



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

## Notice of Decision

Decision Date: November 25, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004120

[REDACTED]

Dear [REDACTED]

On October 19, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's July 10, 2015 notices of eligibility determination and enrollment.

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).

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).

This page intentionally left blank.



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

## Decision

Decision Date: November 25, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004120

[REDACTED]

## Issue

The issue 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 receive advance premium tax credits and no longer eligible for cost sharing reductions, effective July 1, 2015?

## Procedural History

In 2014, the Marketplace determined that you were eligible to receive advance premium tax credits and eligible for cost sharing reductions and you were enrolled in a silver-level qualified health plan.

On November 3, 2014, the Marketplace issued a renewal notice that stated your coverage in a silver-level qualified health plan was automatically renewed and you were eligible to received advance premium tax credits and eligible for cost sharing reductions, effective January 1, 2015.

On December 26, 2014, the Marketplace issued an enrollment notice confirming your selection of a silver-level qualified health plan and dental plan, and your monthly premium responsibility after your monthly advance premium tax credit was applied.

On June 16, 2015, a June 2, 2015 disenrollment notice from your dental plan due to nonpayment of premium was uploaded to your Marketplace account as "RETURN MAIL JUN 11 2015."

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).

That same day, the Marketplace issued a notice of eligibility redetermination that you were newly eligible to purchase a qualified health plan at full cost through the Marketplace, effective July 1, 2015.

On June 17, 2015, the Marketplace issued a notice confirming your enrollment in a silver-level qualified health plan with dental coverage at full cost, effective July 1, 2015.

On July 10, 2015, the Marketplace issued another notice of eligibility redetermination that you were newly eligible to receive advance premium tax credits and cost sharing reductions, effective August 1, 2015.

On July 10, 2015, the Marketplace issued a notice confirming your enrollment in a silver-level qualified health plan with a monthly premium responsibility of \$139.86 after your monthly advance premium tax credit of \$319.00 was applied, effective August 1, 2015.

On July 30, 2015, you spoke with a representative from the Marketplace's Account Review Unit and appealed the August 1, 2015 start date of your enrollment. You also requested that the aid you were receiving continue during the appeal process, which the Marketplace granted effective July 1, 2015.

On September 10, 2015, the Marketplace issued a notice confirming the continuation of your enrollment, effective July 1, 2015, with a monthly premium responsibility of \$139.86 after your monthly advance premium tax credit of \$319.00 was applied.

On September 29, 2015, the Marketplace issued a notice of telephone hearing and confirmation of your request for aid to continue. In this regard, the notice stated that:

Aid to Continue means that your eligibility and/or coverage will stay the same until a decision is made about your appeal. If you are covered by Medicaid, you will continue to be covered by Medicaid. If you receive help paying for coverage, the level of help you receive will stay the same. If you pay a premium of any amount for your coverage, you will continue to be eligible to stay enrolled as long as you continue to pay your premiums on time.

On October 19, 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) The record reflects that the Marketplace automatically renewed your health insurance coverage for 2015 with the health you had in 2014.

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).

- 2) You testified that a certified application counselor (CAC) assisted you with your application in 2013 and did not enter your apartment number along with your mailing address. The notices in your Marketplace account from 2013 to June 17, 2015 confirm that your apartment number was not included in the address line.
- 3) According to your Marketplace account and your testimony, a disenrollment notice was issued on June 2, 2015 regarding cancellation of your dental insurance and was returned to the Marketplace as undeliverable. The address listed on that notice did not have your apartment number. According to your Marketplace account, this resulted in your address being invalidated by the Marketplace during the Return Mail Process on June 15, 2015.
- 4) According to your Marketplace account and your testimony, your address being invalidated triggered an eligibility redetermination notice on June 16, 2015 that you were eligible to purchase a qualified health plan at full cost and a notice confirming your enrollment in a silver-level qualified health plan, effective July 1, 2015. This redetermination meant that you had lost your advance premium tax credit as of July 1, 2015, and had to pay the full cost of premium to have coverage in July 2015.
- 5) According to the Marketplace's note on July 24, 2015, you were requesting to have an adjustment made to your billing statement as you were not aware that your mailing address information was missing your apartment number, which was not your fault but an error by the CAC, who had assisted you.
- 6) According to that same July 24, 2015 Marketplace note, you stated that you cannot afford the monthly premium at full cost for July 2015 and your health plan had advised that if payment is not made in full by July 31, 2015, your insurance will be terminated.
- 7) According to the Marketplace note of July 31, 2015 and your Marketplace account, your financial assistance (advance premium tax credit) was added back onto your account, effective August 1, 2015, but you did not want a gap in financial assistance for the month of July 2015.
- 8) According to your Marketplace account, on September 10, 2015, the Marketplace issued the notice regarding your enrollment as of July 1, 2015 and, on September 29, 2015, a letter acknowledging your request for aid to continue.
- 9) According to the Marketplace note of September 8, 2015, you contacted the Marketplace to report that your health coverage was cancelled in July 2015. The note further reflect that the Marketplace system had not been notified by the health plan and that aid to continue is needed to continue coverage.
- 10) You testified that on that same date, you were granted aid to continue but did not fully understanding what it meant and that you would be responsible for paying

your monthly premiums for July, August, and September 2015, when you wanted coverage to be re-instated as of October 1, 2015.

11) According to a Marketplace note of September 24, 2015 and your testimony at hearing, you were informed by the health plan that you have to satisfy the premium arrearage back to July 1, 2015, which you did not fully understand when you requested that your coverage be reinstated because you were told your coverage could be reinstated as of October 1, 2015.

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)).

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-in-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. The Centers for Medicare & Medicaid Services (CMS) has determined certain categories of individuals eligible for a special enrollment period under paragraph (d)(4) of 45 CFR 155.420, that is, when 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)(4)).

CMS has defined misconduct to include misinformation misrepresentation, or inaction by individuals or entities providing formal enrollment assistance (like an insurance company, Navigator, certified application counselor, Call Center Representative, or agent or broker) resulting in (1) A failure to enroll the consumer in a plan; (2) Consumers being enrolled in

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).

the wrong plan against their wish; or (3) The consumer not receiving advance premium tax credits or cost-sharing reductions (Guidance for Issuers on Special Enrollment Periods for Complex Cases in after the Initial Open Enrollment Period, Affordable Exchange Guidance, Department of Health & Human Services, CMS, dated March 26, 2014, as retrieved on October 8, 2015 at:

<http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/complex-cases-SEP-3-26-2014.pdf>

Generally, if a triggering life even occurs, the qualified individual or enrollee has 60 days from the date triggering event to select a QHP (45 CFR § 155.420(c)(1)).

## Legal Analysis

The issue under review is whether the Marketplace properly determined you were no longer eligible for advance premium tax credits and cost sharing reductions and could enroll in a qualified health plan at full cost, effective July 1, 2015.

The Marketplace provided an open enrollment period from November 15, 2014 until February 15, 2015, which was later extended to February 28, 2015 for people who could not complete their application by the February 15, 2015 deadline. The record reflects that you submitted a complete application on November 3, 2014, which was processed on December 19, 2014 during the open enrollment period.

The record reflects that your address was incorrectly reported at that time by a certified application counselor (CAC) in that it was missing your apartment number. This resulted in your address being invalidated by the Marketplace on June 15, 2015, through its Return Mail Process when a June 2, 2015 notice was returned to the Marketplace as undeliverable on June 11, 2015. The Marketplace's actions in response resulted in you no longer being eligible for advance premium tax credits and cost sharing reductions and being responsible to pay the full monthly premium for coverage, effective July 1, 2015.

This returned mail set off a chain of events resulting in you being disenrolled from your health insurance plan by Empire, effective July 1, 2015, for non-payment of premium; the Marketplace finding you newly eligible to receive advance premium tax credits and cost sharing reductions, effective August 1, 2015; and the Marketplace granting you aid to continue on September 10, 2015 during the appeal process, which put you back in the health plan you had before being disenrolled, effective July 1, 2015.

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

A special enrollment period can be granted on the basis of “misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities.”

You credibly testified that you did not know your address had been misreported by the CAC who assisted you in 2013 and you never had a problem with receiving other notices or them being returned as undeliverable from the Marketplace until the problem with the June 2, 2015 notice. Your testimony is supported by the record, which shows that all notices from December 15, 2013 to June 17, 2015 went to your address without an apartment number listed on the address line. As a result, a series of events occurred through no fault of your own but because the CAC who assisted you did not include your apartment number with your mailing address.

Ordinarily, your eligibility would be redetermined to take effect as of July 1, 2015. However, since you did not use this health insurance and, therefore, should not be compelled to pay premiums for a plan you did not use, the effective date will not be made retroactive to July 1, 2015.

Under these circumstances and because you testified that, at this late date, you are looking for coverage only prospectively, you are granted a special enrollment period until 60 days from the date of this decision in which to enroll in the plan of your choice.

Therefore, the Marketplace’s July 10, 2015 notice of eligibility determination that you are newly eligible to receive advance premium tax credits and cost sharing reductions is MODIFIED to include that you are eligible for a special enrollment period until 60 days from the date of this decision.

The July 10, 2015 enrollment notice is RESCINDED.

## **Decision**

The July 10, 2015 notice of eligibility determination is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this notice.

The July 10, 2015 enrollment notice is RESCINDED.

The September 10, 2015 and September 29, 2015 notices insofar as you are granted aid to continue are, in relevant part, RESCINDED.

**Effective Date of this Decision:** November 25, 2015



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

You have no health insurance coverage through the Marketplace for the months of July 2015 to present.

You qualify for a special enrollment period to enroll in a qualified health plan until 60 days from the date of this notice.

Your case is being returned to the Marketplace, which will facilitate your special enrollment period and apply the appropriate advance premium tax credits and cost sharing reductions.

## **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

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).

Albany, NY 12211

- By fax: 1-855-900-5557

## **Summary**

The July 10, 2015 notice of eligibility determination is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this notice.

The July 10, 2015 enrollment notice is RESCINDED.

The September 10, 2015 and September 29, 2015 notices insofar as you are granted aid to continue are, in relevant part, RESCINDED.

You have no health insurance coverage through the Marketplace for the months of July 2015 to present.

You qualify for a special enrollment period to enroll in a qualified health plan until 60 days from the date of this notice.

Your case is begin returned to the Marketplace, which will facilitate your special enrollment period and apply the appropriate advance premium tax credits and cost sharing reductions.

## **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:**

