



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

Notice of Decision

Decision Date: October 15, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004058

[REDACTED]

Dear [REDACTED],

On October 13, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 6, 2015 disenrollment from health coverage for you and your spouse.

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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
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Decision

Decision Date: October 15, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004058

[REDACTED]

Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did the Marketplace properly determine that you and your spouse were disenrolled from your health coverage, effective February 1, 2015, under NY State of Health Account Number [REDACTED]?

Procedural History

NY State of Health Number: [REDACTED]

In 2014, you and your spouse were enrolled in a silver-level qualified health plan with Fidelis Care from January 1, 2014 to December 31, 2014 in a Marketplace account bearing your name and assigned account number [REDACTED].

On December 22, 2014, the Marketplace issued a notice of eligibility redetermination stating that you and your spouse were newly eligible to purchase a qualified health plan at full cost through NY State of Health, effective January 1, 2015.

On December 23, 2014, the Marketplace issued an enrollment notice confirming your and your spouse's health coverage in a silver-level qualified health plan with Fidelis Care at full cost.

NY State of Health Number: [REDACTED]

On December 1, 2014, the Marketplace received your application for health insurance coverage in 2015 in account number [REDACTED].

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On December 28, 2014, the Marketplace issued a notice of eligibility determination in [REDACTED] stating, in part, that you and your spouse were eligible to receive up to \$485.00 per month in advance premium tax credits (APTC) and, if you selected a silver-level qualified health plan, eligible for cost sharing reductions, effective February 1, 2015.

On December 31, 2014, the Marketplace issued an enrollment notice confirming your and your spouse's selection of a silver-level qualified health plan with Fidelis Care and your monthly premium responsibility of \$274.58, after your monthly APTC of \$485.00 was applied. The notice informed you that coverage could start after you paid your first month's premium and could start as early as February 1, 2015.

On May 6, 2015, the Marketplace issued a cancellation notice that said your and your spouse's coverage with the silver-level Fidelis Care health plan was cancelled, effective February 1, 2015, due to non-payment of premium under account number [REDACTED]

On July 27, 2015, you and/or your spouse spoke with the Marketplace's Account Review Unit and appealed the May 6, 2015 cancellation notice insofar as the Marketplace erroneously cancelled/deactivated the wrong health insurance plan.

On October 13, 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) You testified and your Marketplace accounts reflect that there were two separate accounts in your name in December 2014.
- 2) You are appealing your and your spouse's disenrollment from the wrong health plan in account number [REDACTED], when you both should have been disenrolled from the full cost health plan in account number [REDACTED]
- 3) You testified that you and your spouse became aware that there were two accounts and two health plan enrollments in the same plan for 2015 when you began receiving multiple insurance identification cards and duplicative monthly billing statements.
- 4) You testified that you and/or your spouse contacted the Marketplace and Fidelis Care on numerous occasions in an effort to straighten out your health plan coverage.

- 5) You testified and your Marketplace account reflects that on or about May 6, 2015, the Marketplace erroneously cancelled your coverage under account number [REDACTED].
- 6) You testified and your Marketplace account reflects that this error resulted in your health plan with APTC in your current account, account number [REDACTED] being cancelled retroactively to February 1, 2015, which had the effect of leaving you and your spouse without coverage in 2015 and without the benefit of applying APTC.
- 7) You testified and your Marketplace account reflects that on May 14, 2015, you and/or your spouse filed a complaint and a Marketplace representative acknowledged that your couple plan enrollment via account number [REDACTED] was cancelled in error by a Marketplace representative on April 7, 2015, when the couple plan via account number [REDACTED] was the health plan intended to be cancelled.
- 8) You testified that your complaint was not promptly resolved, despite your having been told that it would be and, as a result, you and your spouse have had to go without health coverage in 2015 and will likely face a penalty for not having health coverage this year.
- 9) According to the Marketplace notes regarding internal activity on your accounts, on May 15, 2015, your case was referred to the Department of Health and, on June 3, 2015, the Department of Health issued a direction to the Marketplace to determine which account was to be kept active and to deactivate the account that should no longer continue. On June 5, 2015, your matter was sent back to the agent to review, but no further action was taken until July 28, 2015, when your appeal request was made.
- 10) You want to be afforded a special enrollment period in 2015 for you and your spouse to select a health plan for the remainder of the year and you want the possibility of an IRS tax penalty for not having health coverage in 2015 to be addressed.

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)).

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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 a triggering event occurs, such as when:

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

(45 CFR § 155.420(d)(4)).

Generally, if a triggering life 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)).

Exemptions

A shared responsibility payment may be imposed with respect to a non-exempt individual who does not maintain minimum essential coverage. However, an exemption may relieve an individual from the shared responsibility payment (45 CFR § 155.600(a)).

An exemption may be granted to an applicant for at least before, a month or months during which, and the month after, if it is determined the individual(s) experienced circumstances that prevented them from obtaining coverage under a qualified health plan (45 CFR § 155.605(g)(1)(iii)).

The Marketplace may adopt an exemption eligibility determination made by HHS for an exemption application that is submitted before the start of open enrollment for 2016 (45 CFR § 155.625(b)).

Legal Analysis

The issue under review is whether the Marketplace properly cancelled and/or deactivated your health plan with advance premium tax credits (APTC) and cost sharing reductions (CSR) in your current account, account number [REDACTED] retroactively to February 1, 2015.

The record reflects that your 2014 silver-level Fidelis Care plan coverage was renewed at full cost in account number [REDACTED] by the Marketplace for 2015, without your input. Simultaneously, in December 2014, you had created and completed a new application in account number [REDACTED] that resulted in you and your spouse being found eligible to receive APTC and CSR, effective February 1, 2015, with coverage under the silver-level Fidelis Care health plan you had selected that could start that same day.

You credibly testified that, after realizing you had two active health plans, you and/or your spouse told Marketplace representatives over a two-month period that you wanted your most current eligibility for APTC and CSR and enrollment in a silver-level Fidelis Care health plan to remain intact in account number [REDACTED]. However, through error or inadvertence, your eligibility and coverage through that account was cancelled/deactivated leaving you and your spouse without health insurance this year.

While the record reflects that the Department of Health directed that the Marketplace determine which of your two accounts and related health plan were to be deactivated and to correct its error accordingly, no action to make this correction was taken and this appeal ensued.

A special enrollment period can be granted on the basis of “error, misrepresentation, or inaction of an officer, employee, or agent of the [Marketplace] or [the U.S. Department of Health and Human Services], or its instrumentalities as evaluated and determined by the [Marketplace].”

The record indicates that the Marketplace, by action or inaction, made an error in deactivating the wrong silver-level Fidelis Care health plan in account number [REDACTED], instead of the correct silver-level Fidelis Care health plan in [REDACTED]. Therefore, the Marketplace improperly cancelled your coverage.

Ordinarily, this finding of an improper cancellation of coverage would result in the Marketplace’s May 6, 2015 cancellation notice in account number [REDACTED] being rescinded; however, since you did not have the ability to use this health insurance and should therefore not be compelled to pay premiums for a plan you were unable to use, the cancellation of your account will not be rescinded.

Instead, because you testified that, at this late date, you and your spouse are looking for coverage only from October 1, 2015 forward via a special enrollment period, and are requesting an exemption from paying any tax penalty for the months you and your

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spouse were without coverage, you and your spouse are granted a special enrollment period in which to enroll in the plan of your choice.

Your case is begin returned to the Marketplace, which will facilitate your reenrollment with the appropriate advance premium tax credits in account number [REDACTED]. The Marketplace is also directed to deactivate your silver-level Fidelis Care health plan in account number [REDACTED], effective January 1, 2015.

Sometimes after an appeal decision an appellant can claim an exemption from the requirement to have health insurance. If both of the following applied to you in 2015, you might qualify for a health coverage exemption:

- In 2015 you were not enroll in a qualified health plan because of an appealable reason, and
- Your appeal was eventually successful.

If this is accurate, you may not to have to pay the fee for the months you and your spouse were uncovered. If approved, the exemption generally also covers the month of the decision itself. It will not cover the month of the decision itself if the decision is in the next plan year.

Please note, that you must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, the NY State of Health Marketplace cannot and will not accept hardship exemption applications.

You will find all of the information you need to claim the exemption due to an appeal decision at www.healthcare.gov/exemptions-tool/#/results/details/eligible-based-on-appeal. You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word “pending” in column “c” and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

New York State of Health finds that you were not enrolled in a health plan because of an appealable error on its part, and that your appeal was successful.

Decision

The May 6, 2015 cancellation notice in Account Number [REDACTED] was improper; and New York State of Health finds that you were not enrolled in a health plan for most of 2015 because of an appealable error on its part and that your appeal was successful.

You and your spouse have been granted a special enrollment period to select a health plan outside of the open enrollment period for 2015 in account number [REDACTED]

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and have until 60 days from the date of this decision to do so, if you wish, with a start date you select.

Your case is begin returned to the Marketplace, which will facilitate your reenrollment with the appropriate advance premium tax credits in account number [REDACTED]. The Marketplace is also directed to deactivate your silver-level Fidelis Care health plan in account number [REDACTED], effective January 1, 2015.

If you would like an exemption for the months you and your spouse were without coverage as a result of being improperly disenrolled, you must contact the United States Department of Health and Human Services (HHS).

New York State of Health finds that you were not enrolled in a health plan because of an appealable error on its part, and that your appeal was successful.

Effective Date of this Decision: October 15, 2015

How this Decision Affects Your Eligibility

The Marketplace erred in disenrolling you and your spouse from your preferred silver-level Fidelis Care health plan effective February 1, 2015 in Account Number [REDACTED].

You and your spouse qualify to select a health plan outside of the open enrollment period for 2015 in account number [REDACTED] and have until 60 days from the date of this decision to do so, if you wish.

The Marketplace is directed to deactivate your silver-level Fidelis Care Health plan in Account Number [REDACTED], effective January 1, 2015.

You may be eligible for an exemption from paying a tax penalty for the months you and your spouse were without coverage, you must claim this exemption through the United States Department of Health and Human Services (HHS).

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

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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 May 6, 2015 cancellation notice in Account Number [REDACTED] was improper; and New York State of Health finds that you were not enrolled in a health plan for most of 2015 because of an appealable error on its part and that your appeal was successful.

You and your spouse have been granted a special enrollment period to select a health plan outside of the open enrollment period for 2015 in account number [REDACTED] and have until 60 days from the date of this decision to do so, if you wish, with a start date you select.

Your case is begin returned to the Marketplace, which will facilitate your reenrollment with the appropriate advance premium tax credits in account number [REDACTED]. The Marketplace is also directed to deactivate your silver-level Fidelis Care health plan in account number [REDACTED], effective January 1, 2015.

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If you would like an exemption for the months you and your spouse were without coverage as a result of being improperly disenrolled, you must contact the United States Department of Health and Human Services (HHS).

New York State of Health finds that you were not enrolled in a health plan because of an appealable error on its part, and that your appeal was successful.

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:

