



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: AP000000004261



Dear [REDACTED],

On November 3, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace 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 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
P.O. Box 11729
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Decision

Decision Date: November 25, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004261



Issue

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

Did the Marketplace improperly deny you and your domestic partner the ability to add a dental plan during a 60-day special enrollment period?

Procedural History

On July 3, 2015 the Marketplace issued a notice of eligibility that you and your domestic partner are eligible to purchase a qualified health plan at full cost through New York State of Health effective as of August 1, 2015. The notice also stated that you and your partner qualify to select a health plan outside of the open enrollment period until August 30, 2015.

On the same day the Marketplace issued an enrollment notice confirming that you and your partner were enrolled in Empire Blue Cross Blue Shield (Medical Downstate) effective August 1, 2015.

On August 11, 2015 the Marketplace issued a notice confirming that on August 10, 2015 you requested a telephone hearing to review a "SEP Exception."

On November 3, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was left open November 6, 2015 to allow you to submit additional information.

On November 6, 2015 you submitted faxed a three-page document to the Marketplace Appeals Unit. That document was marked as "Appellant Exhibit A" and made part of the record. The record is now complete and closed.

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Findings of Fact

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

- 1) You are applying for health insurance through the Marketplace for you and your domestic partner.
- 2) The Marketplace determined you and your domestic partner are eligible to purchase a qualified health plan at full cost through New York State of Health effective as of August 1, 2015. The Marketplace found that you and your partner qualified to select a health plan outside of the open enrollment period until August 30, 2015.
- 3) On July 2, 2015 you and your domestic partner enrolled in Empire Blue Cross Blue Shield (Empire).
- 4) You testified that you contacted the Marketplace several times within a week of enrolling in Empire to add a dental plan. However, you were verbally denied.
- 5) On November 6, 2015 you faxed a three-pages of documents to the Marketplace Appeals Unit. The documents state that on November 6, 2015 you had emergency exams and x-rays (Appellant Exhibit A p. 2-3).

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).

Stand-Alone Dental Plans

Each QHP and stand-alone dental plan that offers coverage through the Individual Marketplace enters a standard contract, and the same contract is used for both types of plans. In Appendix C of the contract, the term “QHP” is defined to include dental plans: “‘Qualified Health Plan’ or ‘QHP’ shall mean a health benefit plan that has received the Exchange’s certification to be offered through the Exchange, including a Stand-Alone Dental Plan except where otherwise noted.”

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Special Enrollment Period

The Marketplace must provide an initial open enrollment period and 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>).

Once the open enrollment period ends, the Marketplace must provide special enrollment period to qualified individuals when a triggering event occurs. During a special enrollment period, a qualified individual may enroll and enrollees may change QHPs (45 CFR § 155.420(a)(1)). Generally, a qualified individual or enrollee has 60 days from the date of a triggering event to select or change their QHP (45 CFR § 155.420(c)(1)).

Legal Analysis

The issue under appeal is whether or not the Marketplace improperly denied you and your domestic partner the ability to add a dental plan during a 60-day special enrollment period?

The record does not contain a notice of eligibility determination or redetermination on the issue of a special enrollment period (SEP). It does, however, contain an August 11, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issue on appeal as "SEP Exception."

The lack of a notice of eligibility determination on the issue of SEP does not prevent the Appeals Unit from reaching the merits of the case. 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 11, 2015 notice, which acknowledges the appeal on the issue of SEP denial, permits an inference that

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the Marketplace did deny your SEP 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.

Enrollment in a qualified health plan (QHP) or stand-alone dental plan purchased through the Marketplace is governed by federal regulation and by a contract between the Marketplace and the plans.

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.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll or change to another health plan offered in the Marketplace. The Federal regulations provides that a qualified individual has 60 days from the date of a triggering event to select a qualified health plan (QHP) or an enrollee may change QHPs in the Marketplace.

On July 3, 2015 the Marketplace issued a notice of eligibility that you and your domestic partner are eligible to purchase a qualified health plan at full cost through New York State of Health effective as of August 1, 2015. The notice also stated that you and your partner qualify to select a health plan outside of the open enrollment period until August 30, 2015.

On the same day the Marketplace issued an enrollment notice confirming that you and your partner were enrolled in Empire Blue Cross Blue Shield (Empire) effective August 1, 2015.

You credibly testified that you attempted to add a dental plan to you and your domestic partner's QHP within a week of enrolled in your Empire plan. Since this event took place during the special enrollment period, you and your domestic partner should have been given the opportunity to add a dental plan to your QHP.

Therefore, your case is RETURNED to the Marketplace to allow you and your domestic partner to select and confirm your enrollment in a dental plan within 60 days of the issuance of this decision. Coverage will be effective August 1, 2015, or at your option, prospectively.

Decision

Therefore, your case is RETURNED to the Marketplace to allow you and your domestic partner to select and confirm your enrollment in a dental plan within 60 days of the issuance of this decision. Coverage will be effective August 1, 2015, or at your option, prospectively.

Effective Date of this Decision: November 25, 2015

How this Decision Affects Your Eligibility

You and your domestic partner are eligible to enroll in a dental plan.

You have 60 days from issuance of this decision to enroll in a dental plan.

The dental will have a start date of September 1, 2015, or at your option, prospectively from when you enroll in a dental 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:

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Summary

Therefore, your case is RETURNED to the Marketplace to allow you and your domestic partner to select and confirm your enrollment in a dental plan within 60 days of the issuance of this decision. Coverage will be effective August 1, 2015, or at your option, prospectively.

You and your domestic partner are eligible to enroll in a dental plan.

You have 60 days from issuance of this decision to enroll in a dental plan.

The dental will have a start date of September 1, 2015, or at your option, prospectively from when you enroll in a dental plan.

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:

