



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

Notice of Decision

Decision Date: December 10, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004150

[REDACTED]

Dear Mr. [REDACTED]

On November 13, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's 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

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).

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STATE OF NEW YORK
DEPARTMENT OF HEALTH
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Decision

Decision Date: December 10, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004150

[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 remain enrolled in a qualified health plan through the Marketplace, effective July 31, 2015?

Procedural History

On February 23, 2014, a letter was sent by the Marketplace to you confirming your choice to receive all information and notifications regarding your account via electronic communication.

On December 20, 2014, the Marketplace received your application for financial assistance.

On January 3, 2015, an eligibility determination was made on your application finding you conditionally eligible to receive advance premium tax credits in the amount of \$151.00 effective January 1, 2015. However, you were asked to provide proof of your immigration status before March 22, 2015.

On July 23, 2015, an eligibility determination was made finding you no longer eligible to enroll through the NY State of Health because the verification documents available to them show that you are not lawfully present. Your eligibility was ended effective July 31, 2015.

On July 24, 2015, a disenrollment notice was issued ending your silver level qualified health plan effective July 31, 2015.

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On July 31, 2015, you contacted the Marketplace's Account Review Unit and appealed the July 23, 2015 eligibility determination insofar as you were determined ineligible to purchase health insurance after failing to provide proof of citizenship documentation by the requested deadline. You asked that your coverage under your qualified health plan be reinstated.

On November 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 left open for 15 days for you to provide proof of your citizenship documentation in the form of a 1-766 Employment authorization Card. No such evidence was received by the stated deadline.

Findings of Fact

A review of the record support the following findings of fact:

- 1) You are seeking insurance for yourself.
- 2) You testified, and your Marketplace account confirms, that you receive all of your notices via electronic notice.
- 3) You testified that your e-mail address has stayed the same for the duration of your account history with the Marketplace.
- 4) You testified that you believe you received the notices asking you to provide your citizenship documentation.
- 5) You testified that you were unable to open the documents in your Marketplace account.
- 6) There is no evidence in the record that the Marketplace received your citizenship documentation before March 22, 2015.
- 7) Your application states that you are an immigrant non-citizen.
- 8) The NY State of Health Appeals Unit did not receive a copy of your I-766 Employment Authorization card. However, the Marketplace shows that a document with an unexpired employment authorization was received and verified on July 23, 2015, but there was no document available to view in your account.
- 9) You were disenrolled from your health insurance provider effective July 31, 2015.
- 10) You are seeking reinstatement of your health insurance coverage.

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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 expecting 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, from the date the notice of inconsistency is received by the applicant, to provide satisfactory documentary evidence. Notice is considered to have been received five days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the five-day period. (45 CFR § 155.315(c)(3)).

Electronic Notices

(a) Effective no earlier than October 1, 2013 and no later than January 1, 2015, the agency must provide individuals with a choice to receive notices and information ... in electronic format or by regular mail and must be permitted to change such election.

(b) If the individual elects to receive communications from the agency electronically, the agency must—

(1) Ensure that the individual's election to receive notices electronically is confirmed by regular mail.

(2) Ensure that the individual is informed of his or her right to change such election to receive notices through regular mail.

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(3) Post notices to the individual's electronic account within 1 business day of notice generation.

(4) Send an email or other electronic communication alerting the individual that a notice has been posted to his or her account. The agency may not include confidential information in the email or electronic alert.

(5) Send a notice by regular mail within three business days of the date of a failed electronic communication if an electronic communication is undeliverable.

(42 CFR §435.918).

Legal Analysis

The 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?

On January 3, 2015, an eligibility determination was made on your application from December 20, 2014 finding you conditionally eligible to receive advance premium tax credits in the amount of \$151.00 effective January 1, 2015. However, you were asked to provide proof of your immigration status before March 22, 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 five days after the date on the notice.

Ninety days from the December 20, 2014 eligibility determination would be March 22, 2015.

On July 23, 2015, an eligibility determination was made finding you no longer eligible to enroll through the NY State of Health because the information available to them showed that you are not lawfully present. Your eligibility was ended effective July 31, 2015. You appealed this determination as you believed that you had provided the requested information.

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You testified that you believe you received the notices asking you to provide your citizenship documentation. You testified that you were unable to open or upload documents to your Marketplace account.

The record reflects that the Marketplace did not receive your requested citizenship documentation before the deadline of March 22, 2015.

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 from data sources.

You testified that you elected to receive all notices from the Marketplace via electronic communication. You further confirmed during the hearing that your e-mail address has stayed the same for the duration of your account history with the Marketplace. The Marketplace is required to send a notice by regular mail within three business days of the date of a failed electronic communication if an electronic communication is undeliverable. There is no proof in the record that there was a failure in the delivery of the notices to your e-mail address.

Since the requested citizenship documentation was not received within the applicable 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 remain enrolled in a qualified health plan through NY State of Health, effective July 31, 2015.

The Hearing Officer allowed you fifteen days from your November 13, 2015 hearing to provide supporting documentation in the form of your work authorization card. The NY State of Health Appeals Unit did not receive a copy of your I-766 Employment Authorization card by the end of the allotted time period. However, the Marketplace shows that a document with an unexpired employment authorization was received and verified on July 23, 2015, but there was no document available to view in your account.

Therefore, the Marketplace's July 23, 2015 eligibility determination is correct and is **AFFIRMED**.

Your case is **RETURNED** to the Marketplace to redetermine your eligibility for health insurance based upon your status as a non-immigrant authorized for employment in the United States.

Decision

The July 23, 2015 eligibility determination notice is **AFFIRMED**.

Your case is **RETURNED** to the Marketplace to redetermine your eligibility for health insurance based upon your status as a non-immigrant authorized for employment in the United States, if necessary.

Effective Date of this Decision: December 10, 2015

How this Decision Affects Your Eligibility

You are not eligible to enroll in a qualified health plan through the Marketplace at this time.

Your case is being sent back to the Marketplace to redetermine your eligibility for health insurance, if necessary.

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.

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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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P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The July 23, 2015 eligibility determination notice is **AFFIRMED**.

Your case is **RETURNED** to the Marketplace to redetermine your eligibility for health insurance based upon your status as a non-immigrant authorized for employment in the United States, if necessary.

You are not eligible to enroll in a qualified health plan through the Marketplace 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:

