



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

## Notice of Decision

Decision Date: August 21, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004169

[REDACTED]

Dear [REDACTED],

On August 17, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's denial of your request to change your Medicaid Managed Care plan.

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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## Decision

Decision Date: August 21, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004169

[REDACTED]

## Issues

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

Did the Marketplace issue a timely notice of determination regarding your request to change your Medicaid Managed Care plan?

Did the Marketplace properly deny your request to change your Medicaid Managed Care plan enrollment from Healthfirst to a different plan?

## Procedural History

On December 17, 2014 the Marketplace issued an eligibility determination notice stating you were eligible for Medicaid effective November 1, 2014.

Also on December 17, 2014 the Marketplace issued an enrollment confirmation notice stating your insurance coverage through Medicaid would begin November 1, 2014 and that your enrollment with Healthfirst, your Medicaid Managed Care (MMC) plan would begin January 1, 2015.

No further documents appeared in your account until August 4, 2015, when the Marketplace issued a letter stating that on August 3, 2015 you requested a telephone hearing. The letter listed the description of your appeal as "Change the MA MMC plan."

On August 5, 2015 you submitted a request for an expedited hearing because of your medical condition; this request for an expedited hearing was granted.

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On August 17, 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, and the record reflects, that you were first determined eligible for Medicaid effective November 1, 2014.
- 2) You testified that you enrolled in Healthfirst as your Medicaid Managed Care plan because it was strongly recommended by a representative from the Marketplace.
- 3) You testified that in June 2015 your Achilles tendon on your left foot ruptured, necessitating surgery.
- 4) You testified that as a result of your injury and subsequent surgery, you now need physical therapy in order to ensure that you are able to walk again.
- 5) You submitted a letter requesting an expedited appeal. The letter, dated [REDACTED]. The letter stated, in part, that it was medically necessary for you to start physical therapy treatment as soon as possible to allow full healing and recovery, muscle development, and walking stability. It further stated that delaying physical therapy treatment could lead to continued muscle atrophy and possible disability.
- 6) You testified that at the end of July you attempted to locate a physical therapist in your area in order for you to begin the necessary therapy. You further testified that you called 20 or more physical therapist offices but could not find a physical therapist within reasonable distance that would accept Healthfirst.
- 7) You testified that as a result of your injury transportation is an issue for you, because you are unable to walk for long periods of time and you cannot drive.
- 8) You testified that the closest physical therapist that accepts Healthfirst would require you to change transportation methods en route and that it was too far to walk. You further testified that this office does not have a Russian speaking doctor or physical therapist.

- 9) You testified that you also called Healthfirst to help locate a physical therapist that could assist you but they were unable to find one that suited your transportation needs. Healthfirst also could not locate many offices that had a representative who spoke Russian.
- 10) You testified that you were able to find several Russian speaking physical therapist offices that meet all of your needs; however, they only accept UnitedHealthcare or Fidelis.
- 11) You testified that you contacted the Marketplace at the end of July to request to change your Medicaid managed care plan. However, you were told you could not change your plan at this time.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

## **Applicable Law and Regulations**

### Timely Notice of Eligibility

When an individual applies for insurance through the Marketplace, the Marketplace must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 FR § 435.1200(b)(3)(iii)).

To assess whether an eligibility determination was untimely, the Marketplace must base the time period from the date of application to the date the Marketplace notifies the applicant of its decision (45 CFR § 155.310(e)(2)). However, if the applicant submits an incomplete application or there is not sufficient information for the Marketplace to make an eligibility determination, then the Marketplace must notify that applicant that more information is needed to complete the application (45 CFR § 155.310(k)(1)).

The Marketplace must provide Medicaid applicants notice of their eligibility determination within 45 days from the date of the application (42 CFR § 435.912).

### 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).

## Changes in Medicaid Managed Care Plan Enrollment

Medicaid enrollees who are enrolled in a Medicaid Managed Care (MMC) plan have 90 days from their initial enrollment date to change plans. If an enrollee does not change plans within 90 days, the enrollee is “locked-in” to the plan, and cannot change plans for the following 9 months unless they show good cause to do so (18 NYCRR § 360-10.3(f)).

Medicaid enrollees may change or disenroll from an MMC during the lock-in period if:

- The MMC failed to provide accessible and appropriate care, services or supplies;
- The MMC fails to adhere to the standards prescribed by the Commissioner of Health and the failure negatively impacts the enrollee;
- Enrollment in the MMC was not consensual;
- The enrollee, the MMC and the social services district agree that changing plans would be in the best interest of the enrollee;
- The enrollee’s medical condition requires multiple services at the same time that the MMC has elected not to cover, and a physician determines that receiving the services separately would subject the enrollee to unnecessary risk; or
- There exists any other good cause

(18 NYCRR § 360-10.6)

## **Legal Analysis**

The first issue under review is whether the Marketplace issued a timely determination of your eligibility to change Medicaid Managed Care (MMC) plans.

The Marketplace must provide Medicaid applicants notice of their eligibility determination within 45 days from the date of the completed application. The applicant must be notified if the application does not contain sufficient information to permit the Marketplace to conduct an eligibility determination. To assess whether an eligibility determination was untimely, the Marketplace must base the time period from the date of the completed application to the date the Marketplace notifies the applicant of its decision.

You testified that you contacted the Marketplace at the end of July in order to change your enrollment in Healthfirst to another MMC plan. The record does not contain a notice of eligibility determination or redetermination on the issue of the Marketplace's denial of your request to change health plans. It does contain an August 4, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies one of the issues on appeal as "Change the MA MMC plan."

Generally, the Appeals Unit would return your case to the Marketplace in order for the Marketplace to make a formal determination on your request. However, you requested and were granted an expedited appeal and it could be detrimental to your health to needlessly delay a formal decision on your appeal.

Therefore, because the lack of a notice of eligibility determination on the issue of the denial of your request to change MMC plans does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal the Marketplace's failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the August 4, 2015 notice, which acknowledges the appeal on the issue of "Change the MA MMC plan" permits an inference that the Marketplace did deny your request to change MMC plans.

Therefore, the second issue under review is whether the Marketplace properly denied your request to change your MMC plan enrollment from Healthfirst to a different plan.

You were determined eligible for Medicaid effective November 1, 2014. On December 17, 2014 the Marketplace issued a notice confirming that you were enrolled in Healthfirst, an MMC plan, effective January 1, 2015

The Marketplace allows Medicaid enrollees to change their MMC plans for 90 days from their initial date of enrollment, after which time they are locked-in to their plan for nine months. Enrollees may only change their MMC plan during the lock-in period if they are able to show good cause.

You testified that you attempted to change your MMC plan at the end of July, which was seven months from your initial enrollment date.

However, you credibly testified to exceptional circumstances that should be taken into consideration. You testified that in June 2015, after you had already selected Healthfirst as your health plan, you had surgery for an Achilles tendon rupture which resulted in you needing physical therapy in order to ensure that you would be able to walk again. Your testimony was supported by a letter dated August 4, 2015, from [REDACTED] [REDACTED] [REDACTED] which stated, in part, that it was medically necessary for you to start physical therapy treatment as soon as possible to allow

full healing and recovery, muscle development, and walking stability, and that delaying physical therapy treatment could lead to continued muscle atrophy and possible disability.

You testified that at the end of July 2015 you called 20 or more physical therapist offices but could not find a physical therapist that could be reached by reasonable transportation methods and distance that would also accept Healthfirst. You further testified that the closest physical therapist that accepted Healthfirst required you to change transportation method en route, and is too far away to walk. As a result of your injury, transportation is an issue for you because you are unable to walk for long periods of time and you cannot drive.

In addition to the transportation issues, you testified that you unable to locate an office that accepted Healthfirst that also had a Russian speaking physical therapist. You testified that in addition to calling 20 or more offices yourself, you also called Healthfirst to help locate a physical therapist that could assist you; Healthfirst was also unable to find one that suited your transportation and language needs.

The record supports a finding that there is sufficient good cause to allow you to change your MMC plan outside of the 90 day lock-in period. You took appropriate and reasonable steps to locate a physical therapist office within reasonable distance that could accommodate your needs but was unable to find one that accepted Healthfirst. If you remain in Healthfirst it could be detrimental to your ability to fully recover. Therefore, your case is RETURNED to the Marketplace to allow you the opportunity to change you MMC plan.

## **Decision**

The Marketplace's denial of your request to change your Medicaid managed care plan is RESCINDED.

Your case is RETURNED to the Marketplace to allow you the opportunity to change your Medicaid Managed Care plan, and for the Marketplace to assist you in expediting the process so you may start physical therapy as soon as possible.

**Effective Date of this Decision:** August 21, 2015

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

Your case is being sent back to the Marketplace to allow you the opportunity to switch Medicaid Managed Care plan



## **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 Marketplace's determination to deny you the opportunity to change Medicaid Managed Care plans is **RESCINDED**.

Your case is **RETURNED** to the Marketplace to allow you the opportunity to change Medicaid Managed Care plans.

**Legal Authority**

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

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).

**A Copy of this Decision Has Been Provided To:**

