



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: AP000000004175

[REDACTED]

Dear Ms. [REDACTED]

On October 16, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's August 1, 2015 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.

## Legal Authority

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

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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: AP000000004175

[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 not eligible for a special enrollment period, as of August 1, 2015?

## Procedural History

On December 13, 2014, the Marketplace issued a notice of eligibility determination stating that you were eligible to purchase a qualified health plan at full cost, effective January 1, 2015.

Also on December 13, 2014, the Marketplace issued a notice confirming your enrollment in Gold Select Gold NS INN Dep25. The notice further stated that your enrollment could start as early as January 1, 2015 if you paid your first month's premium.

On December 14, 2014, the Marketplace issued a notice confirming your request to cancel your insurance coverage with Gold Select Gold NS INN Dep25. The notice further stated that you would not have coverage with Gold Select Gold NS INN Dep25.

Also on December 14, 2014, the Marketplace issued a notice confirming your enrollment in Silver Select Silver NS INN Dep25. The notice further stated that your enrollment could start as early as January 1, 2015, if you paid your first month's premium.

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On March 11, 2015, the Marketplace issued a disenrollment notice stating that your insurance with Silver Select Silver NS INN Dep25 would be terminated, effective January 31, 2015, because premium payments had not been received by the plan.

On March 24, 2015, you spoke with the Marketplace's Account Review Unit and appealed the denial of your request for a special enrollment period.

On June 15, 2015, the Marketplace issued a notice stating that your appeal request was invalid because it was not based on an eligibility determination. It was determined that the Appeals Unit could not review your complaint because it was considered to be a complaint about the termination of your coverage, and not a complaint about the denial of a special enrollment period. The termination of a plan due to the nonpayment of premiums is not within the jurisdiction of the Appeals Unit.

On July 10, 2015, multiple documents were uploaded to your Marketplace account, including: a copy of a notice issued on March 25, 2015 confirming your request for an appeal regarding the denial of a special enrollment period; a copy of the March 11, 2015 disenrollment notice containing handwritten notes; a copy of your January 2015 billing statement from Excellus BlueCross BlueShield; a copy of your February 2015 billing statement from Excellus BlueCross BlueShield containing handwritten notes; and a copy of your March 2015 billing statement from Excellus BlueCross BlueShield containing handwritten notes.

On July 11, 2015, the Marketplace issued a notice of eligibility redetermination stating that you were eligible to purchase a qualified health plan at full cost, effective August 1, 2015.

On August 1, 2015, the Marketplace issued a notice of eligibility redetermination stating that you were eligible to purchase a qualified health plan at full cost, effective September 1, 2015. The notice further stated that you did not qualify to select a health plan outside of the open enrollment period for 2015.

On August 3, 2015, 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 16, 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 up to 15 days to provide you an opportunity to submit supporting evidence, including written communications issued to you by Excellus BlueCross BlueShield.

On October 30, 2015, the Marketplace's Appeals Unit received your supporting evidence, which was uploaded to your duplicate inactive account

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( [REDACTED] ) on October 28, 2015 and October 30, 2015. This evidence included: a written statement, a chronology of events, proof of payments made to Excellus BlueCross BlueShield, correspondence sent to you from Excellus BlueCross BlueShield, correspondence sent to you from the Marketplace, and a written hearing summary. These documents were collectively marked as Appellant's Exhibit 1, and incorporated into the record.

The record was closed on October 30, 2015.

## **Findings of Fact**

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

- 1) The record reflects that you submitted your initial application for health insurance through the Marketplace on December 12, 2014.
- 2) The record reflects that you enrolled in Gold Select Gold NS INN Dep25 (Gold Select) on December 12, 2014.
- 3) The record reflects that you switched your plan from Gold Select to Silver Select Silver NS INN Dep25 (Silver Select) on December 12, 2014.
- 4) You testified that you were enrolled in an Excellus BlueCross BlueShield plan outside of the Marketplace in 2014, and your monthly premiums were automatically withdrawn. You testified, and provided evidence, that you spoke directly with Excellus BlueCross BlueShield on December 12, 2014, after enrolling in the Silver Select plan through the Marketplace, to ensure that the automatic payments would continue uninterrupted in 2015 (Appellant's Exhibit 1, October 30, 2015). You testified, and provided evidence, that an Excellus BlueCross BlueShield representative informed you that you did not have to make any changes to your account because your automatic payments would be adjusted to reflect your new premium (*id.*).
- 5) You testified, and provided evidence, that you made a manual payment for your January 2015 premium for your coverage through the Marketplace (Appellant's Exhibit 1, October 30, 2015). According to the documents submitted on July 10, 2015, Excellus BlueCross BlueShield received your manual payment for January 2015 coverage.
- 6) You testified that you received an invoice on or around December 15, 2015, which reflected that you were being billed for the plan you purchased outside of the Marketplace. You further testified that it was at that time when you realized that you were re-enrolled in your previous plan.

- 7) You testified that you received invoices from Excellus BlueCross BlueShield for your premium payments for coverage in February and March 2015, but believed that these payments would be automatically withdrawn from your bank account.
- 8) You testified, and provided evidence, that, upon receiving the invoice for your March 2015 premium payment, which indicated that you had not made your February 2015 premium payment, you sent a check to Excellus BlueCross BlueShield for the entire outstanding balance (Appellant's Exhibit 1, October 30, 2015). According to the documents submitted on July 10, 2015, you mailed this payment to Excellus BlueCross BlueShield on February 15, 2015. You testified, and provided evidence, that this payment was cashed by Excellus BlueCross BlueShield on March 9, 2015 (Appellant's Exhibit 1, October 30, 2015).
- 9) The record reflects that your health plan with Silver Select was terminated, effective January 31, 2015.
- 10) You testified that you became aware that your plan was terminated in March 2015 while at the pharmacy.
- 11) You testified that you subsequently spoke with Excellus BlueCross BlueShield to inquire why your plan was terminated, and you were informed that the Marketplace terminated your coverage because your February 2015 premium payment was late.
- 12) You testified that you were informed by Excellus BlueCross BlueShield that you had two active policies. You further testified that you believed that the automatic payments were being applied to your old policy purchased outside of the Marketplace, and not your new policy purchased through the Marketplace.
- 13) You testified that you were informed by an Excellus BlueCross BlueShield representative that your monthly premium payments would be automatically converted to your new policy, and that you reasonably relied upon that information.
- 14) You testified that, after you were disenrolled from your plan, you made attempts to re-enroll in a health plan, but were prevented from submitting a new enrollment outside of the open enrollment period.

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. This is permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent loses certain health insurance coverage:
  - (a) Health insurance considered to be minimum essential coverage;
  - (b) Enrolled in any non-calendar year health insurance policy that will expire in 2014, even if they have the option to renew the expiring non-calendar year individual health insurance policy; or
  - (c) Pregnancy-related coverage; or
  - (d) 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; or
- (3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status; or

- (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; or
- (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; or
- (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; or
- (7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move; or
- (8) The qualified individual who is an Indian may enroll in a QHP or change from one QHP to another one time per month; or
- (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)).

Misinformation or misrepresentation, as it relates to special enrollment periods, includes, "[m]isconduct by a non-Marketplace enrollment assister (like an insurance company, navigator, certified application counselor, or agent or broker) [that] resulted in [the consumer]:

- Not getting enrolled in a plan,
- Being enrolled in the wrong plan, or
- Not getting the premium tax credit or cost-sharing reduction [they] were eligible for"

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(<https://www.healthcare.gov/sep-list/>, retrieved October 23, 2015).

Generally, if a triggering life event 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)).

## **Legal Analysis**

The issue under review is whether the Marketplace properly denied you a special enrollment period as of 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 December 13, 2014. Therefore, you completed 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.

The record reflects that you were disenrolled from your insurance coverage with Silver Select, effective January 31, 2015, because premium payments had not been received by the health plan. Generally, loss of insurance coverage may be considered a triggering event for purposes of being granted a special enrollment period. However, loss of insurance coverage as a result of failing to pay insurance premiums in a timely manner is not considered a triggering event to support approval of a special enrollment period.

Since the credible evidence of record reflects that your disenrollment from Silver Select was the result of a failure to timely pay insurance premiums, it is not considered a triggering life event; therefore, you were not entitled to a special enrollment period on that basis.

A special enrollment period may also be granted when an applicant's enrollment or non-enrollment in a qualified health plan is unintentional, inadvertent, or erroneous, and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Marketplace or its instrumentalities. This includes misconduct by a non-Marketplace enrollment assister, such as an insurance company, that results in the failure to enroll in a plan.

The record reflects that you successfully enrolled in Silver Select on December 12, 2014. You testified, and provided evidence, that you spoke with Excellus BlueCross BlueShield in December 2014 to confirm that your automatic

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payments for your previous Excellus BlueCross BlueShield plan would carry over to your new plan purchased through the Marketplace. You further testified, and provided evidence, that you were informed that the automatic payments would continue uninterrupted in 2015, and you relied upon that information.

However, the credible evidence of record indicates that your reliance upon the insurance plan's misinformation resulted in a loss of your health insurance coverage, and you were subsequently unable re-enroll in the same plan; therefore, a special enrollment period should be granted on that basis.

Additionally, the failure of your health insurance plan to properly document your payments might be related to the Marketplace's error in allowing a second account to be created for you.

Therefore, the Marketplace's August 1, 2015 eligibility determination that you did not qualify to select a health plan outside of the open enrollment period for 2015 is **RESCINDED**.

Your case is **REMANDED** back to the Marketplace to grant you a special enrollment period in order to enroll in health plan outside of the open enrollment period for 2015.

## **Decision**

The August 1, 2015 eligibility determination is **RESCINDED**.

Your case is **REMANDED** back to the Marketplace to grant you a special enrollment period in order to enroll in health plan outside of the open enrollment period for 2015.

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

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

This decision does not change your eligibility.

It sends your case back to the Marketplace to grant you a special enrollment period to enroll in a health plan outside of the open enrollment period for 2015.

## **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 August 1, 2015 eligibility determination is **RESCINDED**.

Your case is **REMANDED** back to the Marketplace to grant you a special enrollment period in order to enroll in health plan outside of the open enrollment period for 2015.

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This decision does not change your eligibility.

It sends your case back to the Marketplace to grant you a special enrollment period to enroll in a health plan outside of the open enrollment period for 2015.

### **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:**

