persons must experience a triggering event.

According to the credible evidence of record, your and your spouse's previous insurance coverage through Family Health Plus ended on March 13, 2015, which is considered a triggering life event.

When a triggering life event occurs, the qualified individuals have 60 days from the date of that event to select a qualified health plan.

Sixty days from March 13, 2015 was May 12, 2015; therefore, you would have qualified to select a qualified health plan outside of the open enrollment period until May 12,

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2015. However, the record reflects that you did not file an application with the Marketplace until May 26, 2015, which was more than 60 days from the triggering event. As such, you and your spouse did not qualify for a special enrollment period.

Therefore, the May 27, 2015 eligibility determination that you and your spouse do not qualify to select a health plan outside of the open enrollment period for 2015 was correct and is AFFIRMED.

However, it appears that the Marketplace determined your and your spouse's eligibility for financial assistance based on annual household income and not monthly income for May 2015, the month of your application. You credibly testified and provided documentary proof that the income you received during May 2015 was \$3,079.92 in earnings, and possibly \$123.41 in additional earnings (\$1,480.96/12 months), such that your gross household income that month equals \$3,210.83 at most. According to your Marketplace application, you are in a five-person tax household since you and your spouse plan on filing your 2015 federal tax return as Married Filing Jointly and will be claiming your three children on that return.

Therefore, your case is being RETURNED to the Marketplace to redetermine your and your spouse's eligibility for financial assistance on a monthly income basis for May 2015, using a monthly income of \$3,210.83 for a five-person household.

Decision

The Marketplace's May 27, 2015 eligibility determination, which in part denies you and your spouse a special enrollment period in 2015, is AFFIRMED.

Your case is RETURNED to the Marketplace to redetermine your and your spouse's eligibility for financial assistance on a monthly income basis for May 2015, using a monthly income of \$3,210.83 for a five-person household.

Effective Date of this Decision: October 28, 2015

How this Decision Affects Your Eligibility

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

Your case is being returned to the Marketplace with the direction to redetermine your and your spouse's eligibility for financial assistance on a monthly income basis for May 2015, using a monthly income of \$3,210.83 for a five-person household.

The Marketplace will issue a notice of eligibility redetermination.

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 Marketplace's May 27, 2015 eligibility determination, which in part denies you and your spouse a special enrollment period in 2015, is **AFFIRMED**.

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

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Your case is RETURNED to the Marketplace to redetermine your and your spouse's eligibility for financial assistance on a monthly income basis for May 2015, using a monthly income of \$3,210.83 for a five-person household.

The Marketplace will issue a notice of eligibility redetermination.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

