



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

Notice of Decision

Decision Date: November 09, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003827

[REDACTED]

Dear [REDACTED],

On October 8, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's July 8, 2015 disenrollment notice and the denial of 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 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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Issues

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

Did the Marketplace properly terminate your enrollment in your qualified health plan effective May 31, 2015 because of non-payment of premiums?

Did the Marketplace properly determine that you do not qualify for a Special Enrollment Period as of July 8, 2015?

Procedural History

On December 5, 2014, the Marketplace issued a notice of eligibility redetermination that you were newly conditionally eligible for advance premium tax credits of \$0.00 per month, effective January 1, 2015.

On December 17, 2014, the Marketplace issued an enrollment notice confirming your selection of a gold-level qualified health plan and your monthly premium responsibility of \$492.94

On July 8, 2015 the Marketplace issued a disenrollment notice stating that your insurance with your gold-level qualified health plan is terminated effective May 31, 2015 because your health plan had not received your premium payment on time. The notice further stated that you must pay your premium responsibility within the required

timeframe in order to maintain coverage and, if you believe you made your premium payment on time, you can contact your health plan directly at 1-888-447-7703.

That same day, you spoke with a representative from the Marketplace's Account Review Unit and appealed being disenrolled for nonpayment of premium and not being able to re-enroll until the next open enrolment period.

On October 8, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. A Spanish Interpreter (██████████) assisted at the hearing. The record was developed during the hearing and held open for up to fifteen days for you to submit correspondence and premium statements from your health plan.

On October 20, 2015, the Appeals Unit received a 23 page fax from you. It consisted of documents from Emblem Health, including billing statements, a certificate of insurance for the period of coverage, a cancellation letter, bills for medical services, and a written statement from you. That same day, this 23 page fax was made part of the record as (██████████) and the record was closed.

Findings of Fact

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

- 1) You testified that you purchased a gold-level health plan through the Marketplace with coverage effective January 1, 2015 and paid your premiums on time.
- 2) You testified and provided the June 17, 2015 Emblem Health invoice that said your premium amount due by July 1, 2015 was \$985.88 (Appellant's Exhibit A, p. 3). You testified that this bill was for your past due premium for June 2015 and your July 2015 premium.
- 3) You testified and provided a written statement that you attempted to make your June 2015 premium payment of \$492.94 online on July 6, 2015 but it did not go through due to data inconsistencies (██████████).
- 4) You testified and provided a written statement that you spoke with three health plan representatives on July 7, 2015 and expressed each time that you were trying to pay your June 2015 premium the day before online and again over the telephone that day and would pay our July 2015 premium mid-week because you were unemployed, did not have the money that day, and your husband had to pay your premium when he got paid. You testified that you were told you could not only pay one month at that time, the system had gone down, and you needed to call back later (██████████).

- 5) You testified that you feel this was unfair and places a financial burden on you since you did not have the money to pay the premiums for both months at that time and your July 2015 premium was only 6 days behind.
- 6) You testified and provided a written statement that, since you were not able to solve the billing problem over the telephone on July 7, 2015, you sent out a check via regular mail that day [REDACTED]
- 7) You provided a written statement that you found out from your doctor's office on July 8, 2015, that your insurance had been cancelled as of May 31, 2015 ([REDACTED]).
- 8) You provided a copy of a July 9, 2015 termination confirmation letter from Emblem Health regarding your past due premium for June 2015. The notice indicated that since they had not received payment for the effective period of June 1, 2015, they have cancelled your coverage effective that date ([REDACTED]).
- 9) You provided a copy of the certificate of insurance issued by Emblem Health, dated July 13, 2015, that stated your coverage began January 1, 2015 and ended June 1, 2015 ([REDACTED]).
- 10) You testified that you were sent a reimbursement check in the mail for the payment you had sent in but it was destroyed in transit, so you returned the destroyed mail to the health plan and have not yet received a replacement check as reimbursement.
- 11) You testified that you tried to work with your health plan but were treated rudely and abruptly, do not feel your health coverage should have been cancelled due to nonpayment of premium, and that the cancellation of coverage occurred through no fault on your end.
- 12) You testified that you do not think it is fair for the Marketplace to have denied you a special enrollment period within which to select a health plan because you did nothing wrong.
- 13) You testified that you incurred costs for medical treatment and care in June 2015, and you want health coverage to be reinstated as of June 1, 2015 to cover those costs.
- 14) You testified that because your health coverage was cancelled, your husband added you to his employer-sponsored health plan effective July 1, 2015.

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

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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).

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).

The Marketplace is required to provide “timely written notice to an applicant of any eligibility determination” made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual Marketplace (45 CFR § 155.310(g)). An applicant or enrollee has the right to appeal an eligibility determination or redetermination or a failure by the Marketplace to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

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 a triggering event occurs. One of the relevant triggering events is the loss, by a qualified individual or a dependent, of minimum essential coverage (45 CFR § 155.420(d)(4)). Another triggering event is 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)(10)).

The loss of minimum essential coverage by a qualified individual or a dependent as a result of a failure to pay premiums on a timely basis is not a sufficient basis to be awarded a special enrollment period (45 CFR § 155.420(e)).

Legal Analysis

Non-Appealable Issue

The first issue raised is whether or not the Marketplace properly disenrolled you from your qualified health plan, effective May 31, 2015, due to non-payment of premium.

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 you were properly terminated from your health plan for non-payment of premiums and remain entitled to a refund for the premium you paid for June 2015 and/or July 2015. Therefore, your appeal of the July 8, 2015 disenrollment notice is **DISMISSED** as a non-appealable issue.

However, Emblem Health may be able to help you with your request for reimbursement of the premium that you claim you paid for June and/or July 2015. If you have not already been assisted with your current billing and premium issue, please contact Emblem Health directly at 1-888-250-2220, Monday – Friday 8:00 AM – 8:00 PM.

In addition, since your issue concerns a health insurer and/or payment, reimbursement, coverage, benefits, rates and/or premiums, you can contact NY Department of Financial Services at their Consumer Hotline at (888) 447-7703 (Monday through Friday, 8:30 AM

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to 4:30 PM); or locally to (212) 480-6400; or you can file a complaint with the NY State Department of Financial Services at:

<http://www.dfs.ny.gov/consumer/fileacomplaint.htm>

Special Enrollment Period

The next issue under review is whether or not the Marketplace properly denied you a special enrollment period.

On July 8, 2015, the Marketplace issued a disenrollment notice stating that your coverage in your QHP is terminated effective May 31, 2015 because of non-payment of premiums. That same day, the Marketplace verbally denied your request for a special enrollment period.

However, the record does not contain a notice of eligibility determination or redetermination on the issue of denial of a special enrollment period. It does contain a July 9, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issue on appeal as "Consumer is requesting an SEP but does not meet qualifications."

In this particular case, the lack of a notice of eligibility determination on the issue of denial of special enrollment does not prevent the Appeals Unit from reaching the merits of the case nor 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 July 9, 2015 notice, which acknowledges the appeal on the issue of denial of special enrollment, permits an inference that the Marketplace did deny your request. Since Appeals Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued.

In certain circumstances, a special enrollment period is granted to individuals so that they may enroll in a QHP outside of the open enrollment period if the individual experiences a triggering event. Loss of insurance coverage is considered a triggering event for purposes of being granted a special enrollment period. However, loss of insurance coverage as a result of not paying premiums on a timely basis is not a sufficient basis to be awarded a special enrollment period.

The Marketplace provided an open enrollment from November 15, 2014 through February 28, 2015. The record indicates that you were enrolled in a QHP during the open enrollment period, and were covered by this QHP until May 31, 2015, when your coverage was terminated.

The record reflects that you lost your health coverage under your Emblem Health QHP as of May 31, 2015 because you did not pay your June 2015 premium by July 1, 2015. The record further reflects that you were sent letters from Emblem Health, dated July 9,

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and 13, 2015, which stated that your coverage was terminated as a result of non-payment. Indeed, the June 17, 2015 statement reflected that you were past due on premiums at that time, and showed that you were obligated to pay a total of \$492.94 to Emblem Health to continue coverage for the period between June 1, 2015 and June 30, 2015, and your current monthly premium of \$492.94 for July 2015. This payment was due by July 1, 2015. The record further shows that you attempted to make an online payment on July 6, 2015 and contacted Emblem Health on July 7, 2015 to make payment, when both dates were after the July 1, 2015 payment deadline for June 2015 coverage to continue in effect.

These two payments equaled a two months-worth of your share of your health insurance premiums; the first payment would have brought you up-to-date as of the end of June 2015, but you did not attempt to make payment until after the July 1, 2015 deadline. By then it was over a month late.

Since it is clear the reason for your loss of coverage was non-payment of premiums for June 2015 by July 1, 2015, and there is no evidence that your disenrollment on July 8, 2015 was a result of misconduct on the Emblem Health QHP's part, you are not entitled to a special enrollment period.

Therefore, the Marketplace's determination to deny a special enrollment period is incorporated by reference within this decision and AFFIRMED.

Decision

Your appeal of the July 8, 2015 disenrollment notice is DISMISSED as a non-appealable issue.

Your appeal of the July 8, 2015 denial of a special enrollment period is incorporated by reference within this decision and is AFFIRMED.

Effective Date of this Decision: November 09, 2015

How this Decision Affects Your Eligibility

Your request for reimbursement of monthly premiums you paid for June and/or July 2015 is not an appealable issue and, therefore, has been dismissed. You have been provided with information as to how to pursue a refund or file a complaint, if one is due.

Your health insurance coverage with your qualified health plan was terminated effective May 31, 2015 due to non-payment of your June 2015 premium.

You are not be responsible for the monthly premium for June 2015 and July 2015.

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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

Your appeal of the July 8, 2015 disenrollment notice is DISMISSED as a non-appealable issue.

Your appeal of the July 8, 2015 denial of a special enrollment period is incorporated by reference within this decision and is AFFIRMED.

Your request for reimbursement of monthly premiums you paid for June and/or July 2015 is not an appealable issue and, therefore, has been dismissed. You have been provided with information as to how to pursue a refund, if one is due, or file a complaint.

Your health insurance coverage with your qualified health plan was terminated effective May 31, 2015 due to non-payment of your June 2015 premium.

You are not be responsible for the monthly premium for June 2015 and July 2015.

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:

