



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

Notice of Decision

Decision Date: February 8, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004564

[REDACTED]

Dear [REDACTED],

On December 16, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's July 20, 2015 disenrollment notice, and September 1, 2015 eligibility determination.

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).

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).

This page intentionally left blank.



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

Decision

Decision Date: February 8, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004564



Issue

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

Did the Marketplace properly terminate your household's enrollment in coverage through their qualified health plan, effective July 31, 2015?

Did the Marketplace properly deny your household the ability to enroll in a qualified health plan outside of open enrollment effective October 1, 2015?

Procedural History

On March 13, 2015, the Marketplace received your household's updated application for financial assistance with your health insurance.

That same day, an eligibility determination was made finding your spouse conditionally eligible and you and your son eligible to receive advance premium tax credits and cost sharing reductions in the amount of \$979.00 per month effective April 1, 2015. This eligibility was based upon the condition that you provide documentation confirming your spouse's citizenship status by June 11, 2015.

Also on that day you enrolled your household in a Silver level health plan. Coverage for that plan would start as early as April 1, 2015 so long as you paid your first month's premium.

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).

On July 19, 2015 an eligibility determination notice was issued finding your spouse no longer eligible to remain enrolled in coverage through the Marketplace because the documentation requested confirming his citizenship status was not received. His eligibility would therefore end effective July 31, 2015.

That same day an eligibility determination notice was issued finding you and your son eligible to receive advance premium tax credits and cost sharing reductions in the amount of \$542.00 per month effective September 1, 2015. You were told in that notice that you could choose a health plan at that time.

On July 20, 2015, a disenrollment notice was issued terminating your household's coverage through their Silver level qualified health plan effective July 31, 2015.

On August 13, 2015, an eligibility determination was made finding your household eligible to receive advance premium tax credits and cost sharing reductions in the amount of \$979.00 per month effective September 1, 2015. You were told that you could select a health plan at that time.

On September 1, 2015, you spoke with the Marketplace's Account Review Unit and appealed the September 4, 2015, redetermination insofar as you, your spouse, and your son were determined to be ineligible to enroll in a qualified health plan outside of open enrollment.

On September 4, 2015, an eligibility redetermination notice was issued finding your household eligible to receive advance premium tax credits and cost sharing reductions in the amount of \$979.00 per month effective October 1, 2015. However, you were further told in this notice that your household no longer qualified to select a health plan outside of the open enrollment period for 2015.

On December 16, 2015, you had a telephone hearing with a Hearing Officer from the NY State of Health Appeals Unit. The record was developed during the hearing and left open 15 days for you to provide additional documentation in the form of e-mail attachment notifications showing that you were unable to open the communications from the NY State of Health Marketplace. This documentation was received via secure fax from the NY State of Health Appeals Unit on December 17, 2015, and incorporated into the record as (Appellant's Exhibit 1).

Findings of Fact

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

- 1) Your account confirms that you originally signed up for electronic notices per a notice from the NY State of Health dated December 27, 2013.

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).

- 2) You testified that your e-mail address has remained unchanged.
- 3) You testified, and your Marketplace account confirms, you receive all of your notices currently via regular mail.
- 4) You testified you did not receive any Marketplace notices asking you to provide citizenship documentation by June 11, 2015. You further testified that you did receive some notices but were unable to open them in your e-mail account.
- 5) You provided supporting documentation in which you testified shows you are unable to open any e-mail notifications sent from the Marketplace (Appellant's Exhibit 1).
- 6) On your March 13, 2015 application you attested to your spouse being a United States Citizen.
- 7) There is no evidence in the record that the Marketplace received your husband's supporting documentation for citizenship status before June 11, 2015.
- 8) On September 23, 2015, a copy of your Certificate of Naturalization was received posted to your Marketplace account.
- 9) Your household was disenrolled from their Silver level health plan on July 31, 2015.
- 10) You are seeking reinstatement of your household's health insurance.

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)).

Electronic Notices

(a) Effective no earlier than October 1, 2013 and no later than January 1, 2015, the agency must provide individuals with a choice to receive notices and information ... in electronic format or by regular mail and must be permitted to change such election.

(b) If the individual elects to receive communications from the agency electronically, the agency must—

(1) Ensure that the individual's election to receive notices electronically is confirmed by regular mail.

(2) Ensure that the individual is informed of his or her right to change such election to receive notices through regular mail.

(3) Post notices to the individual's electronic account within 1 business day of notice generation.

(4) Send an email or other electronic communication alerting the individual that a notice has been posted to his or her account. The agency may not include confidential information in the email or electronic alert.

(5) Send a notice by regular mail within three business days of the date of a failed electronic communication if an electronic communication is undeliverable

(42 CFR §435.918).

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 (45 CFR § 155.420(d)).

This is permitted when any one of multiple events occurs, including a qualified individual or his or her dependent loses certain health insurance coverage (45 CFR § 155.420(d)(1)).

Another qualifying event is when 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 (45 CFR § 155.420(d)(4)).

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)).

Legal Analysis

The first issue under review is whether the Marketplace properly determined your spouse was 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 inconsistency. For purposes of verifying citizenship, notice is considered received five days after the date on the notice.

In the eligibility determination issued on March 13, 2015, you were advised that your spouse's eligibility was only conditional, and you and your son were eligible to receive advance premium tax credits and cost sharing reductions in the amount of \$979.00 per month effective April 1, 2015. This eligibility was based upon the condition that you provide documentation confirming your spouse's citizenship status by June 11, 2015.

The record reflects that the Marketplace did not receive the requested citizenship documentation before the deadline of June 11, 2015.

If the Marketplace 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.

You testified that you receive your notices via electronic notification and your e-mail address has not changed since the time of your application. There is no proof in the record that there was a failure in the delivery of the notice to your e-mail address.

When sending electronic notices the Marketplace is required to send an email or other electronic communication alerting the individual that a notice has been posted to his or her account. The agency may not include confidential information in the email or electronic alert. Send a notice by regular mail within three business days of the date of a failed electronic communication if an electronic communication is undeliverable

You provided supporting documentation in which you testified shows you are unable to open any e-mail notifications or attachments sent from the Marketplace (Appellant's Exhibit 1). The Marketplace does not send confidential information via electronic means. The notice which you received regarding your account was related to the notices being posted to your account. You were then asked to review those notices and the information contained in your online account, including the eligibility determinations requesting additional supporting documentation by June 11, 2015.

Since the requested citizenship documentation was not received within the 90-day period, the Marketplace was required to redetermine your husband's

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).

eligibility without verification of his citizenship status. As a result, the Marketplace properly determined that your spouse could not remain enrolled in a qualified health plan through NY State of Health effective July 31, 2015.

Therefore, the Marketplace's, July 20, 2015 disenrollment notice terminating coverage for your spouse is AFFIRMED.

However, On September 23, 2015, a copy of your spouse's Certificate of Naturalization was received and posted to your Marketplace account. This information has been incorporated into the record and will be the basis for his eligibility to enroll in a qualified health plan.

The second issue under review is whether the Marketplace properly denied you and your son the ability to enroll in a qualified health plan outside of open enrollment effective October 1, 2015.

When a qualified individual loses coverage considered to be minimum essential coverage, that individual may be entitled to a special enrollment period in which to reenroll, pursuant to 45 CFR § 155.420(d)(1)(i). After your spouse's coverage was terminated for failing to provide citizenship status in the requested time frame, you and your son continued to be eligible. You and your son's loss of coverage is not considered to be voluntary on your part, because there were no outstanding requirements to remain eligible.

Therefore, when your spouse's coverage was terminated, you and your son's coverage should not have been. Once his coverage ended, you and your son should have been granted a special enrollment period in which to sign up for new coverage within 60 days.

On August 13, 2015, an eligibility determination was made finding your household eligible to receive advance premium tax credits and cost sharing reductions in the amount of \$979.00 per month effective September 1, 2015. You, your son, and your spouse could select a health plan at that time. There is no indication in the record that a specific time period of 60 days was provided to you and your son to enroll in a health plan.

On September 4, 2015, an eligibility redetermination notice was issued based upon your September 1, eligibility determination finding your household eligible to receive advance premium tax credits and cost sharing reductions in the amount of \$979.00 per month effective October 1, 2015. However, you were further told in this notice that your household no longer qualified to select a health plan outside of the open enrollment period for 2015.

Generally, a person is given 60 days to enroll into a health plan after a qualifying event. Since you and your son not informed of an eligibility for a special enrollment period before it expired, you are granted an additional sixty days from the date of this decision to reenroll.

60 days from your loss of coverage on July 31, 2015 would be by September 30, 2015.

Since the Marketplace considers your spouse's failure to provide proof of citizenship as a voluntary action causing the termination of his coverage, he individually would not be entitled to a special enrolment period in which to enroll in new coverage, barring other circumstances. However, currently, once a family member is found to be eligible for a special enrollment period, all members of the family will be granted one as well.

Since you and your son have been granted an additional special enrollment period, he is granted one as well. Therefore, the September 1, 2015 eligibility determination notice addressed to you, your spouse, and your son denying your household the ability to choose a health plan outside of open enrollment is improper and is MODIFIED to reflect that your household is eligible for a special enrollment period effective August 1, 2015.

Decision

The July 20, 2015 disenrollment notice terminating coverage for your spouse is AFFIRMED.

The September 1, 2015 eligibility determination notice addressed to you, your spouse, and your son denying your household the ability to choose a health plan outside of open enrollment is improper and is MODIFIED to reflect that your household is eligible for a special enrollment period effective August 1, 2015.

Your case is RETURNED to the Marketplace to determine your eligibility, and allow you, your spouse, and your son to reenroll into a qualified health plan effective August 1, 2015 or within 60 days from the date of this decision.

Effective Date of this Decision: February 8, 2016

How this Decision Affects Your Eligibility

The Marketplace properly terminated your spouse's enrollment in a qualified health plan because you did not provide citizenship documentation in timely manner.

Your case is RETURNED to the Marketplace to determine your eligibility, and allow you, your spouse, and your son to reenroll into a qualified health plan effective August 1, 2015 or within 60 days from the date of this decision.

Please note that you will be responsible for any premiums that are owed to your health plan as a result of your reenrollment.

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

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).

P.O. Box 11729
Albany, NY 12211

- By fax: 1-855-900-5557

Summary

The July 20, 2015 disenrollment notice terminating coverage for your spouse is **AFFIRMED**.

The September 1, 2015 eligibility determination notice addressed to you, your spouse, and your son denying your household the ability to choose a health plan outside of open enrollment is improper and is **MODIFIED** to reflect that your household is eligible for a special enrollment period effective August 1, 2015. However, if you have not yet been enrolled in coverage for 2016, the Marketplace must determine your eligibility and allow your household to enroll within 60 days from this decision.

The Marketplace properly terminated your spouse's enrollment in a qualified health plan because you did not provide citizenship documentation in timely manner.

Your case is **RETURNED** to the Marketplace to determine your eligibility, and allow you, your spouse, and your son to reenroll into a qualified health plan effective August 1, 2015 or within 60 days from the date of this decision.

Please note that you will be responsible for any premiums that are owed to your health plan as a result of your reenrollment.

Legal Authority

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

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).

A Copy of this Decision Has Been Provided To:

