



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

## Notice of Decision

Decision Date: December 18, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004690

[REDACTED]

Dear [REDACTED],

On November 30, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's September 15, 2015 notice of eligibility determination denying you 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).

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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## Decision

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NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000004690



## Issue

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

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

## Procedural History

On September 14, 2015, the Marketplace received your application for health insurance.

That same day, the Marketplace prepared a preliminary eligibility determination that stated that you were eligible to purchase a qualified health plan at full cost through New York State of Health, effective October 1, 2015. It further found that you did not qualify to select a health plan outside of the open enrollment period for 2015.

Also that same day, you spoke to the Marketplace's Account Review Unit and appealed that eligibility determination insofar as you were determined to be ineligible to enroll in a health plan outside of the open enrollment period.

On September 15, 2015, the Marketplace issued a notice of eligibility determination that was consistent with the September 14, 2015 preliminary determination.

On November 30, 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.

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## Findings of Fact

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

- 1) The record reflects that you submitted your initial application for health insurance on September 14, 2015.
- 2) You testified that you had left your previous employment in June 2015 and you assumed your employer-sponsored insurance ended June 30, 2015.
- 3) You testified that your new employer agreed to provide you with employer-sponsored health insurance but was away on vacation during August 2015.
- 4) You testified that after your employer returned from vacation, you were informed that you had to wait for open enrollment through its group health plan and could not be enrolled in health coverage at that time such that the health insurance “offer was off the table.”
- 5) You testified that, as a result, you contacted the Marketplace in an effort to secure health insurance coverage on your own and were told that you were outside the 60 day period for special enrollment and did not otherwise qualify for a special enrollment.
- 6) You testified that you did not know of a 60 day special enrollment period until it was too late.
- 7) You want to be afforded the opportunity to enroll in a health plan through the Marketplace or to be considered for an exemption from having to pay a penalty to the IRS for not having health insurance during the second half of 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,

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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. 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 a triggering event occurs, such as when the qualified individual or his or her dependent involuntarily loses certain health insurance coverage considered to be minimum essential coverage (45 CFR § 155.420(d)(1)(a)).

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)).

### 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 the Department of Health and Human Services for an exemption application that is submitted before the start of open enrollment for 2016 (45 CFR § 155.625(b)).

## **Legal Analysis**

The 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 initial complete application on September 14, 2015. Therefore, you did not complete your application during the open enrollment period.

Once the 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

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in the Marketplace. In order to qualify for a special enrollment period, a person must experience a triggering event.

You testified that you lost your minimum essential coverage on June 30, 2015. This could qualify as a triggering event that would 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 June 30, 2015 was August 29, 2015; therefore, you would have qualified to select a qualified health plan outside of the open enrollment period until August 29, 2015. However, the record reflects that your application was not complete until September 14, 2015, which was after your special enrollment period expired.

Also, while you did not understand there was a 60 day period within which to select a health plan through the Marketplace, your lack of knowledge does not otherwise meet any of the remaining triggering events to qualify you for a special enrollment period.

Therefore, the Marketplace's September 15, 2015 notice of eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2015 is AFFIRMED.

You further testified that you are concerned that you will face a penalty by the IRS for not having health insurance after June 30, 2015, and want to be considered for an exemption.

Sometimes after an appeal decision, an appellant can claim an exemption from the requirement to have health insurance. An individual might qualify for a health coverage exemption if both of the following criteria applied in 2015:

- In 2015, the individual was unable to enrolled in coverage through a qualified health plan because of an appealable reason
- The individual's appeal would have been eventually successful.

If both are accurate, an individual may not to have to pay the penalty for the months you were uncovered.

However, in your case, the record does not support a finding of any action or inaction that was unintentional, inadvertent, or erroneous and was the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities, or non-Exchange entities that would otherwise qualify you for a special enrollment period.

If, however, you wish to pursue a health insurance exemption, **you must claim this exemption through the United States Department of Health and Human Services**

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**(HHS).** Currently, the NY State of Health Marketplace cannot and will not accept exemption applications.

You will find all of the information you need to claim the exemption due to an appeal Decision at [www.healthcare.gov/exemptions-tool/#/results/details/eligible-based-on-appeal](http://www.healthcare.gov/exemptions-tool/#/results/details/eligible-based-on-appeal). You can also call 1-800-318-2596.

## **Decision**

The September 15, 2015 notice of eligibility determination is AFFIRMED.

**Effective Date of this Decision:** December 18, 2015

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

You do not qualify for a special enrollment period to enroll in a qualified health plan at this time.

## **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.

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## If You Have Questions about this Decision (Customer Service Resources):

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## Summary

The September 15, 2015 notice of eligibility determination is AFFIRMED.

You do not qualify for a special enrollment period to enroll in a qualified health plan at this time.

If, however, you wish to pursue a health insurance exemption, **you must claim this exemption through the United States Department of Health and Human Services (HHS)**. Currently, the NY State of Health Marketplace cannot and will not accept exemption applications.

You will find all of the information you need to claim the exemption due to an appeal Decision at [www.healthcare.gov/exemptions-tool/#/results/details/eligible-based-on-appeal](http://www.healthcare.gov/exemptions-tool/#/results/details/eligible-based-on-appeal). You can also call 1-800-318-2596.

## 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:**

