



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: AP000000005083

[REDACTED]

Dear [REDACTED],

On January 11, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's July 18, 2015 eligibility redetermination.

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

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).

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

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DEPARTMENT OF HEALTH
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Issues

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

Did the Marketplace properly disenroll you and your spouse from your qualified health plan, effective July 31, 2015?

Based on your interactions with NY State of Health, do you and your spouse qualify for a health insurance exemption?

Did the Marketplace properly determine that your child's coverage through Child Health Plus ended on August 31, 2015?

Procedural History

On March 11, 2015, the Marketplace received your household's application for health insurance, which listed that you, your spouse, and your child needed health insurance.

On March 12, 2015, the Marketplace issued an eligibility determination notice stating that you and your spouse were conditionally eligible to share in advance premium tax credits (APTC) of up to \$349.00 per month and cost-sharing reductions, effective April 1, 2015. The notice explained that the condition on your eligibility related to your and your spouse's citizenship status and you both had to submit documentation proving your statuses before June 9, 2015. The notice also stated that your child was eligible to enroll through Child Health Plus (CHP) with a \$15.00 premium per month, effective April 1, 2015.

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That same day, the Marketplace issued an enrollment notice confirming that you and your spouse were enrolled in a silver-level qualified health plan and your child was enrolled in a CHP plan. The notice further stated that coverage for both plans could begin as early as April 1, 2015, provided you paid the first month's premiums.

On July 18, 2015, the Marketplace issued a notice of eligibility redetermination that stated you and your spouse were no longer eligible for financial assistance and could not enroll in a qualified health plan at full cost through the Marketplace because you had not provided your respective citizenship documents by June 9, 2015. The notice stated that your and your spouse's eligibility would end July 31, 2015.

That same day, the Marketplace issued a notice of eligibility redetermination regarding your child that stated he was eligible to enroll in CHP for a cost of \$15.00, effective September 1, 2015.

On July 19, 2015, the Marketplace issued a disenrollment notice confirming that your and your spouse's insurance with your silver-level qualified health plan would end effective July 31, 2015, because you both were no longer eligible to enroll in health insurance through the Marketplace.

That same day, the Marketplace issued an enrollment notice confirming your child's enrollment in a CHP plan, your monthly premium responsibility of \$15.00, and his enrollment effective date of August 1, 2015.

On July 29, 2015, the Marketplace issued a disenrollment notice stating that your child's CHP coverage would end effective August 31, 2015. No reason for the termination of his coverage was provided in that notice.

On November 3, 2015, the Marketplace prepared a preliminary eligibility redetermination and found you and your spouse conditionally eligible to receive APTC, effective December 1, 2015, and your child conditionally eligible to enroll in CHP for a cost of \$45.00 per month, effective December 1, 2015. The notice requested that you confirm your household income by submitting income documentation before February 1, 2016. The notice further stated that your household's eligibility was temporary because it was unable to confirm your reported total household income of \$76,885.20 as listed in your application with state and federal data sources.

On November 3, 2015, you spoke to the Marketplace's Account Review Unit and appealed you and your spouse being disenrolled from your qualified health plan for not providing citizenship documents, when you believed you had.

On November 4, 2015, the Marketplace issued an eligibility redetermination notice that was consistent with the November 3, 2015 preliminary redetermination.

On January 11, 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) You testified, and the record reflects, that you are appealing the Marketplace's actions in disenrolling you and your spouse from your qualified health plan, effective July 31, 2015. You testified that your appeal in this regard relates only to the possibility of you and your spouse being exposed to a penalty by the IRS for not having health insurance for the remainder of 2015.
- 2) You testified that you are also appealing your child's disenrollment from his CHP plan as of August 31, 2015.
- 3) According to your March 11, 2015 Marketplace application, you and your spouse were listed as U.S. Citizens and your Social Security numbers were provided.
- 4) According to your testimony, you faxed copies of your and your spouse's certificates of naturalization to the Marketplace in April 2015.
- 5) According to the Appeal Summary, dated December 7, 2015, there is no record of the Marketplace receiving any facsimile from you that month.
- 6) According to the Appeal Summary, dated December 7, 2015, and your testimony, you submitted copies of your and your spouse's certificates of naturalization via facsimile on July 23, 2015. The Appeal Summary indicates that on that date the Marketplace received these documents.
- 7) According to your Marketplace account, these documents were not attached by the Marketplace to that account.
- 8) According to the Appeal Summary, the Marketplace's resolution on July 23, 2015 indicated that your eligibility was to be redetermined before a request for special enrollment period review was sent. Your Marketplace account does not reflect that your and your spouse's eligibility was redetermined at that time or that a request for special enrollment period review was sent.
- 9) According to your Marketplace account, your application was changed on July 27, 2015, to list you and your spouse as naturalized citizens with your naturalization certificate information. Your Marketplace account does not reflect that your and your spouse's eligibility was redetermined at that time.

- 10) According to your Marketplace account and your testimony, your child was enrolled on or about March 11, 2015 in a CHP plan through the Marketplace with an April 1, 2015 effective date of coverage.
- 11) According to your Marketplace account, your child was sixteen years of age at the time and resided with you and your spouse and continues to reside with you and your spouse in Queens County, New York.
- 12) You testified that you timely paid the first premium for your child's insurance and had consistently paid all of your child's premiums on time.
- 13) You testified that you were not aware that your child's health insurance had been terminated until September 1, 2015 when you took him to the doctor for a sick visit.
- 14) You testified that, because your child did not have health insurance to cover that visit, you have been billed approximately \$200.00 for that sick visit.
- 15) You testified that as a result of your child being disenrolled, your child experienced a gap in his CHP coverage for the months of September, October, and November 2015, and you want his coverage restored for these months.
- 16) You also testified that the Marketplace erred in disenrolling you and your spouse from your silver-level qualified health plan, effective July 31, 2015, because you had provided your respective certificates of naturalization before that date.
- 17) You testified that you are not seeking to have your and your spouse's coverage reinstated through the Marketplace and did not select a qualified health plan for your coverage to resume as of December 1, 2015, because you will be securing health insurance for you and your spouse outside of the Marketplace.
- 18) You testified that, because the Marketplace erred, you and your spouse might be exposed to an IRS penalty, from which you want to be exempted.

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 who reasonably expects 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 to provide satisfactory documentary evidence, from the date the notice of inconsistency is received by the applicant. Notice is considered received 5 days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the 5 day period. (45 CFR § 155.315(c)(3)).

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)).

Child Health Plus

A child who meets the eligibility requirements for Child Health Plus (CHP) may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the federal poverty level (FPL) (New York Public Health Law (PHL) § 2511(2)(a)(iii)). To be eligible to enroll in CHP with subsidy payments, a child must not be “eligible for medical assistance”; that is, must not be eligible for Medicaid (NY Public Health Law § 2511(2)(b)).

The “period of eligibility” for CHP is “that period commencing on the first day of the month during which a child is an eligible child and enrolled or recertified for enrollment on an annual basis based on all required information and documentation and ending on the last day of the twelfth month following such date,” unless the CHP premiums are not timely paid or child no longer resides in New York State, gains access to or obtains other health insurance coverage, or becomes eligible for Medicaid (NY Public Health Law [PHL] § 2510(6)).

Legal Analysis

Citizenship and Immigration Status

The first issue under review is whether the Marketplace properly determined that you and your spouse were 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 5 days after the date on the notice.

In the eligibility determination notice issued on March 12, 2015, you were advised that your and your spouse's eligibility was only conditional, and that you both needed to confirm your citizenship status before June 9, 2015. This was likely because you had listed yourself and your spouse as U.S. citizens and not as naturalized citizens on your Marketplace application such that your statuses could not be verified.

The record reflects that the Marketplace did not receive the requested citizenship documentation before the June 9, 2015 deadline. When the Marketplace remains unable to verify your citizenship after this deadline, it must disqualify the individual or individuals from being eligible for financial assistance and to remain enrolled in a qualified health plan. The record reflects that as of July 18, 2015, your Marketplace account did not contain the requisite documentation regarding your and your spouse's citizenship, which resulted in you and your spouse being disqualified. Therefore, the July 18, 2015 eligibility redetermination notice and July 19, 2015 disenrollment notice were correct when issued and are AFFIRMED.

However, the record further reflects that as of July 23, 2015, after you became aware that there was an inconsistency in your account, you provided copies of your and your spouse's certificates of naturalization, which the Marketplace acknowledged receiving that day. Ordinarily, the receipt of such proof would result in the Marketplace verifying your documentation and redetermining your and your spouse's eligibility for health insurance, as stated in its own resolution of July 23, 2015 as contained in the Appeal Summary, but the Marketplace did not attach your documentation to your account, did not otherwise act on your documentation or its own resolution, and has not proffered any plausible reason for not doing so. Therefore, by this Decision, we find that the Marketplace erred in not redetermining your and your spouse's eligibility in a timely manner so that your health insurance coverage could be reinstated with a minimal lapse in coverage.

However, since you testified that you are not interested in having your and your spouse's eligibility restored and your health insurance reinstated, no further action is required by the Marketplace as to this first issue.

Tax Penalty Exposure and Exemption

Also at the hearing, you testified that you were concerned about the possibility of being exposed to an IRS tax penalty for not having health insurance for the period of August 1, 2015 through November 30, 2015. In the interest of justice and administrative efficiency, the Hearing Officer agreed to hear testimony on this issue raised at the time of the hearing.

Based on the facts in the record and your testimony, the Appeals Unit finds that the NY State of Health Marketplace erred in not timely redetermining your and your spouse's eligibility to enroll in a qualified health plan and failed to issue a timely notice of eligibility redetermination once proof of your citizenship status was provided on July 23, 2015, such that you both were without health plan coverage as of August 1, 2015 through November 30, 2015. Because of this error and resultant delay in an eligibility redetermination, we also find that you were not able to enroll in a qualified health plan (QHP) during that period.

If this decision could effectuate an earlier 2015 plan year re-enrollment, we would instruct NY State of Health to redetermine your and your spouse's eligibility accordingly. However, NY State of Health cannot redetermine your couple's enrollment retroactively to August 1, 2015 through November 30, 2015 since we are now in February 2016. Further, it would be inequitable to hold you both responsible for premium payments for this period of time at this late date. Nevertheless, you and your spouse may have other claims or remedies as a result of a finding that NY State of Health's Marketplace's error caused your disenrollment from your couple's health plan and delayed your ability to re-enroll until November 4, 2015. We therefore address your concern, noting that you opted not to select a qualified health plan through the Marketplace when afforded the opportunity for your health insurance coverage to resume as of December 1, 2015.

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

- In 2015 you were disenrolled from coverage in a qualified health plan because of an appealable reason
- Your appeal was eventually successful

If this is accurate, you may not have to pay the penalty for the months you were uncovered. If approved, your exemption generally also covers the month of the Decision itself. It will not cover the month of the Decision itself if the Decision is in the next plan year. For example, you could not re-enroll during 2015 and we issue a decision in 2016.

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).

In this case, your exemption would cover only the months during 2015 that you were both uncovered; that is, from August 1, 2015 through November 30, 2015.

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. You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word “pending” in column “c” and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

Child Health Plus – Period of Eligibility

The third issue under review is whether the Marketplace properly determined that your child’s enrollment in his CHP ended effective August 31, 2015.

On March 12, 2015, the Marketplace issued a notice of eligibility determination for an application submitted for your sixteen-year-old child on March 11, 2015. It stated that, effective April 1, 2015, your child could enroll through CHP with a premium of \$15.00 per month. That eligibility determination has not been appealed and is not under review here.

On July 29, 2015, however, the Marketplace issued a disenrollment notice that your child’s CHP coverage ended August 31, 2015, which is under review.

Since the period of your child’s CHP eligibility began on April 1, 2015, it continues until March 31, 2016, unless an event occurs to disqualify them from CHP eligibility. The record does not indicate that any CHP premiums were not timely paid, that your child has gained access to or obtained other health insurance, or that your child has become eligible for Medicaid. The record does confirm that he still resides in New York State.

When additional determinations were made after March 12, 2015, the twelve-month period of CHP eligibility that began on April 1, 2015 had not expired, and no event had occurred to end that eligibility. According to the credible evidence of record, your child’s CHP coverage should not have ended effective August 31, 2015.

To bring the Marketplace’s decisions into line with the record as currently developed, the following change is made:

The July 29, 2015 disenrollment notice stating that CHP coverage would end effective August 31, 2015 is **RESCINDED**.

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).

The November 4, 2015 eligibility redetermination notice is RESCINDED in part as it relates to your child's conditional eligibility for CHP and is to state your child is eligible for CHP. The monthly premium of \$45.00 remains in effect as of December 1, 2015.

We note that, in the November 4, 2015 eligibility redetermination notice, the Marketplace requested that you confirm your household's income by submitting documentation for each family member before February 1, 2016 so that it can confirm your household's eligibility, including that of your child. If you have not already done so, please submit income documentation to the Marketplace upon receipt of this Decision.

Decision

The July 18, 2015 eligibility redetermination notice and July 19, 2015 disenrollment notices were correct when made and are AFFIRMED.

No further action by the Marketplace is required regarding your and your spouse's disenrollment.

The Marketplace erred in not redetermining your and your spouse's eligibility in a timely manner for the period of August 1, 2015 to November 30, 2015.

This Decision does not grant you and your spouse an exemption from the shared responsibility payment.

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. You can also call 1-800-318-2596.

The July 29, 2015 disenrollment notice regarding your child's CHP plan coverage is RESCINDED.

Your case is RETURNED to the Marketplace to ensure that your child's Child Health Plus coverage is restored effective September 1, 2015.

The November 4, 2015 eligibility redetermination notice is RESCINDED in part as it relates to your child's conditional eligibility for CHP. The monthly premium of \$45.00 remains in effect as of December 1, 2015.

Effective Date of this Decision: February 8, 2016

How this Decision Affects Your Eligibility

No further action is required by the Marketplace regarding your and your spouse's disenrollment.

This Decision does not grant you and your spouse an exemption from the shared responsibility payment.

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. You can also call 1-800-318-2596.

The effective date of your child's Child Health Plus plan is April 1, 2015. This coverage will continue until March 31, 2016 unless one of the events mentioned above occurs.

You are responsible for paying the insurance carrier any Child Health Plus premiums that are owed for the month's he experienced a gap in coverage and you are responsible for paying the increase in monthly premium to \$45.00 as of December 1, 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:
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P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The July 18, 2015 eligibility redetermination notice and July 19, 2015 disenrollment notices were correct when made and are **AFFIRMED**.

No further action by the Marketplace is required regarding your and your spouse's disenrollment.

The Marketplace erred in not redetermining your and your spouse's eligibility in a timely manner for the period of August 1, 2015 to November 30, 2015.

This Decision does not grant you and your spouse an exemption from the shared responsibility payment.

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. You can also call 1-800-318-2596.

The July 29, 2015 disenrollment notice regarding your child's CHP plan coverage is **RESCINDED**.

Your case is **RETURNED** to the Marketplace to ensure that your child's Child Health Plus coverage is restored effective September 1, 2015.

The November 4, 2015 eligibility redetermination notice is **RESCINDED** in part as it relates to your child's conditional eligibility for CHP. The monthly premium of \$45.00 remains in effect as of December 1, 2015.

The effective date of your child's Child Health Plus plan is April 1, 2015. This coverage will continue until March 31, 2016 unless one of the events mentioned above occurs.

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You are responsible for paying the insurance carrier any Child Health Plus premiums that are owed for the month's he experienced a gap in coverage and you are responsible for paying the increase in monthly premium to \$45.00 as of December 1, 2015.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

