



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

## Notice of Decision

Decision Date: November 16, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000003988

[REDACTED]

Dear [REDACTED]

On October 7, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's July 19, 2015 eligibility determination and July 20, 2015 disenrollment notices.

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).

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## Decision

Decision Date: November 16, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000003988



## Issues

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

Did the Marketplace properly determine on July 19, 2015 that you and your spouse are not eligible to receive financial assistance or to be enrolled in a qualified health plan at full cost through the Marketplace effective July 31, 2015?

Did the Marketplace properly disenroll you and your spouse from Empire HMO 600 Gold ST INN Pediatric Dental Dep 25 effective May 31, 2015?

## Procedural History

On December 7, 2014, the Marketplace issued an eligibility determination notice that you and your spouse are conditionally eligible to receive up to \$237.00 of advance premiums tax credits and, if you enroll in a silver-level health plan, cost-sharing reductions, through New York State of Health effective January 1, 2015. You were directed to provide additional documentation regarding citizenship status before March 8, 2015.

On the December 14, 2015, the Marketplace issued a notice confirming that you and your spouse were enrolled in Empire HMO 600 Gold ST INN Pediatric Dental Dep 25 and coverage could start as early as January 1, 2015.

On July 19, 2015, the Marketplace issued an eligibility determination notice that you and your spouse are not eligible to receive financial assistance or to be enrolled in a qualified health plan at full cost through the Marketplace. This was because you failed to

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provide information regarding your citizenship status. Your eligibility was to end effective July 31, 2015.

On July 20, 2015, the Marketplace issued a disenrollment notice that your Empire HMO 600 Gold ST INN Pediatric Dental Dep 25 health plan would end effective July 31, 2015.

On July 22, 2015, you spoke with the Marketplace's Account Review Unit and requested an appeal insofar as you and your spouse were found not eligible to be enrolled in a qualified health plan at full cost or receive financial assistance through the Marketplace and were disenrolled as of July 31, 2015.

On October 7, 2015 you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was left open until October 9, 2015 to allow you to submit additional documentation to the Marketplace Appeals Unit.

On October 8, 2015, you faxed a five-page document to the Marketplace Appeals Unit. That document was marked as "Appellant Exhibit A" and made part of the record. The record is now complete and closed.

## **Findings of Fact**

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

- 1) You and your spouse were enrolled in Empire HMO 600 Gold ST INN Pediatric Dental Dep 25 health plan from January 1, 2015 through July 31, 2015, when you were disenrolled for failure to provide citizenship documentation.
- 2) You testified that you were not aware that citizenship status documentation was needed until you received the disenrollment notice from the Marketplace.
- 3) You testified that you opted to receive electronic notices and never saw a notice that you needed to provide additional documentation until after you were disenrolled from the health plan.
- 4) You testified that the email address listed in your Marketplace Account is your current email address.
- 5) On October 8, 2015 you faxed to the Marketplace Appeals Unit your and your spouse's:
  - (a) Certificates of Naturalization ( [REDACTED] ) and ( [REDACTED] );
  - (b) U.S. Passports (Appellant Exhibit A, pp. 2-5).

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**

### Citizenship 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)).

### Electronic Notices

(a) Effective no earlier than October 1, 2013 and no later than January 1, 2015, the agency must provide individuals with a choice to receive notices and information ... in electronic format or by regular mail and must be permitted to change such election.

(b) If the individual elects to receive communications from the agency electronically, the agency must—

(1) Ensure that the individual's election to receive notices electronically is confirmed by regular mail.

(2) Ensure that the individual is informed of his or her right to change such election to receive notices through regular mail.

(3) Post notices to the individual's electronic account within 1 business day of notice generation.

(4) Send an email or other electronic communication alerting the individual that a notice has been posted to his or her account. The agency may not include confidential information in the email or electronic alert.

(5) Send a notice by regular mail within three business days of the date of a failed electronic communication if an electronic communication is undeliverable

(42 CFR §435.918).

## **Legal Analysis**

The Marketplace must determine an applicant's eligibility promptly and without undue delay and then provide a timely notice to the applicant of the eligibility determination

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made. The applicant must be notified if the application does not contain sufficient information to permit the Marketplace to conduct an eligibility determination for enrollment in a qualified health plan (QHP) or insurance affordability programs through the Marketplace.

On December 7, 2014, the Marketplace issued an eligibility determination notice that you and your spouse were conditionally eligible to receive up to \$237.00 of advance premiums tax credits and cost-sharing reductions, if you enroll in a silver-level health plan through the Marketplace effective January 1, 2015. You were directed to provide documentation by March 8, 2015 of your citizenship status to confirm your eligibility.

On December 14, 2015, you and your spouse were enrolled in Empire HMO 600 Gold ST INN Pediatric Dental Dep 25, which could start as early as January 1, 2015

On July 19, 2015, the Marketplace issued an eligibility determination notice that you and your spouse were “not eligible for Medicaid, Child Health Plus, or to receive tax credits or cost sharing reductions to help pay for the cost of insurance. [You] also cannot enroll in a qualified health plan at full cost through the [Marketplace].” The notice stated that you failed to provide proof of your citizenship status.

On July 20, 2015, the Marketplace issued a disenrollment notice that your Empire HMO 600 Gold ST INN Pediatric Dental Dep 25 health plan would end effective July 31, 2015.

Since you elected to receive communications from the Marketplace electronically, the Marketplace was required to post notices to your electronic account within one business day of notice generation. It was also required to send an e-mail or other electronic communication alerting you that a notice had been posted to your account.

The December 7, 2014, eligibility determination notice was posted to your account, but the record contains no evidence the Marketplace sent the required e-mails to tell you that it was available in your account. The record also does not indicate whether, if the electronic notices were not delivered, paper notices were sent by regular mail within three business days of the date of a failed electronic communication.

You testified you did not receive e-mails telling you that the notices were available in your Marketplace account and that your health coverage was being discontinued.

Lacking evidence to the contrary, we must conclude that you did not receive notice regarding the need for additional information to confirm your eligibility through the Marketplace.

Accordingly, the July 19, 2015 notice stating that you and your spouse are not eligible to enroll in a qualified health plan or receive financial assistance because you did not provide additional documentation within the required timeframe lacks support in the record and is **RESCINDED**.

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Therefore, the July 20, 2015 disenrollment notice is RESCINDED.

On October 8, 2015 you faxed you and your spouse's Certificates of Naturalization (No. [REDACTED] and (No. [REDACTED] to the Marketplace Appeals Unit. Therefore, your case is REMANDED to the Marketplace to redetermine your eligibility based on the documentation you provided.

## **Decision**

The notice of eligibility determination issued on July 19, 2015 is RESCINDED.

The July 20, 2015 disenrollment notice is RESCINDED.

Your case is REMANDED to the Marketplace to determine you and your spouse's eligibility based on your citizenship status of U.S. Citizen.

**Effective Date of this Decision:** November 16, 2015

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

This decision cancels the July 19, 2015 eligibility determination and the July 20, 2015 disenrollment notices.

Your case is returned to the Marketplace to determine you and your spouse's eligibility based on your citizenship status of U.S. Citizen.

The Marketplace will issue a new notice of eligibility determination.

## **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.

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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 notice of eligibility determination issued on July 19, 2015 is RESCINDED.

The July 20, 2015 disenrollment notice is RESCINDED.

Your case in REMANDED (returned) to the Marketplace to determine you and your spouse's eligibility based on your citizenship status of U.S. Citizen.

The Marketplace will issue a new notice of eligibility determination.

### **Legal Authority**

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

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**A Copy of this Decision Has Been Provided To:**



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