



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: AP000000005082

[REDACTED]

Dear [REDACTED],

On January 27, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's failure to enroll your spouse in an individual qualified health plan and its denial of a special enrollment period for your spouse.

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).

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Issues

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

Did the Marketplace properly terminate your enrollment in coverage through the Marketplace, effective April 30, 2015?

Did the Marketplace properly terminate your spouse's enrollment in coverage through the Marketplace, effective April 30, 2015 and re-enroll her as of June 1, 2015, resulting a one month gap in coverage during May 2015?

Procedural History

On December 25, 2014, the Marketplace issued a notice of eligibility redetermination that stated you were conditionally eligible to share up to \$627.00 per month of advance premium tax credits (APTC) with your spouse and conditionally eligible for cost-sharing reductions, effective February 1, 2015. Your spouse was found newly eligible to share with you the monthly APTC and cost-sharing reductions without condition and your eligibility was conditional pending submission of immigrations documents to confirm your status before March 26, 2015.

That same day, the Marketplace issued an enrollment notice confirming your selection of a couple's platinum-level qualified health plan (QHP) with North Shore - LIJ CareConnect, which could start as early as February 1, 2015, provided you paid your first month's premium.

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As of March 26, 2015, you had not submitted documentary proof of your immigration status to the Marketplace.

On April 15, 2015, the Marketplace issued an eligibility redetermination that stated you no longer qualified for financial assistance and could not enroll in a QHP at full cost through the Marketplace because you had not submitted the requisite documents to confirm your immigration status within the timeframe allotted. The notice further indicated that your eligibility would end effective April 30, 2015.

Also on April 15, 2015, the Marketplace issued a notice of eligibility redetermination regarding your spouse that stated she was eligible to receive \$255.00 per month in APTC and eligible for cost-sharing reductions, effective May 1, 2015.

On April 16, 2015, the Marketplace issued a disenrollment notice that stated you and your spouse were disenrolled from your couple's platinum-level QHP, effective April 30, 2015.

On April 22, 2015, the Marketplace issued a notice of eligibility redetermination that stated, effective June 1, 2015, you were conditionally eligible to share in \$327.00 per month in APTC with your spouse, who was determined eligible unconditionally. Your eligibility was conditional pending submission of immigrations documents to confirm your status before July 20, 2015.

That same day, the Marketplace issued an enrollment notice confirming that you and your spouse had selected a platinum-level QHP with North Shore-LIJ CareConnect Insurance Company, Inc., which could start as early as June 1, 2015, provided you paid your first month's premium.

On April 29, 2015, a copy of both sides of your permanent resident card was uploaded to your Marketplace account (Document [REDACTED])

On May 1, 2015, the Marketplace issued a notice of eligible redetermination finding your eligibility unconditional as of June 1, 2015. The remainder of the redetermination with regard to your and your spouse's eligibility for financial assistance was the same as was stated in the April 22, 2015 notice of eligibility redetermination.

On November 3, 2015, you spoke to the Marketplace's Account Review Unit and appealed that eligibility determination insofar as your spouse was denied a special enrollment period to enroll in a different QHP outside of the open enrollment period.

On January 27, 2016, 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) In a notice sent to you on December 25, 2014, you were advised that you and your wife were conditionally eligible to enroll in insurance through the Marketplace and to share in APTC and cost-sharing reductions with your spouse, whose eligibility was unconditional. That notice informed you that you needed to confirm your immigration status by providing documents to the Marketplace before March 26, 2015.
- 2) Your Marketplace account reflects that you have elected to receive all of your notices via regular mail.
- 3) There is no indication that any mail that was sent to you at the address listed on your account was returned as undeliverable.
- 4) There is no evidence in the record that the Marketplace received your immigration documentation before March 26, 2015.
- 5) According to your Marketplace account, your U.S. Permanent Resident card was sent to the Marketplace via facsimile on April 21, 2015 and was uploaded on April 29, 2015 (Document [REDACTED]).
- 6) On April 15, 2015, a notice was sent to you stating that you, individually, were no longer eligible to enroll in health insurance through the Marketplace, even at full cost, effective April 30, 2015. An April 16, 2015 disenrollment notice stated that you and your spouse were being disenrolled from your couple's platinum-level QHP, effective April 30, 2015.
- 7) Also on April 15, 2015, a separate notice was issued stating that your spouse was eligible to receive individually APTC and cost-sharing reductions effective May 1, 2015 and that, since her current coverage was due to end April 30, 2015, she needed to pick a plan for herself through the Marketplace.
- 8) There is no record that your spouse selected a plan for coverage to begin May 1, 2015.

- 9) On April 22, 2015, the Marketplace issued a notice of eligibility redetermination stating that you and your spouse were eligible for APTC and cost-sharing reductions, effective June 1, 2015. An enrollment notice of that date confirmed your QHP selection and stated coverage could start as early as June 1, 2015, provided the premium for that month was paid.
- 10) According to your Marketplace account, your spouse did not have health insurance coverage during May 2015, and you want her coverage re-instated for that month.
- 11) According to the Appeal Summary, dated December 24, 2015, an entry was made on November 3, 2015, that stated you contacted the Marketplace on several occasions and filed many requests to see if you could change QHPs outside of open enrollment because of your spouse's urgent post-partum medical issues that required she be transferred to another hospital to be treated by specialists, which your current QHP would not cover (Document [REDACTED] p. 2).
- 12) According to a Marketplace complaint (Incident # [REDACTED] your request for a special enrollment period for your spouse was denied on October 22, 2015.
- 13) You testified at hearing that your spouse could not be transferred to another hospital to see certain specialists because she was denied a special enrollment period to change to another QHP and, only later, when you gained family coverage through your employer was she able to be treated. As such, you are no longer pursuing an appeal on this issue.
- 14) You further testified that you want your spouse's coverage for May 2015 to be re-instated because she should not have had a gap in coverage that month.

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 (QHP) 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)).

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The Marketplace must verify or obtain information in order to determine that an applicant is eligible for enrollment in a QHP, 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 (45 CFR § 155.420(d)).

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

However, a loss of coverage such as that referenced above does not include, "voluntary termination of coverage or other loss due to—

- (1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or
- (2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128" (45 CFR § 155.420(e)).

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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)).

Implementation Date of Enrollment

Generally, when an eligibility redetermination is made during a benefit year, the Marketplace implements resulting changes on the first day of the month following the date of the notice of eligibility determination (45 CFR 155.330(f)(1)(i), (e)(1)(ii)). There are some exceptions to this general rule. If a change affects enrollment or premiums only, it is implemented on the first day of the month following the date on which the Marketplace was notified of the change (45 CFR 155.330(f)(1)(iii)). A decrease in the amount of advance premium tax credit (APTC) or a change in cost-sharing reductions is implemented on the first day of the second month after the date of the notice of eligibility determination or notice to the Marketplace (45 CFR 155.330(f)(3)). Exceptions in cases of marriage, birth, adoption, placement for adoption, and placement in foster care are addressed in 45 CFR § 155.420(b)(2)(i) and (ii), but are not applicable in your case.

Legal Analysis

The first issue under review is whether the Marketplace properly terminated your individual enrollment in coverage effective April 30, 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 December 25, 2014, you were advised that your eligibility was only conditional, and that you needed to confirm your immigration status before March 26, 2015.

There is no evidence in the record that the Marketplace received your immigration documentation before March 26, 2015. Instead, the record reflects that you submitted via facsimile a copy of your U.S. Permanent Resident Card on April 21, 2015, which was uploaded to your Marketplace account on April 29, 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.

Therefore, the April 15, 2015 notice of eligibility redetermination regarding your eligibility for coverage is AFFIRMED because the Marketplace was required to rescind the conditional approval of your eligibility to enroll through the Marketplace.

The second issue under review is whether the Marketplace properly terminated your spouse's enrollment in coverage also effective April 30, 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 coverage was terminated, your spouse continued to be eligible for financial assistance and to enroll in a QHP through the Marketplace. Her loss of coverage is not considered to be voluntary on her part, because there were no outstanding requirements for her to remain eligible. However, she could not remain enrolled in the couple's QHP any longer since your eligibility for and enrollment in that plan ended effective April 30, 2015.

The record reflects that the Marketplace issued a notice of eligibility redetermination regarding your spouse's eligibility for financial assistance through the Marketplace on April 15, 2015, with a May 1, 2015 effective date. According to the rule of implementation, when an eligibility redetermination is made during a benefit year, the Marketplace implements resulting changes on the first day of the month following the date of the notice of eligibility determination. The notice of eligibility redetermination regarding your spouse was issued on April 15, 2015, such that she should have been enrolled in an individual QHP with the same insurance company, effective May 1, 2015. However, the record reflects that she had a gap in coverage that month and was only able to enroll with you in a couple's QHP with a start date of June 1, 2015.

Therefore, your case is RETURNED to the Marketplace to effectuate your spouse's enrollment in an individual QHP with the same insurance carrier for the month of May 2015, and to notify you accordingly. You will be responsible for your portion of the premium for that month.

Decision

The April 15, 2015 notices of eligibility redetermination regarding you and your spouse respectively are AFFIRMED.

Your case is RETURNED to the Marketplace to effectuate your spouse's enrollment in an individual QHP with the same insurance carrier for the month of May 2015, and to notify you accordingly.

Effective Date of this Decision: February 8, 2016

How this Decision Affects Your Eligibility

The Marketplace is directed to effectuate your spouse's enrollment in an individual QHP through the same insurance carrier for the month of May 2015, and to notify you accordingly.

You will be responsible for payment of your portion of the premium due for that month.

Once the May 2015 premium is paid and coverage is confirmed, you can submit any claims to your spouse's individual QHP for medical treatment she received in May 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 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 15, 2015 notices of eligibility redetermination regarding you and your spouse respectively are AFFIRMED.

Your case is RETURNED to the Marketplace to effectuate your spouse's enrollment in an individual QHP with the same insurance carrier for the month of May 2015, and to notify you accordingly.

You will be responsible for payment of your portion of the premium due for that month.

Once the May 2015 premium is paid and coverage is confirmed, you can submit any claims to your spouse's individual QHP for medical treatment she received in May 2015.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

