



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

## Notice of Decision

Decision Date: January 27, 2016

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004585

[REDACTED]

Dear [REDACTED],

On December 4, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's April 16, 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 and the NY State of Health number at the top of this notice.

### Legal Authority

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

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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: January 27, 2016

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004585

[REDACTED]

## Issues

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

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

Is there a basis for your qualifying for a health insurance exemption for 2015, based on your interactions with the NY State of Health?

## Procedural History

On March 2, 2014, the Marketplace issued a notice of eligibility determination stating that you were eligible for Medicaid.

On December 16, 2014, the Marketplace issued a notice stating that it was time to renew your NY State of Health coverage. The notice further stated that based on information about you from state and federal data sources obtained as of November 27, 2014, you were eligible to receive advance payments of the premium tax credit (APTC) of up to \$32.02 per month, eligible to receive cost-sharing reductions (CSR), and ineligible for Medicaid, effective February 1, 2015. The notice also instructed you to select a plan between December 16, 2014 and January 15, 2015 for your new plan to be effective February 1, 2015. If there had been a mistake, you would need to update your account by January 15, 2015 in order for such changes to be effective by February 1, 2015. The notice also advised you that the open enrollment period would end February 15, 2015.

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On January 16, 2015, the Marketplace issued a disenrollment notice confirming that your coverage with Wellcare of New York, Inc., your Medicaid Managed Care plan, would end effective January 31, 2015.

On February 28, 2015, the Marketplace received a revised application. On March 1, 2015, the Marketplace issued an eligibility redetermination notice stating that you were eligible to receive an APTC of up to \$98.00 per month; ineligible for CSR; and ineligible for Medicaid. This eligibility determination was effective April 1, 2015. This notice also advised you to pick a health plan.

On March 2, 2015, the Marketplace received a further revised application, which was not completed until April 2, 2015. In response to this application, the Marketplace prepared a preliminary eligibility determination finding you eligible for an APTC of up to \$98.00 per month.

On April 3, 2015, the Marketplace issued an eligibility redetermination notice again stating you were eligible to receive an APTC of up to \$98.00 per month, ineligible for CSR, and ineligible for Medicaid. This eligibility redetermination was effective April 1, 2015. This notice also advised you to pick a plan.

On April 16, 2015, the Marketplace issued an eligibility redetermination notice stating that you were eligible to receive an APTC of up to \$98.00 per month; ineligible for CSR; and ineligible for Medicaid. This notice also stated that you did not qualify to select a plan outside of the open enrollment period. This eligibility determination was effective May 1, 2015.

On September 2, 2015, you spoke to the Marketplace's Account Review Unit and appealed that you were unable to enroll in a health plan outside of the open enrollment period.

On December 4, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

## **Findings of Fact**

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

- 1) You were disenrolled from your Medicaid coverage with Wellcare of New York, Inc. effective January 31, 2015. You submitted your application for health insurance on February 28, 2015. You later revised your application on March 2, 2015; this application was not completed until April 2, 2015.
- 2) The Marketplace issued eligibility determination notices on March 1, 2015 and April 3, 2015. In each case, you were found eligible for an advance

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premium tax credit of up to \$98.00 per month, effective April 1, 2015 and May 1, 2015 respectively. You were also advised to select a plan.

- 3) On April 16, 2015, the Marketplace issued an eligibility redetermination notice stating that you were eligible to receive APTC of up to \$98.00 per month; ineligible for CSR; and ineligible for Medicaid. This notice also stated that you did not qualify to select a plan outside of the open enrollment period. This eligibility determination was effective May 1, 2015.
- 4) You testified that you had attempted to enroll in a plan on March 31, 2015, but were unable to do so due to technical issues with the Marketplace website.
- 5) You testified that you contacted the Marketplace several times between April 2, 2015 and September 2, 2015 to request a special enrollment period, but were told that you did not qualify to select a plan outside of the open enrollment period during 2015.
- 6) You testified that you were seeking to qualify for a special enrollment period to enroll in a plan for the remainder of 2015.
- 7) You testified that since you were unable to enroll in a plan during 2015, you were seeking correspondence from the Marketplace acknowledging the error in order to avoid having to pay a tax penalty during 2015.

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

## **Applicable Law and Regulations**

### 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 generally permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent involuntarily loses certain health insurance coverage:
  - (a) Health insurance considered to be minimum essential coverage;
  - (b) Enrolled in any non-calendar year health insurance policy, even if they have the option to renew the expiring non-calendar year individual health insurance policy; or
  - (c) Pregnancy-related coverage; or
  - (d) 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; or
- (3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status; or
- (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; or
- (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; or
- (6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or has a change in eligibility for cost-sharing reductions; or
- (7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move; or

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- (8) The qualified individual is an Indian, as defined by section 4 of the Indian Health Care Improvement Act, and may enroll in a QHP or change from one QHP to another one time per month; or
- (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)).

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)).

The Marketplace provided a special enrollment period for individuals who were uninsured in 2014 and owed a federal tax penalty (“Special Enrollment Periods,” <http://info.nystateofhealth.ny.gov/SpecialEnrollmentPeriods>). For those who qualify, the SEP began on March 1, 2015 and ended at 11:59 p.m. on April 30, 2015 (*id*). However, individuals who owe a fee for not having coverage in 2014, but are already enrolled in coverage through the Marketplace for 2015, cannot use the special enrollment period to switch plans (“Owe a fee for not having health coverage in 2014? You may still be able to get coverage for 2015,” <https://www.healthcare.gov/blog/tax-penalty-special-enrollment-period-for-2015-health-coverage/>).

### Exemptions

A shared responsibility payment may be imposed with respect to a non-exempt individual who does not maintain minimum essential coverage. However, an exemption may relieve an individual from the shared responsibility payment (45 CFR § 155.600(a)).

An exemption may be granted to an applicant for at least before, a month or months during which, and the month after, if it is determined the individual(s) experienced circumstances that prevented them from obtaining coverage under a qualified health plan (45 CFR § 155.605(g)(1)(iii)).

The Marketplace may adopt an exemption eligibility determination made by HHS for an exemption application that is submitted before the start of open enrollment for 2016 (45 CFR § 155.625(b)).

## **Legal Analysis**

The first issue under review is whether the Marketplace properly denied you a special enrollment period.

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. The record reflects that you submitted your application on February 28, 2015. Therefore, had you owed a tax penalty for 2014 and you selected a plan at that time, you would have been able to enroll in a plan.

Once an annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered in the Marketplace. In order to qualify for a special enrollment period, a person must experience a triggering event.

You testified, and the record reflects that you had lost your Medicaid coverage with Wellcare of New York, Inc. on January 31, 2015. This qualified as a triggering event that could justify a special enrollment period.

When a triggering life event occurs, the qualified individual has sixty days from the date of that event to select a qualified health plan.

Sixty days from January 31, 2015 was April 1, 2015; therefore, you were qualified to select a qualified health plan (QHP) outside of the open enrollment period until April 1, 2015. You testified that you attempted to select a QHP on March 31, 2015, but were unable to do so because you experienced technical issues with selecting a plan through the Marketplace website.

However, since there is no Marketplace record that you made an attempt to update your application or otherwise enroll in a plan on March 31, 2015, and there is no Marketplace record that you attempted to call the Marketplace on or before April 1, 2015 in order to resolve an enrollment issue, we do not find your testimony credible.

The facts as set out in the record do not suggest that any other triggering event described in 45 CFR § 155.420(d) has occurred.

Since the Marketplace properly found that you did not qualify for a special enrollment period, the April 16, 2015 eligibility determination is **AFFIRMED**.

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The second issue under review is whether you qualify for a health insurance exemption for 2015.

Based on the facts in the record and your testimony, the Appeals Unit finds that the NY State of Health Marketplace did not err in preventing the processing your health plan selection on April 2, 2015 and that there is insufficient basis for an exemption to the requirement to have insurance.

The Marketplace properly issued an eligibility determination notice on April 16, 2015 finding that you did not again qualify to select a plan outside of the open enrollment period or your initial special enrollment period.

## **Decision**

The April 16, 2015 eligibility determination is AFFIRMED.

There is insufficient basis for an exemption to the requirement to have insurance.

**Effective Date of this Decision:** January 27, 2016

## **How this Decision Affects Your Eligibility**

You did not qualify for a special enrollment period to enroll in a qualified health plan.

Your eligibility is unchanged.

This Decision has no effect on any subsequent eligibility determination issued on or after April 16, 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.

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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  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

The April 16, 2015 eligibility determination is AFFIRMED.

There is insufficient basis for an exemption to the requirement to have insurance.

You did not qualify for a special enrollment period to enroll in a qualified health plan.

Your eligibility is unchanged.

This Decision has no effect on any subsequent eligibility determination issued on or after April 16, 2015.

### **Legal Authority**

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

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**A Copy of this Decision Has Been Provided To:**

