



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

## Notice of Decision

Decision Date: October 28, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004059

[REDACTED]

Dear [REDACTED],

On October 14, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's July 19, 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

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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## Decision

Decision Date: October 28, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004059

[REDACTED]

## Issues

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

Did the Marketplace properly determine that you were no longer eligible to enroll in a qualified health plan, effective July 31, 2015?

Did the Marketplace provide you with a timely determination regarding your request to enroll in a health plan outside of the open enrollment period?

Did the Marketplace properly determine that you were not eligible for a special enrollment period?

## Procedural History

On March 12, 2015, the Marketplace issued a notice of eligibility determination stating that you were conditionally eligible to receive advance premium tax credits and cost sharing reductions, effective April 1, 2015. The notice further requested that you provide documentation confirming your citizenship status before June 9, 2015, or your eligibility for health insurance and financial assistance might end.

Also on March 12, 2015 the Marketplace issued a notice confirming your enrollment in a qualified health plan.

On July 19, 2015, the Marketplace issued a notice of eligibility redetermination stating that you were no longer eligible to enroll in health insurance through the Marketplace because you had not confirmed your citizenship status.

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Also on July 19, 2015, the Marketplace issued a notice that stated your enrollment in your qualified health plan was terminated effective July 31, 2015.

On July 27, 2015, you spoke with the Marketplace's Account Review Unit and appealed the July 19, 2015 determination insofar as you were not eligible to enroll in a qualified health plan.

On August 7, 2015, you provided your Certificate of Naturalization number to the Marketplace.

Also on August 7, 2015, your eligibility was redetermined and a notice was issued on August 8, 2015 stating that you were eligible to receive advance premium tax credits and cost-sharing reductions, effective September 1, 2015.

On October 14, 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 that you received the Marketplace's March 12, 2015 notice of eligibility determination, but were unaware that your eligibility was conditional upon submission of documentation to confirm your citizenship.
- 2) You testified that you were never asked whether you were a naturalized citizen and, therefore, never provided your Certificate of Naturalization number.
- 3) There is no evidence in the record that the Marketplace received your proof of citizenship before June 9, 2015.
- 4) You spoke to a Marketplace representative on, or around, August 7, 2015 and provided your Certificate of Naturalization number.
- 5) You are seeking reinstatement of your health insurance coverage.
- 6) When you requested an appeal, you also requested that you be allowed to enroll in a plan outside of the open enrollment period.

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 and Immigration 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)).

If an applicant attests to citizenship, status as a national, or lawful presence, and the Marketplace is unable to verify such attestation, the Marketplace must provide the applicant 90 days to provide satisfactory documentary evidence, from the date the notice of inconsistency is received by the applicant. Notice is considered received 5 days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the 5 day period. (45 CFR § 155.315(c)(3)).

### Timely Review

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

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'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

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- (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)).

## **Legal Analysis**

The first issue under review is whether the Marketplace properly determined that you were no longer eligible to enroll in a qualified health plan through the Marketplace, effective July 31, 2015.

The Marketplace is required to determine whether individuals are eligible to enroll in coverage through the Marketplace, and must confirm, among other things, that their citizenship status is satisfactory.

If the Marketplace cannot verify an individual's citizenship status, it must provide the individual a period of 90 days from the date notice is received to resolve the inconsistency. For purposes of verifying citizenship, notice is considered received 5 days after the date on the notice.

In the eligibility determination issued on March 12, 2015, you were advised that your eligibility was only conditional, and that you needed to confirm your citizenship status before June 9, 2015.

The record reflects that the Marketplace did not receive the requested citizenship documentation before the deadline.

If the Marketplace remains unable to verify the inconsistency after the 90 day period ends, then it must determine the applicant's eligibility based on the information available in the data sources.

Since the requested citizenship documentation was not received within the 90 day period, the Marketplace was required to redetermine your eligibility without verification of your citizenship status. As a result, the Marketplace properly determined that you could not enroll in a qualified health plan through NY State of Health effective July 31, 2015 because you did not provide the information requested by the Marketplace.

Therefore, the Marketplace's July 19, 2015 eligibility determination is correct and is AFFIRMED.

The second issue is whether the Marketplace timely prepared an eligibility determination regarding your request for a special enrollment period.

The record does not contain a notice of eligibility determination or redetermination on the issue of a special enrollment period, either timely issued or otherwise.

Therefore, it is determined that the Marketplace failed to timely provide you with an eligibility determination regarding your request for a special enrollment period, and the matter must be returned to the Marketplace for a determination on your eligibility for a special enrollment period.

The third issue cannot be addressed at this time, because if no determination has been issued regarding your request, the Appeals Unit has no determination to review.

Therefore, the matter is returned to the Marketplace for it to issue a determination as to your request for a special enrollment period.

## **Decision**

The July 19, 2015 eligibility determination notice is AFFIRMED.

The matter is returned to the Marketplace for it to issue a determination as to your request for a special enrollment period.

**Effective Date of this Decision:** October 28, 2015

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

You eligibility to enroll in a qualified health plan through the Marketplace outside of the open enrollment period will not be addressed at that time. A determination regarding your request for a special enrollment period will be issued by the Marketplace after it reviews your account.

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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**

The July 19, 2015 eligibility determination notice is **AFFIRMED**.

The matter is returned to the Marketplace for it to issue a determination as to your request for a special enrollment period.

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You eligibility to enroll in a qualified health plan through the Marketplace outside of the open enrollment period will not be addressed at that time. A determination regarding your request for a special enrollment period will be issued by the Marketplace after it reviews your account.

## **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:**

