



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: AP000000004093

[REDACTED]

Dear [REDACTED],

On October 15, 2015, you appeared by telephone at a hearing on your request of NY State of Health Marketplace's July 19, 2015 disenrollment notice and 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.

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).

Legal Authority

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:

Did the Marketplace properly determine that your enrollment in your qualified health plan should be terminated effective July 31, 2015?

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

Procedural History

On February 12, 2015, the Marketplace issued an eligibility determination notice that you were conditionally eligible to purchase a qualified health plan at full cost through New York State of Health effective March 1, 2015. The Marketplace directed you to confirm your citizenship status by providing documentation before May 14, 2015.

On February 12, 2015 the Marketplace issued an enrollment notice that you have been enrolled in Fidelis Care Silver ST INN Pediatric Dental Dep25 and coverage could start as early as March 1, 2015.

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On July 19, 2015, the Marketplace issued an eligibility determination notice that you are not eligible for financial assistance or cannot enroll in a qualified health plan at full cost through NY State of Health effective July 31, 2015.

On July 19, 2015, the Marketplace issued a disenrollment notice stating that your coverage through Fidelis Care Silver ST INN Pediatric Dental Dep25 would end effective July 31, 2015. The notice states that you are “no longer eligible to enroll in health insurance through New York State of Health.”

On July 29, 2015, you requested an appeal insofar as you were disenrolled from your health plan and were denied a special enrollment period.

On October 15, 2015, you appeared for your scheduled 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. On February 12, 2015 the Marketplace determined that you were conditionally eligible to purchase a qualified health plan at full cost through New York State of Health. The notice directed you to submit citizenship status documentation by May 14, 2015 to confirm your eligibility.
2. You were enrolled in Fidelis Care Silver ST INN Pediatric Dental Dep25 and coverage was effective March 1, 2015.
3. The Marketplace determined you not eligible for financial assistance or eligible to enroll in a qualified health plan at full cost effective July 31, 2015, for failing to provide additional citizenship status documentation.
4. You testified that you were aware that you needed to submit citizenship status documentation to the Marketplace but forgot to submit it.
5. You mailed your U.S. Passport to the Marketplace on July 29, 2015.
6. No notice of eligibility determination has been issued by the Marketplace denying you a special enrollment period.

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7. You are seeking to reenroll in a health 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

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)).

De Novo Review

The Marketplace Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “*De novo review* means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

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)).

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Special Enrollment Periods

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,

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- 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)).

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 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 February 12, 2015 you were advised that your eligibility was only conditional, and that you needed to confirm your citizenship status before May 14, 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 disenrollment notice is correct and is **AFFIRMED**.

The second issue is whether or not the Marketplace properly denied you a special enrollment period.

The record does not contain a notice of eligibility determination or redetermination on the issue of a special enrollment period (SEP). It does, however, contain a July 30, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issue on appeal as "Denial of Special Enrollment Period (SEP)."

The lack of a notice of eligibility determination on the issue of SEP does not prevent the Appeals Unit from reaching the merits of the case. Under 45 CFR § 155.505(b), you are as entitled to appeal Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the July 30, 2015 notice, which acknowledges

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the appeal on the issue of SEP denial, permits an inference that the Marketplace did deny your SEP request. Since Appeal Unit review of Marketplace determinations is performed on a *de novo* basis, no deference would have been granted to the notice of eligibility determination had it been issued.

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 Fidelis Care Silver ST INN Pediatric Dental Dep25 and coverage could start as early as March 1, 2015.

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

The record supports that you conditionally eligible to enroll in a qualified health plan. However, the Marketplace requested additional citizenship status documentation from you by May 14, 2015 to confirm your eligibility. The Marketplace did not receive any citizenship status documentation from you by this date.

The Marketplace determined you not eligible for financial assistance or eligible to enroll in a qualified health plan at full cost effective July 31, 2015, for failing to provide additional citizenship status documentation.

If an individual loses coverage because he or she voluntarily terminated that coverage, there would be no basis for providing a special enrollment period. The Marketplace considers a failure to provide requested documents to support a person's eligibility a voluntary action. Therefore, the Marketplace correctly denied you a special enrollment period.

Decision

The July 19, 2015 disenrollment notice is AFFIRMED.

The Marketplace's determination to deny you a special enrollment is AFFIRMED.

Effective Date of this Decision: November 16, 2015

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How this Decision Affects Your Eligibility

You are not eligible to enroll in a qualified health plan through the Marketplace for the remainder of 2015 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 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:
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- By fax: 1-855-900-5557

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Summary

The July 19, 2015 disenrollment notice is AFFIRMED.

The Marketplace's determination to deny you a special enrollment is AFFIRMED.

You are not eligible to enroll in a qualified health plan through the Marketplace for the remainder of 2015 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

