



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: AP000000004262

[REDACTED]

Dear [REDACTED],

On November 3, 2015 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's decision to not reinstate health insurance coverage for you and your twenty-two-year-old child.

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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Issues

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

Did the Marketplace properly determine that you were not eligible for a special enrollment period?

Did the Marketplace properly determine that your twenty-two-year-old child was not eligible for a special enrollment period?

Procedural History

On April 24, 2015, you applied for health insurance through the Marketplace for you and your two children, ages sixteen and twenty-two.

On the same day your New York State driver's license was uploaded to your Marketplace account.

On April 24, 2015 the Marketplace issued a notice stating:

We previously notified you that additional information is required to confirm you eligibility for health insurance through New York State of Health. You have since submitted documentation to resolve the inconsistency; however the documentation appears to be insufficient to resolve the request.

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On April 25, 2015 the Marketplace issued an eligibility determination notice that you are conditionally eligible and your twenty-two-year-old child is eligible for up to \$279.00 of advance premium tax credits effective June 1, 2015. Your sixteen-year-old child was determined eligible to enroll through Child Health Plus with a \$30.00 premium per month effective June 1, 2015. The notice directed you to confirm your citizenship status by providing documentation before July 23, 2015.

Also on April 25, 2015 the Marketplace issued an enrollment notice confirming that you and your twenty-two-year-old child were enrolled in Empire Blue Cross Blue Shield (Medical Downstate) as early as June 1, 2015. Furthermore, your sixteen-year-old was enrolled in United Healthcare Community Plan as early as June 1, 2015.

On August 2, 2015 the Marketplace issued an eligibility determination notice that states that you are not eligible for financial assistance or cannot enroll in a qualified health plan at full cost through the Marketplace. The notice states that you did not provide proof of your citizenship status and your eligibility will end effective August 31, 2015.

On the same day the Marketplace issued a disenrollment notice that you and your twenty-two-year-old child's coverage through Empire HMO 2000 Silver ST INN Pediatric Dental Dep 25 is terminated effective August 31, 2015.

On August 10, 2015, you spoke to the Marketplace Account Review Unit and requested an appeal insofar as you and your twenty-two-year-old child being denied a special enrollment period.

On October 21, 2015, your U.S. Passport [REDACTED] was uploaded to your Marketplace Account.

On November 3, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing. The record is now closed.

Findings of Fact

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

- 1) On April 24, 2015 you applied for health insurance coverage through the Marketplace for you and two children, ages sixteen and twenty-two.
- 2) On April 25, 2015 the Marketplace issued an eligibility determination notice directing you to confirm your citizenship status by providing documentation by July 23, 2015.

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- 3) You and your twenty-two-year-old child were enrolled in Empire Blue Cross Blue Shield (Medical Downstate) as early as June 1, 2015.
- 4) On April 24, 2015 your New York State driver's license was uploaded to your Marketplace account.
- 5) On April 24, 2015 the Marketplace issued a notice that you have submitted documentation to resolve an inconsistency, however, the documentation appears to be insufficient to resolve the request.
- 6) On August 2, 2015, a notice was sent to you stating that you, individually, were no longer eligible to enroll in health insurance through the Marketplace, even at full cost, and that your eligibility will end effective August 31, 2015.
- 7) Also on August 2, 2015, a disenrollment notice was issued stating that you were "no longer eligible to enroll in health insurance through New York State," and your twenty-two-year-old child was "no longer eligible to remain enrolled in their current health insurance." The notice stated that coverage will end effective August 31, 2015.
- 8) You testified that you never received the notice requesting citizenship status documents.
- 9) On October 21, 2015, your U.S. Passport ([REDACTED]) was uploaded to your Marketplace Account.
- 10) No notice of eligibility determination has been issued by the Marketplace for denying you a special enrollment period.

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 §

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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)).

Special Enrollment - Generally

The Marketplace must provide an annual open enrollment period during which qualified individuals may enroll in a qualified health plan (QHP) and enrollees may change QHPs (45 CFR § 155.410(a)). The open enrollment period for the benefit year beginning on January 1, 2015 during which a qualified individual may enroll in a QHP and enrollees may change QHPs begins on November 15, 2014 and extends through February 15, 2015 (45 CFR § 155.410(e)).

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 to another QHP. A special enrollment period may be permitted when one of the following triggering events occurs:

- 1) The qualified individual or his or her dependent
 - i) loses health insurance considered to be minimum essential coverage
 - ii) is enrolled in a non-calendar-year health insurance policy that will expire in 2015, even if they have the option to renew the policy
 - iii) loses pregnancy-related coverage
 - iv) loses 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,
- 3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status,
- 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,

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

Special Enrollment Period – Voluntary Termination

A special enrollment period is granted when including a qualified individual or his or her dependent loses certain health insurance coverage (45 CFR § 155.420(d)).

However, a loss of coverage such as that referenced above does not include,

"voluntary termination of coverage or other loss due to—

(1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or

(2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128" (45 CFR § 155.420(e)).

Special Enrollment Period – Loss of Minimum Essential Coverage

When an individual or his or her dependent loses minimum essential coverage, the date of the loss of coverage is the last day the consumer would have coverage under their previous plan (45 CFR § 155.420(d)(1)(i)).

A qualified individual or his or her dependent loses minimum essential coverage has 60 days before and after the triggering event to select a QHP (45 CFR § 155.420(c)(2)).

Legal Analysis

The first issue is whether you are eligible for a 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 “Denial of reinstatement.”

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 “Denial of reinstatement,” permits an inference that 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.

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.

In certain circumstances, a special enrollment period is granted to individuals so that they may enroll in a qualified health plan outside of the open enrollment period if the individual experiences a triggering event.

The record supports that you conditionally eligible to receive up to \$279.00 monthly in advance premium tax credits. However, the Marketplace requested additional citizenship status documentation from you by July 23, 2015 to confirm your eligibility. The Marketplace did not receive any citizenship status documentation from you by this date.

The Marketplace determined you not eligible for financial assistance or eligible to enroll in a qualified health plan at full cost effective August 31, 2015, for failing to provide additional citizenship status documentation.

If an individual loses coverage because he or she voluntarily terminated that coverage, there would be no basis for providing a special enrollment period. Additionally, the Marketplace considers a failure to provide requested documents to support a person's eligibility a voluntary action. Therefore, the Marketplace correctly denied you a special enrollment period.

The second issue is whether the Marketplace properly determined that your twenty-two-year-old child is not eligible for a special enrollment period.

On April 25, 2015, the Marketplace determined your twenty-two-year-old child eligible to receive up to \$279.00 monthly in advance premium tax credits. Subsequently, they were enrolled in Empire Blue Cross Blue Shield (Medical Downstate) and coverage could start as early as June 1, 2015.

On August 2, 2015, the Marketplace issued a disenrollment notice stating that your twenty-two-year-old's coverage through Empire HMO 2000 Silver ST INN Pediatric Dental Dep 25 will end effective August 31, 2015. The notice states that your twenty-two-year-old child is "no longer eligible to remain enrolled in their current health insurance."

When an individual or his or her dependent loses minimum essential coverage, the date of the loss of coverage is the last day the consumer would have coverage under their previous plan. After your coverage was terminated, your child continued to be eligible. Their loss of coverage is not considered to be voluntary on their part, because their prior eligibility determination had not been a condition and at no time was any further documentation requested from them.

Therefore, when your coverage terminated, your child should have been granted a special enrollment period in which to sign up for new coverage.

Once your child's health plan terminated, they were eligible to re-enroll in another health within a 60-day period after the disenrollment date, August 31, 2015.

Therefore, the Marketplace improperly denied your twenty-two-year-old child a special enrollment period.

The matter is REMANDED to the Marketplace so that your twenty-two-year-old child is enrolled in a qualified health plan of their choice effective September 1, 2015.

Decision

The Marketplace's determination to deny you a special enrollment is **AFFIRMED**.

The Marketplace's determination to deny your twenty-two-year-old child a special enrollment period is **RESCINDED**.

This case is **REMANDED** to the Marketplace to allow your twenty-two-year-old child to enroll in a qualified health plan effective September 1, 2015.

Effective Date of this Decision: November 25, 2015

How this Decision Affects Your Eligibility

Your twenty-two-year-old child has 60 days from the date of this decision to enroll in a qualified health plan, if they have not already done 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:

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Summary

The Marketplace's determination to deny you a special enrollment is **AFFIRMED**.

The Marketplace's determination to deny your twenty-two-year-old child a special enrollment period is **RESCINDED**.

This case is **REMANDED** to the Marketplace to allow your twenty-two-year-old child to enroll in a qualified health plan effective September 1, 2015.

Your twenty-two-year-old child has 60 days from the date of this decision to enroll in a qualified health plan, if they have not already done so.

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

