



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: AP000000004331

[REDACTED]

Dear [REDACTED],

On November 12, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's July 19, 2015 eligibility determination and August 14, 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: December 10, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004331

[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 no longer eligible to enroll in a qualified health plan through the Marketplace, effective July 31, 2015?

Procedural History

On February 20, 2015, the Marketplace issued a notice of eligibility determination stating that you were conditionally eligible to receive advance premium tax credits and cost sharing reductions, effective April 1, 2015. The notice further requested that you needed to provide documentation confirming your citizenship status before May 22, 2015 and, if you failed to submit the documentation, your eligibility to remain enrolled in health insurance through the Marketplace or to receive financial assistance might end.

That same day, the Marketplace issued a notice confirming your enrollment in a platinum-level qualified health plan.

On July 19, 2015, the Marketplace issued a notice of eligibility redetermination stating that you were no longer eligible to enroll in health insurance through the Marketplace because you had not confirmed your citizenship status. Your eligibility for coverage ended effective July 31, 2015.

That same day, the Marketplace issued a notice that stated your enrollment in your qualified health plan was terminated effective July 31, 2015.

On August 14, 2015, you spoke with the Marketplace's Account Review Unit and appealed the July 19, 2015 determination insofar as you were determined to be ineligible to remain enrolled in a qualified health plan and were verbally denied a special enrollment period within which to re-enroll in a qualified health plan.

On November 12, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and was held open for you to submit the front and back of your U.S. Passport card, which was received that same day and made part of the record as "Appellant's Exhibit A." The record is now closed.

Findings of Fact

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

- 1) You testified that you provided copies of your Social Security card and United States Passport Card to the Certified Application Counselor (CAC) when you met with him on December 5, 2014.
- 2) There is no evidence in the record that the CAC provided your citizenship documents to the Marketplace at that time.
- 3) Your December 5, 2014 Marketplace application contains your Social Security Number and states that you are a U.S. Citizen.
- 4) According to your Marketplace account, on February 10, 2015, the same CAC assisted you in updating your application. You testified that he did not tell you that your eligibility was conditioned upon you providing proof of your citizenship before May 22, 2015 or that you might lose your eligibility for financial assistance if you missed this deadline.
- 5) There is no evidence in the record that the CAC provided your citizenship documents to the Marketplace at that time.
- 6) According to your Marketplace account, the Marketplace was able to verify your Social security Number on February 10, 2015.
- 7) You submitted a copy of your U.S. Passport Card (No. [REDACTED] or [REDACTED] to the Appeals Unit on November 12, 2015, which was issued on March 7, 2012 and expires March 6, 2022 (Appellant's Exhibit A, p. 2). The card states that Russia is your pace of birth and your birth date is [REDACTED].

- 8) You are seeking reinstatement of your health insurance coverage, effective December 1, 2015.

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

Applicable Law and Regulations

Citizenship and Immigration Status

To enroll in a qualified health plan through the Marketplace, an applicant must be a citizen or national of the United States, or a non-citizen lawfully present in the United States and reasonably expecting to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1)).

The Marketplace must verify or obtain information in order to determine that an applicant is eligible for enrollment in a qualified health plan, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

If an applicant attests to citizenship, status as a national, or lawful presence, and the Marketplace is unable to verify such attestation, the Marketplace must provide the applicant 90 days, from the date the notice of inconsistency is received by the applicant, to provide satisfactory documentary evidence. Notice is considered to have been received five days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the five-day period. (45 CFR § 155.315(c)(3)).

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-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 a triggering events occurs.

The Centers for Medicare & Medicaid Services (CMS) has determined certain categories of individuals eligible for a special enrollment period under paragraph (d)(4) of 45 CFR § 155.420, that is, when (1) 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 (2) 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 (Federal Register/Vol. 80, No. 39, February 27, 2015, effective April 28, 2015, to be codified at 45 CFR § 155.420(d)(4)). In such cases, the Exchange may take such action as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction by the Exchange or misconduct on the part of a non-Exchange entity (*Id.*).

CMS has defined misconduct to include misinformation misrepresentation, or inaction by individuals or entities providing formal enrollment assistance (like an insurance company, Navigator, certified application counselor, Call Center Representative, or agent or broker) (Guidance for Issuers on Special Enrollment Periods for Complex Cases in after the Initial Open Enrollment Period, Affordable Exchange Guidance, Department of Health & Human Services, CMS, dated March 26, 2014, as retrieved on October 8, 2015 at:

<http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/complex-cases-SEP-3-26-2014.pdf>

Generally, if a triggering life even 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 determined that you were no longer eligible to enroll in a qualified health plan through the Marketplace, effective July 31, 2015.

The Marketplace is required to determine whether individuals are eligible to enroll in coverage through the Marketplace, and must confirm, among other things, that their citizenship status is satisfactory.

If the Marketplace cannot verify an individual's citizenship status, it must provide the individual a period of 90 days, from the date notice is received, to resolve the

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inconsistency. For purposes of verifying citizenship, notice is considered received five days after the date on the notice.

In the eligibility determination issued on February 20, 2015, you were advised that your eligibility was only conditional, and that you needed to confirm your citizenship status before May 22, 2015. The condition on your eligibility was likely due to the fact that the Certified Application Counselor (CAC) listed you as a “U.S. Citizen” on your application and not as a naturalized citizen or a non-citizen lawfully present, which would most likely be your citizenship status since you were born in Russia.

Usually, if the Marketplace does not receive the requested citizenship documentation before the deadline, here, by May 22, 2015, and remains unable to verify the inconsistency after the 90 day period ends, then it must determine the applicant’s eligibility based on the information available in the data sources.

Since the requested citizenship documentation was not received within the 90-day period, the Marketplace was required to redetermine your eligibility without verification of your citizenship status. As a result, the Marketplace properly determined that you could not remain enrolled in a qualified health plan through NY State of Health effective July 31, 2015 because you had not provided the information requested by the Marketplace.

However, you credibly testified that you provided documentary proof of your citizenship in the form of Your U.S. Passport Card to the CAC when you first applied on December 5, 2014, but the Marketplace has no record of him submitting that document. You further credibly testified that the CAC assisted you again on February 10, 2015, when you updated your application and he did not inform you of the condition on your eligibility nor inform you that your citizenship status was at issue and needed to be confirmed by May 22, 2015. You testified that you would have again provided a copy of your U.S. Passport Card at that time, had you been made aware that your citizenship status needed to be confirmed. We note that you promptly provided a copy of your U.S. Passport Card to the Appeals Unit on the same date of your hearing.

In cases where there has been misconduct by a CAC, including error, inaction and/or misrepresentation, the Marketplace has the authority “take such action as may be necessary to correct or eliminate the effects” of such misconduct on the part of a non-Exchange entity. Here, the record reflects that your citizenship being listed as “U.S. Citizen,” was misreported by the CAC and triggered a query by the Marketplace about your citizenship status. Further, since your U.S. Passport Card was issued on March 7, 2012, your citizenship status should not have been at issue and would not have been had the CAC timely submitted a copy of your passport card at the time of your initial application on December 5, 2014, when you provided a copy to him; or on February 10, 2015, when he assisted you in updating your account and failed to inform you that your citizenship was at issue and you had a deadline to submit proof of citizenship. Based on the CAC’s misconduct, you were ultimately disenrolled from your platinum-level qualified health plan, effective July 31, 2015, which is reversible error.

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However, you testified that you do not want to pay for premium in months that you did not have coverage and did not seek medical attention, that is, from August 1, 2015 through November 30, 2015.

Accordingly, your case is RETURNED to the Marketplace to reinstate your coverage, effective December 1, 2015, in the platinum-level qualified health plan you had before being disenrolled on July 31, 2015.

Decision

The July 19, 2015 eligibility redetermination and disenrollment notices remain in effect.

However, your case is RETURNED to the Marketplace to reinstate your coverage, effective December 1, 2015, in the platinum-level qualified health plan you had before being disenrolled on July 31, 2015.

Effective Date of this Decision: December 10, 2015

How this Decision Affects Your Eligibility

You do not have health insurance through the Marketplace from August 1, 2015 through November 30, 2015.

Your case is being sent back to the Marketplace to reinstate your coverage, effective December 1, 2015 at your request, in the platinum-level qualified health plan you had before being disenrolled on July 31, 2015.

You will be responsible for the monthly premium for coverage during December 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

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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 July 19, 2015 eligibility redetermination and disenrollment notices remain in effect.

However, your case is RETURNED to the Marketplace to reinstate your coverage, effective December 1, 2015, in the platinum-level qualified health plan you had before being disenrolled on July 31, 2015.

You do not have health insurance through the Marketplace from August 1, 2015 through November 30, 2015.

Your case is being sent back to the Marketplace to reinstate your coverage, effective December 1, 2015 at your request, in the platinum-level qualified health plan you had before being disenrolled on July 31, 2015.

You will be responsible for the monthly premium for coverage during December 2015.

Legal Authority

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A Copy of this Decision Has Been Provided To:

