



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: AP000000004177



Dear Mr. [REDACTED]

On October 15, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's June 5, 2015 disenrollment notice.

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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NY State of Health Number: [REDACTED]  
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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 June 5, 2015, that you, your spouse, and your son were disenrolled from your bronze-level qualified health plan effective June 30, 2015?

## Procedural History

On March 11, 2015, the Marketplace received your application for health insurance for you, your spouse, and your children and prepared a preliminary eligibility determination that, in part, stated you, your spouse, and your son were eligible to share in advance premium tax credits, effective April 1, 2015.

On March 12, 2015, the Marketplace issued a notice of eligibility determination that was consistent with the March 11, 2015 preliminary determination.

Also on March 12, 2015, the Marketplace issued an enrollment notice confirming your, your spouse's, and your son's enrollment in a bronze-level qualified health plan and your monthly premium responsibility of \$497.69. The notice stated that coverage could start as early as April 1, 2015 if you paid your first month's premium.

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On June 5, 2015, the Marketplace issued a disenrollment notice confirming that, based on your request of that date, you, your spouse, and your son's coverage through the bronze-level qualified health plan you were all enrolled in was terminated effective June 30, 2015.

On August 4, 2015, you spoke with a representative from the Marketplace's Account Review Unit and appealed the Marketplace's verbal denial to retroactively disenroll you, your spouse, and your son from the bronze-level plan to April 30, 2015.

On October 15, 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) According to your Marketplace account and your testimony, you applied for health insurance for your family with the assistance of a health insurance broker.
- 2) You testified that when you enrolled yourself, your spouse, and your son in a bronze-level plan on March 11, 2015, you knew it would only be for one month in April 2015 because your employer-sponsored health coverage was slated to begin the following month.
- 3) You testified that you expressed your, your spouse's, and your son's short need for health insurance to your broker and to a Marketplace representative at the time of your application. You testified that your daughter's health insurance coverage was separate from this discussion and is not part of this appeal.
- 4) You testified that you expected this information sufficed as a request for one month of coverage through the Marketplace in the bronze-level qualified health plan you had selected for yourself, your spouse, and your son.
- 5) You testified that you expected that your family plan would be cancelled effective April 30, 2015 based on the information you imparted at the time of your application.
- 6) You testified that in June 2015, you switched employment and your coverage under your former employer-sponsored health plan ended effective June 30, 2015, so you purchased health insurance for yourself, your spouse, and your son directly from the health insurer, which began July 1, 2015.
- 7) You testified that you paid the first month's premium of around \$990.00 for coverage to begin July 1, 2015 through the health plan you purchased outside the Marketplace for yourself, your spouse, and your son.

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- 8) You testified you learned that your family's new health coverage had not started as of July 1, 2015 as you had expected, because the premium payment you made of \$990.00 was applied to past due premiums for May and June 2015 for your family's bronze-level qualified health plan through the Marketplace.
- 9) You testified that you then had to pay the extra premium for the health coverage that you purchased for your family outside the Marketplace to begin on July 1, 2015.
- 10) You testified that you do not want to be responsible for the premiums for the months of May and June 2015 because you gave proper notice to the broker and the Marketplace that you were only seeking one month of coverage on March 11, 2015, and had employer-sponsored health insurance through your employer as of May 1, 2015 that covered you, your spouse, and your son such that no one would have any use for and did not use the bronze-level qualified health plan during May and June 2015.
- 11) According to your Marketplace account and your testimony, you and your broker spoke with a Marketplace representative on August 4, 2015 and your request to have your family bronze-level qualified health plan was verbally denied.
- 12) You want your family's disenrollment from the bronze-level qualified health plan that you purchased through the Marketplace to be cancelled retroactively to April 30, 2015, and you want to be reimbursed by the health insurer for the two months of premium (May and June 2015), for which you do not believe you should be held responsible.

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

## **Applicable Law and Regulations**

### 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).

The Marketplace is required to provide "timely written notice to an applicant of any eligibility determination" made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual Marketplace (45 CFR § 155.310(g)). An applicant or enrollee has the right to appeal an eligibility determination or

redetermination or a failure by the Marketplace to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

### Enrollee Termination of Coverage

The Marketplace must permit an enrollee to terminate his or her coverage with a qualified health plan, including when an enrollee obtains other minimum essential coverage, with appropriate notice to the Marketplace or the qualified health plan (45 CFR § 155.430(b)(1)).

In the case of termination in accordance with paragraph (b)(1), the last day of coverage is:

- (i) The termination date specific by the enrolled, if he or she provides reasonable notice;
- (ii) Fourteen days after the termination is requested by the enrollee, if the enrollee does not provide reasonable notice; or
- (iii) On a date on or after the date on which the termination is requested by the enrollee, subject to the determination of the enrollee's QHP issuer, if the enrollee's QHP issuer agrees to effectuate termination in fewer than fourteen days, and the enrollee requests an earlier termination effective date...

## **Legal Analysis**

The only issue under review is when your, your spouse's, and your son's insurance coverage through your bronze-level qualified health plan should end.

On August 4, 2015, you and your broker spoke with a Marketplace representative and your request to have your health plan retroactively cancelled to April 30, 2015 was verbally denied. However, the record does not contain a notice of eligibility determination or redetermination on the issue of retroactive disenrollment. It does contain an August 5, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies one of the issues on appeal as "Retroactive disenrollment."

In this particular case, the lack of a notice of eligibility determination on the issue of retroactive disenrollment 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 Marketplace 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 5, 2015 notice, which acknowledges the appeal on the issue of denial of retroactive disenrollment, permits an inference that the Marketplace did deny your request. Since Appeal Unit review of Marketplace determinations is performed on a de novo basis, no

deference would have been granted to the notice of eligibility determination had it been issued.

As to the merits of your case, the Marketplace must permit an enrollee to terminate his or her coverage with a qualified health plan with appropriate notice to the Marketplace. If the enrollee has provided reasonable notice, the last day of coverage through their qualified health plan is the day specific provided the enrollee has given 14 days advance notice.

In your case, you, your spouse, and your son became newly eligible to share in advance premium tax credits, effective April 1, 2015, and were enrolled in a bronze-level qualified health plan you had selected, also effective April 1, 2015. You credibly testified that you informed both the Marketplace and your broker on March 11, 2015, that this coverage was only needed for one month, which is the equivalent of 50 days advance notice. As such you provided both the Marketplace and the broker with more than 14 days' notice that you wanted your, your spouse's, and your son's enrollment through your bronze-level qualified health plan to terminate on a specific date, that is, as of effective April 30, 2015.

Therefore, your, your spouse's, and your son's enrollment through your bronze-level qualified health plan should have been terminated effective April 30, 2015.

Your case is RETURNED to the Marketplace to facilitate the termination of your, your spouse's, and your son's enrollment through your bronze-level qualified health plan, effective April 30, 2015.

If you are owed a refund by the health insurer for May and June 2015 premium payments, you can present this decision to the health insurer, Oscar, and request reimbursement or credit, whichever is appropriate.

## **Decision**

The June 5, 2015 disenrollment notice is MODIFIED to state your, your spouse's, and your son's disenrollment from the bronze-level qualified health plan through the Marketplace is effective April 30, 2015.

Your case is RETURNED to the Marketplace to facilitate the termination of your, your spouse's, and your son's enrollment through your bronze-level qualified health plan, effective April 30, 2015.

**Effective Date of this Decision:** December 10, 2015

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

You, your spouse, and your son will be disenrolled from the bronze-level qualified health plan, Oscar Simple 6600 Bronze, effective April 30, 2015.

You, your spouse, and your son, do not have health insurance coverage through the Marketplace as of May 1, 2015.

You are not responsible for premium payments for the months of May and June 2015, and are entitled to reimbursement. You can present this decisions to the health insurer, Oscar, and request reimbursement or credit, whichever is appropriate.

## **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

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- By fax: 1-855-900-5557

## Summary

The June 5, 2015 disenrollment notice is MODIFIED to state your, your spouse's, and your son's disenrollment from the bronze-level qualified health plan through the Marketplace is effective April 30, 2015.

Your case is RETURNED to the Marketplace to facilitate the termination of your, your spouse's, and your son's enrollment through your bronze-level qualified health plan, effective April 30, 2015.

You, your spouse, and your son will be disenrolled from the bronze-level qualified health plan, Oscar Simple 6600 Bronze, effective April 30, 2015.

You, your spouse, and your son, do not have health insurance coverage through the Marketplace as of May 1, 2015.

You are not responsible for premium payments to the health insurer for the months of May and June 2015, and are entitled to reimbursement. You can present this decisions to the health insurer, Oscar, and request reimbursement or credit, whichever is appropriate.

In addition, since your issue concerns a health insurer and/or payment, reimbursement, coverage, benefits, rates and premiums, you can contact NY Department of Financial Services at their Consumer Hotline at (800) 342-3736 (Monday through Friday, 8:30 AM to 4:30 PM); or locally to (212) 480-6400; or you can file a complaint at <http://www.dfs.ny.gov/consumer/fileacomplaint.htm>

## 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:**

