



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: AP000000003998

[REDACTED]

Dear [REDACTED]

On September 11, 2015, you appeared by telephone at a hearing of the Marketplace's July 11, 2015 disenrollment notice and July 23, 2015 eligibility determination.

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

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).

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

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Issues

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

Was your insurance through Empire HMO 5600 Bronze NS Pediatric Dental Dep 25 properly terminated effective April 30, 2015?

Did the Marketplace properly determine that you did not qualify for a special enrollment period as of July 23, 2015?

Procedural History

On December 13, 2014, the Marketplace issued a notice confirming that you were enrolled in Empire HMO 5600 Bronze NS INN Pediatric Dental Dep 25 (Empire) as early as January 1, 2015.

On July 11, 2015, the Marketplace issued a disenrollment notice that your Empire plan was terminated effective April 30, 2015 because Empire had not received payment for health insurance premiums.

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On July 22, 2015, you spoke to the Marketplace Account Review Unit and requested an appeal insofar as your coverage was terminated and you were denied a special enrollment period.

On July 23, 2015, the Marketplace issued an eligibility determination notice that you were eligible for up to \$148.00 of advance premium tax credits. However, you did not qualify to select a health plan outside of the open enrollment period.

On September 11, 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 supports the following findings of fact:

1. You were enrolled in Empire HMO 5600 Bronze NS INN Pediatric Dental Dep 25 (Empire) effective January 1, 2015.
2. You testified that you contacted Empire on July 1, 2015 and paid your health insurance premiums for the months of April and May 2015. The representative told you that your account was active and in good-standing.
3. You testified that you became aware that your plan was cancelled effective April 30, 2015 when you received a disenrollment notice from Empire in July 2015.
4. The Marketplace issued a disenrollment notice of your Empire plan on July 11, 2015 for failure to pay health insurance premiums. The notice stated that your plan terminated effective April 30, 2015.
5. You testified that you were reimbursed the May 2015 health insurance premium.
6. You testified you are seeking to re-enroll in a health insurance plan through the Marketplace.

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 an annual open enrollment period during which qualified individuals may enroll in a qualified health plan (QHP) and enrollees may change QHPs (45 CFR § 155.410(a)). The open enrollment period for the benefit year beginning on January 1, 2015 during which a qualified individual may enroll in a QHP and enrollees may change QHPs begins on November 15, 2014 and extends through February 15, 2015 (45 CFR § 155.410(e)).

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 to another QHP. A special enrollment period may be permitted when one of the following triggering events occurs:

- 1) The qualified individual or his or her dependent
 - i) loses health insurance considered to be minimum essential coverage
 - ii) is enrolled in a non-calendar-year health insurance policy that will expire in 2015, even if they have the option to renew the policy
 - iii) loses pregnancy-related coverage
 - iv) loses 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,

- 3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status,
- 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,
- 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,
- 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,
- 7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move,
- 8) The qualified individual who is an Indian may enroll in a QHP or change from one QHP to another one time per month,
- 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)).

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, including COBRA premiums prior to the expiration of coverage, is not a sufficient basis to be awarded a special enrollment period (45 CFR § 155.420(e)).

Legal Analysis

The first issue is whether or not your Empire health insurance coverage was properly terminated as of April 30, 2015.

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).

Since the issue of termination for failure to pay health insurance premiums is not one that the NY State of Health Appeals Unit is authorized to address, we must dismiss that basis of your appeal request.

However, Empire may be able to help you with your request for coverage. If you have not already been assisted with your current coverage issue, please contact Empire at 1-855-748-1806.

In addition, since your issue concerns a health insurer and/or payment, reimbursement, coverage, benefits, rates and premiums, you can contact NY Department of Financial Services at their Consumer Hotline at (800) 342-3736 (Monday through Friday, 8:30 AM to 4:30 PM); or locally to (212) 480-6400; or you can file a complaint at <http://www.dfs.ny.gov/consumer/fileacomplaint.htm>

The second issue on appeal is whether or not the Marketplace properly denied you a special enrollment period after your coverage terminated effective April 30, 2015.

The Marketplace provided an open enrollment from November 15, 2014 until February 15, 2015. The record indicates that during the open enrollment period you enrolled in Empire HMO 5600 Bronze NS INN Pediatric Dental Dep 25 (Empire) on effective January 1, 2015. As a result of nonpayment of premiums, your coverage ended on April 30, 2015.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in a plan or to change to another health plan offered in the Marketplace.

In certain circumstances a special enrollment period is granted to individuals so that they may enroll in a qualified health plan outside of the open enrollment period if the individual experiences a triggering event. Loss of insurance coverage may be considered a triggering event for purposes of being granted a special enrollment period.

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However, loss of insurance coverage as a result of failing to pay insurance premiums on a timely basis is not considered a triggering event to support approval of special enrollment period.

Therefore, since your insurance coverage ended for non-payment of premiums, a non-qualifying event, you are not entitled to a special enrollment period under 45 CFR § 155.420(d)(1).

No evidence has been offered, or argument made, to support granting of a special enrollment period under the remaining provisions of CFR § 155.420(d).

Since the credible evidence of record confirms that you were ineligible for special enrollment period, the denial of a special enrollment period is AFFIRMED.

Decision

The July 23, 2015 Marketplace's determination notice denying you a special enrollment is AFFIRMED.

This decision does not address your termination of coverage. It informs you of the contact information if you choose to pursue your complaint further.

Effective Date of this Decision: November 09, 2015

How this Decision Affects Your Eligibility

This decision does not change your eligibility

You do not qualify for a special enrollment period to enroll or in a qualified health plan for 2015 health insurance coverage.

If you believe you made your premium payment within the required timeframe, please contact your plan directly at 1-855-748-1806.

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.

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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 July 23, 2015 Marketplace's determination to deny you a special enrollment is **AFFIRMED**.

You did not qualify for a special enrollment period to enroll or in a qualified health plan for 2015 health insurance coverage.

If you believe you made your premium payment within the required timeframe, please contact your plan directly at 1-855-748-1806.

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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

