



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

Notice of Decision

Decision Date: October 22, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000003925

[REDACTED]

Dear [REDACTED],

On October 2, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 15, 2015 disenrollment notice and the June 9, 2015 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 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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Issues

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

Can the Appeals Unit consider your appeal regarding the cancellation of your enrollment in your qualified health plan effective June 1, 2015 because of non-payment of premiums?

Did the Marketplace properly determine that you did not qualify for a special enrollment period as of June 8, 2015?

Procedural History

On December 13, 2014 the Marketplace issued an enrollment confirmation notice stating that you were enrolled in a qualified health plan and that your coverage could start as early as January 1, 2015 if you paid your first month's premium.

On May 15, 2015 the Marketplace issued a disenrollment notice stating that your coverage in your qualified health plan was terminated effective March 31, 2015 because the first premium payment was not received by the plan and that you must pay your premium responsibility within the required timeframe in order to maintain coverage.

On June 8, 2015 the Marketplace reran your eligibility for health insurance. On June 9, 2015 the Marketplace issued a notice stating that as of June 8, 2015, you did not qualify to select a health plan outside of the open enrollment period because the requirements to qualify for a special enrollment period had not been met.

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On July 17, 2015, you spoke with the Marketplace's Account Review Unit and appealed your disenrollment from your health plan and subsequent denial of a special enrollment period to reenroll into a health plan following your disenrollment.

On October 2, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. 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) On May 15, 2015 the Marketplace issued a disenrollment notice stating that your coverage in your qualified health plan was terminated effective March 31, 2015 because of non-payment of premiums.
- 2) You testified that you missed the payment of your March 2015 premium.
- 3) You testified that you did not get a bill from your health plan for the month of March.
- 4) You testified that you paid all of your previous premiums on time.
- 5) You testified that you tried to pay your premium for the month of April 2015 but the amount you paid was reimbursed to you by the health plan after you had been disenrolled.

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

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).

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-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 one of the following triggering events occur:

- (1) The qualified individual or his or her dependent loses certain health insurance coverage:
 - (a) Health insurance considered to be minimum essential coverage;
 - (b) Enrolled in any non-calendar year health insurance policy that will expire in 2014, 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 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
- (8) The qualified individual who is an Indian 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)).

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

- (1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or
- (2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128”

(45 CFR § 155.420(e)).

Legal Analysis

The first issue under review is whether the Appeals Unit can consider your appeal regarding the cancellation of your enrollment in your qualified health plan effective March 31, 2015 because of non-payment of premiums.

On May 15, 2015 the Marketplace issued a disenrollment notice stating that your coverage in your qualified health plan is terminated effective March 31, 2015 because of non-payment of premiums.

You testified that you missed the payment of your March 2015 premium. You testified that you did not get a bill from your health plan for the month of March. You testified that you paid all of your previous premiums on time. You testified that you tried to pay your premium for the month of April 2015 but the amount you paid was reimbursed to you by the health plan after you had been disenrolled.

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. Therefore, your appeal of the May 15, 2015 disenrollment notice is DISMISSED as a non-appealable issue.

The second issue is whether you were properly denied a special enrollment period as of June 8, 2015.

The Marketplace provided an open enrollment from November 15, 2014 until February 15, 2015, and later extended the open enrollment period to February 28, 2015 for people who could not complete their application by the February 15, 2015 deadline. 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.

Generally, the loss of health insurance coverage is considered a triggering event. Here, your enrollment was terminated effective May 31, 2015 because you did not pay your premiums to your health plan on time. The Marketplace considers the failure to pay premiums a voluntary action causing the termination of your

coverage; therefore, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis. As discussed above, the Appeals Unit does not have the authority to decide whether or not your premiums were in fact made on time.

The credible evidence of record indicates that, since the open enrollment period closed on February 28, 2015, no other triggering events have occurred that would qualify you for a special enrollment period.

Therefore, the June 9, 2015 eligibility determination notice is **AFFIRMED** because Marketplace properly denied your request for a special enrollment period.

Decision

Your appeal of the May 15, 2015 disenrollment notice is **DISMISSED** as a non-appealable issue.

The June 9, 2015 eligibility determination notice is **AFFIRMED**.

Effective Date of this Decision: October 22, 2015

How this Decision Affects Your Eligibility

You are not eligible to enroll in a qualified health plan through the Marketplace at this time.

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

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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 May 15, 2015 disenrollment notice is **DISMISSED** as a non-appealable issue.

The June 9, 2015 eligibility determination notice is **AFFIRMED**.

You are not eligible to enroll in a qualified health plan through the Marketplace at this time.

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:

