



STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: November 13, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004342

[REDACTED]

Dear Mr. [REDACTED]

On September 18, 2015, your wife, acting as your authorized representative and on her own behalf, appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's denial of a special enrolment 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 Code of Federal Regulation (CFR) 45 CFR § 155.545(b).

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Issues

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

Did the Marketplace improperly deny you and your spouse the ability to change qualified health plans during a 60-day special enrollment period?

Procedural History

On July 14, 2015, the Marketplace issued a notice of eligibility redetermination, that, in part, stated you and your spouse were newly eligible to receive advance premium tax credits, effective August 1, 2015, and qualified to select a health plan outside of the open enrollment period for 2015. That notice informed you to sign into your Marketplace account or contact the Marketplace to review your options and confirm your selection of a health plan by September 11, 2015.

That same day, the Marketplace issued a notice confirming, in part, your and your spouse's enrollment in a bronze-level qualified health plan with NS – LIJ Care Connect, effective August 1, 2015.

On July 29, 2015 and July 30, 2015, the Marketplace issued notices of eligibility redetermination that, in relevant part, stated you and your spouse were eligible to receive advance premium tax credits, effective September 1, 2015. Those notices also provided instructions on how to pick a plan.

On July 30, 2015, the Marketplace issued a notice confirming, in part, your and your spouse's enrollment in NS – LIJ Care Connect, effective August 1, 2015.

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On August 17, 2015, you and/or your spouse spoke with a representative from the Marketplace's Account Review Unit and appealed not being able to switch your health plan from NS – LIJ Care Connect to another plan during the special enrollment period until September 11, 2015.

On or about September 14, 2015, you requested an expedited appeal.

On September 17, 2015, a September 10, 2015 letter from a medical doctor indicating a medically emergent reason as the basis to expedite the appeal was received and your request for an expedited appeal was granted.

On September 18, 2015, your wife, acting on your behalf as your authorized representative and on her own behalf, had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. Her attorney, also present via telephone conference, assisted her at the hearing. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

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

- 1) Your spouse testified that only your and her enrollment in a qualified health plan is under review.
- 2) Your spouse testified that you both had wanted to change your enrollment from a bronze-level qualified health plan with North Shore - LIJ Care Connect, Insurance Company, Inc. (NS - LIJ Care Connect) in July 2015 and early August 2015 to another plan because her medical providers and specialists and the hospital where they had privileges did not participate in that plan and she would be needing specialized care in the near future.
- 3) According to Marketplace notes pertaining to your account, your spouse contacted the Marketplace in an effort to switch plans beginning on July 29, 2015 through August 10, 2015, and on August 17, 2015 was informed by the Marketplace that you both do not qualify for a special enrollment period and her request to switch plans was denied.
- 4) Your spouse testified that you did not pay the first month's premium in August 2015 to NS – LIJ Care Connect because her medical expenses would not be covered by that plan so it made no sense to pay a premium for coverage that would not cover her medical needs.
- 5) Your spouse testified you are both currently without medical coverage and your spouse is pregnant.

- 6) Your spouse testified that you both would have immediately switched plans within the special enrollment period if afforded the opportunity to do so when she asked in July 2015 and early August 2015.
- 7) Your spouse testified that you both want to be allowed to select a plan in which her medical providers and her hospital participate.

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).

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 when a triggering life event occurs. During a special enrollment period, a qualified individual may enroll in a QHP, and an enrollee may change their enrollment to another plan. One of the triggering life events that permit a special enrollment period is when 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 (45 CFR § 155.420(d)(6)).

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)).

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The Exchange must implement the eligibility determination for enrollment in a QHP through the Marketplace, advance payments of the premium tax credit, and cost-sharing reductions as follows: 1) For an initial eligibility determination, in accordance with the dates specified in § 155.410(c) and (f) and § 155.420(b), as applicable, (2) For a redetermination, in accordance with the dates specified in § 155.330(f) and § 155.335(i), as applicable (45 CFR § 155.310(f)). Specifically, the Exchange must implement an eligibility redetermination that results from an appeal decision on the date specified in that decision (45 CFR § 155.330(f)(1)(ii)).

Legal Analysis

The issue under review is whether the Marketplace properly determined that you and your spouse could not exercise your special enrollment period and select a different qualified health plan in late July 2015 and early August 2015.

On July 13, 2015, you updated your Marketplace application and the Marketplace reran your and your spouse's eligibility and found you both "newly eligible" for advance premium tax credits effective August 1, 2015 and eligible for a special enrollment for 60 days, or until September 11, 2015.

However, between July 29, 2015 and August 10, 2015 during the special enrollment period in place through September 11, 2015, the credible evidence of record reflects that your spouse made efforts to change your health plan selection by contacting the Marketplace to effectuate a change in plans. Your spouse credibly testified and the record reflects that she was told the matter needed to be reviewed and was still under review and, therefore, she was not able to change health plans for the both of you during that timeframe. Your spouse further testified that had she been given the opportunity to select a different plan between July 29, 2015 and August 10, 2015, she would have done so immediately, which would have occurred before the 15th of August 2015 such that your and your spouse's coverage in a different plan could have begun on September 1, 2015.

The record further reflects that the Marketplace determined that you and your spouse did not meet any of the requirements to qualify for a special enrollment period despite already being in the middle of a special enrollment period. The Marketplace conveyed this information to you by telephone on August 17, 2015, but no notice to this effect was generated.

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods 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 18, 2015 notice, which acknowledges the appeal on the issue of the special enrollment period

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denial, permits an inference that the Marketplace did deny your special enrollment period request.

Since Appeal Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to a notice of denial of a special enrollment period had it been issued. Therefore, the issue turns to whether you were properly denied the ability to change plans from July 29, 2015 to August 10, 2015 despite a special enrollment period being in force at these times and until September 11, 2015.

As stated above in the July 14, 2015 notice of eligibility redetermination, you and your spouse qualified to select a health plan outside the open enrollment period, and you were given until September 11, 2015 to do so. Your spouse credibly testified and the record reflects that she contacted the Marketplace prior to the deadline of September 11, 2015 on at least three occasions between July 29, 2015 and August 10, 2015 to change health plans after having selected a bronze-level qualified health plan, but was not allowed to change plans due to internal review processes. Since all of these events took place during the special enrollment period you and your spouse had already been granted until September 11, 2015, your spouse should have been given the opportunity to change health plans for both of you during that period and, as your spouse testified, would have made that change immediately so that you both would have coverage in a different plan by September 1, 2015.

Therefore, your case is RETURNED to the Marketplace to allow you and your spouse to select and confirm your enrollment in a different health plan with coverage to be effective September 1, 2015, or at your option to grant you an additional 60 days from the date of the decision to allow you the opportunity to change health plans, if you so desire.

However, your Marketplace account reflects that your annual household income was again changed on August 31, 2015, to \$177,042.12, which triggered the Marketplace to, again, rerun your household's eligibility for financial assistance. On September 3, 2015, the Marketplace issued a notice of eligibility redetermination that you and your spouse are newly eligible to purchase a qualified health plan at full cost through NY State of Health effective October 1, 2015 and, as such, qualify to select a health plan outside of the open enrollment period for 2015 and have until October 30, 2015 to select a health plan.

Therefore, you and your spouse will have the option of staying in the plan you select for coverage beginning September 1, 2015 or changing once again to another plan

Decision

Your case is RETURNED to the Marketplace to allow you and your spouse to select and confirm your enrollment in a different health plan with coverage to be effective September 1, 2015, or at your option to grant you an additional 60 days from the date of the decision to allow you the opportunity to change health plans, if you so desire.

However, based on the September 3, 2015 notice of eligibility redetermination, you and your spouse are newly eligible to purchase a qualified health plan at full cost, effective October 1, 2015 and have a special enrollment period until October 30, 2015 to select a health plan.

Therefore, you and your spouse will have the option of staying in the plan you select for coverage beginning September 1, 2015 or changing once again to another plan.

Effective Date of this Decision: November 13, 2015

How this Decision Affects Your Eligibility

The July 14, 2015 special enrollment period granted is honored. You and your spouse are being allowed a 60 day period within which to select and confirm a health plan with coverage to be effective September 1, 2015. You and your spouse will be responsible for any premium due for coverage beginning on September 1, 2015; or you will be given an additional 60 day special enrollment period from the date of this Decision within which to change health plans, if you so desire.

You and your spouse have the option of staying in the plan you select for coverage beginning September 1, 2015 or, since you and your spouse have again qualified for a special enrollment period until October 30, 2015 to pick a plan, you may opt to select yet another plan by October 30, 2015 for coverage going forward.

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 you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY – Spanish: 1-877-662-4886).

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 14, 2015 special enrollment period granted is honored. You and your spouse are being allowed a 30 day period within which to select and confirm a health plan with coverage to be effective September 1, 2015. You and your spouse will be responsible for any premium due for coverage beginning on September 1, 2015; or you will be given an additional 60 day special enrollment period from the date of this Decision within which to change health plans, if you so desire.

You and your spouse have the option of staying in the plan you select for coverage beginning September 1, 2015 or, since you and your spouse have again qualified for a special enrollment period until October 30, 2015 to pick a plan, you may opt to select yet another plan by October 30, 2015 for coverage going forward.

Legal Authority

We are sending you this notice in accordance with Code of Federal Regulation 45 CFR § 155.545(a).

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A Copy of this Decision Has Been Provided To:

