



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: AP000000004160

[REDACTED]

Dear [REDACTED]

On October 5, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's August 1, 2015 eligibility determination denying you 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.

Legal Authority

We are sending you this notice in accordance with 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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DEPARTMENT OF HEALTH
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Decision

Decision Date: November 25, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004160

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Issue

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

Did the Marketplace properly determine on August 1, 2015 that you were not eligible for a special enrollment period?

Procedural History

On July 31, 2015, the Marketplace received your application for health insurance in 2015.

On August 1, 2015, the Marketplace issued a notice of eligibility determination that you were eligible to receive an advance premium tax credit of up to \$51.00 per month, effective September 1, 2015. It further stated that you did not qualify to select a health plan outside of the open enrollment period for 2015.

That same day, you spoke to the Marketplace's Account Review Unit and appealed that eligibility determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On October 5, 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) You submitted your initial application for health insurance on July 31, 2015.
- 2) You testified that you plan on filing your 2015 tax return using the tax filing status of Single and will not be claiming any dependents on that tax return.
- 3) In your application dated July 31, 2015, you listed an annual income of \$40,316.12 from earnings. You testified that this amount is correct.
- 4) You testified that you had Medicaid coverage through your local Human Resources Administration (HRA) office in Kings County and were not recertified because you were over-income. According to your testimony and the Medicaid tracking system, your Medicaid - Health Plus coverage ended on May 31, 2015.
- 5) You testified that you went to your local HRA office on July 29, 2015 and July 30, 2015, to get assistance with completing an application for health coverage through the Marketplace. You testified that you asked questions about what health plans would be best for you on both days.
- 6) You testified that you were not told on either July 29, 2015 or July 30, 2015 that you only had 60 days from the date that your Medicaid coverage ended to select a health plan.
- 7) You testified that you made a health plan choice and called the Marketplace on July 31, 2015 to make your selection, but were told you could not because more than 60 days since you lost your health insurance under Medicaid had transpired.
- 8) You testified that, if you had known you had to make a selection by July 30, 2015, you would have done so because you need to have health insurance and would not have waited one extra day, which resulted in you not qualifying to select a plan.
- 9) According to your Marketplace account, you reside in Kings County, New York.

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 an 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 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 of a triggering event to select a QHP (45 CFR § 155.420(c)(1)).

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Legal Analysis

The issue under review is whether the Marketplace properly denied you a special enrollment period, effective August 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 July 31, 2015. Therefore, you did not complete your application during the open enrollment period.

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.

You testified that your previous insurance coverage ended on May 31, 2015, which is considered a triggering life event.

Sixty days from May 31, 2015 was July 30, 2015; therefore, you would have qualified to select a qualified health plan outside of the open enrollment period until July 30, 2015. Although the record reflects that your application was not complete until July 31, 2015, one day later and after your special enrollment period expired, you credibly testified that you went to your local HRA office for assistance on July 29, 2015 and July 30, 2015, and you were not informed on either date of the impending deadline for a special enrollment period on July 30, 2015.

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 testified that you were not informed of the July 30, 2015 deadline on either July 29, 2015 or July 30, 2015 by local HRA representatives, which constitutes inaction by an individual engaged in enrollment assistance that resulted in your inability to qualify for a special enrollment period after 60 days from the triggering event of losing coverage on May 31, 2015, and your inability to enroll in a plan.

As such, the record supports a finding that by an individual’s inaction in informing you of the 60 day deadline occurring on July 30, 2015, you did not timely select and enroll in a plan. Under these circumstances, a special enrollment period is being granted until 60 days from the date of this decision.

Therefore, the Marketplace’s August 1, 2015 notice of eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2015 is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this decision.

Decision

The August 1, 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 decision.

Your case is RETURNED to the marketplace to facilitate for you the opportunity to select and enroll in a health plan within 60 days of this decision, if you so wish.

Effective Date of this Decision: November 25, 2015

How this Decision Affects Your Eligibility

You qualify for a special enrollment period to enroll in a qualified health plan at this time, and your case will be returned to the Marketplace to give you the opportunity to do so.

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:

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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Summary

The August 1, 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.

Your case is RETURNED to the marketplace to facilitate for you the opportunity to select and enroll in a health plan within 60 days of this decision, if you so wish.

You qualify for a special enrollment period to enroll in a qualified health plan at this time, and your case will be returned to the Marketplace to give you the opportunity to do so.

Legal Authority

We are sending you this notice in accordance with 45 CFR § 155.545(a).

A Copy of this Decision Has Been Provided To:

