



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

Notice of Decision

Decision Date: February 12, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000005170

[REDACTED]

Dear [REDACTED],

On February 1, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's decision to deny you, your spouse and child 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 and the NY State of Health number at the top of this notice.

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).

Legal Authority

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

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Issues

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

Did the Marketplace properly determine that your spouse was not eligible for a special enrollment period?

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

Procedural History

On June 15, 2015, you applied for health insurance through the Marketplace for you, your spouse and seventeen-year-old child.

On the same day your Social Security card and New York State Driver License was uploaded to your Marketplace account.

On June 16, 2015, the Marketplace issued an eligibility determination notice that you and your child are eligible to purchase a qualified health plan at full cost through New York State of Health. Your spouse was determined conditionally eligible to purchase a qualified health plan at full cost through New York State of Health. The notice directed you to submit citizenship status and a Social Security

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Number documentation for your spouse by September 13, 2015 to confirm her eligibility.

On June 16, 2015, the Marketplace issued an enrollment notice confirming that you, your spouse and dependent were enrolled in EmblemHealth and coverage could start as early as June 1, 2015.

On June 17, 2015, the Marketplace issued a notice that

We previously notified you that additional information is required to confirm your eligibility for health insurance through New York State of Health. You have since submitted documentation to resolve the inconsistency; however the documentation appears to be insufficient to resolve the request.

The notice stated that the documentation to confirm your spouse's citizenship and proof of Social Security number had not been received.

On October 6, 2015 the Marketplace issued an eligibility determination notice that states that your spouse is not eligible for financial assistance or cannot enroll in a qualified health plan at full cost through the Marketplace. The notice states that you did not provide proof of your citizenship status or Social Security number and your eligibility will end effective October 31, 2015.

On the same day the Marketplace issued a disenrollment notice that your spouse's coverage through Select Care Gold, Gold, ST, INN Dep25 would end effective October 31, 2015.

On October 21, 2015 the Marketplace issued a disenrollment notice that you and your dependent's insurance with EmblemHealth is terminated effective August 31, 2015 because the premium payment had not been received by EmblemHealth.

On November 12, 2015, you spoke to the Marketplace Account Review Unit and requested an appeal insofar as you, your spouse and child being denied a special enrollment period.

On February 1, 2016, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing. The record was left open until February 2, 2016, to allow you to submit additional documentation. That documentation was not received within the allotted time. The record is now complete and closed.

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Findings of Fact

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

- 1) On June 15, 2015 you applied for health insurance coverage through the Marketplace for you, your spouse and seventeen-year-old daughter.
- 2) On June 15, 2015 your New York State Driver License (ID [REDACTED]) and Social Security card was uploaded to your Marketplace account.
- 3) On June 16, 2015 the Marketplace issued an eligibility determination notice directing you to confirm your spouse's citizenship status and Social Security number by providing documentation by September 13, 2015.
- 4) You, your spouse and child were enrolled in Select Care Gold, Gold, ST, INN, Dep25 (EmblemHealth) with a start date of June 1, 2015.
- 5) On June 17, 2015 the Marketplace issued a notice that you have submitted documentation to resolve an inconsistency, however, the documentation appears to be insufficient to resolve the request to confirm your spouse's eligibility for health insurance through the Marketplace.
- 6) On October 6, 2015, a notice was sent to you stating that your spouse was no longer eligible to enroll in health insurance through the Marketplace, even at full cost, and that their eligibility will end effective October 31, 2015.
- 7) On October 6, 2015, a disenrollment notice was issued stating that your spouse was "no longer eligible to enroll in health insurance through New York State," and that coverage with EmblemHealth will end effective October 31, 2015.
- 8) No documents regarding your spouse's citizenship status or Social Security number has been uploaded to your Marketplace account.
- 9) On October 21, 2015, a disenrollment notice was issued stating that you and your child's coverage through Emblem Health was terminated August 31, 2015 because a premium payment had not been received by EmblemHealth.

- 10) You testified that you stopped paying your monthly premiums to EmblemHealth because you were unable to find a provider who accepted the health insurance coverage purchased through the Marketplace.
- 11) You testified that you and your spouse have approximately \$2,800.00 in outstanding medical bills that should have been covered by EmblemHealth because you were still enrolled in the plan when you received the medical services. The hearing record was left open until February 2, 2016 to allow you to submit copies of the outstanding medical bills to the Marketplace Appeals Unit. No documentation was received within the allotted time.

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

Applicable Law and Regulations

De Novo Review

The Marketplace Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “*De novo review* means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

The Marketplace is required to provide “timely written notice to an applicant of any eligibility determination” made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual Marketplace (45 CFR § 155.310(g)). An applicant or enrollee has the right to appeal an eligibility determination or redetermination or a failure by the Marketplace to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

Citizenship 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 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)).

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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)).

If the Exchange remains unable to verify the attestation after the 90 day period ends, then it must determine the applicant's eligibility based on the information available in the data sources (45 CFR § 155.315(f)(5)(i)).

Special Enrollment - Generally

The Marketplace must provide an annual open enrollment period during which qualified individuals may enroll in a qualified health plan (QHP) and enrollees may change QHPs (45 CFR § 155.410(a)). The open enrollment period for the benefit year beginning on January 1, 2015 during which a qualified individual may enroll in a QHP and enrollees may change QHPs begins on November 15, 2014 and extends 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).

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 to another QHP. A special enrollment period may be permitted when one of the following triggering events occurs:

- 1) The qualified individual or his or her dependent
 - i) loses health insurance considered to be minimum essential coverage
 - ii) is enrolled in a non-calendar-year health insurance policy that will expire in 2015, even if they have the option to renew the policy
 - iii) loses pregnancy-related coverage

- iv) loses 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,
- 3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status,
- 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,
- 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,
- 6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions,
- 7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move,
- 8) The qualified individual who is an Indian may enroll in a QHP or change from one QHP to another one time per month,
- 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)).

Special Enrollment Period – Voluntary Termination

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A special enrollment period is granted when including a qualified individual or his or her dependent loses certain health insurance coverage (45 CFR § 155.420(d)(e)).

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)).

Legal Analysis

On November 12, 2015, you spoke with the Marketplace and requested a special enrollment period. The record does not contain a notice of eligibility determination or redetermination on the issue of the special enrollment period. It does contain a November 13, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issue on appeal as "Denial of Special Enrollment Period."

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the November 13, 2015 notice, which acknowledges the appeal on the issue of the special enrollment period denial, permits an inference that the Marketplace did deny your special enrollment period request.

Since the Appeals Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to a notice of denial of a special enrollment period had it been issued. Therefore, currently at issue is whether you, your spouse and child were properly denied a special enrollment period.

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

The Marketplace provided an open enrollment from November 15, 2014 until February 15, 2015, and later extended the open enrollment period to February

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28, 2015 for people who could not complete their application by the February 15, 2015 deadline. 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 in the Marketplace.

Generally, the loss of *health* insurance coverage is considered a triggering event. Here, your spouse's enrollment was terminated effective October 31, 2015 because their citizenship status and Social Security number was not confirmed within the required timeframe. The Marketplace considers the failure to provide proof of citizenship status as a voluntary action causing the termination of your spouse's coverage; therefore, your spouse would not be entitled to a special enrollment period in which to enroll in new coverage on this basis.

Therefore, the Marketplace properly denied your spouse's request for a special enrollment period.

The second issue is whether you were and your child were properly denied a special enrollment period.

Generally, the loss of health insurance coverage is considered a triggering event. Here, your enrollment was terminated effective August 31, 2015 because you did not pay your premiums to your health plan on time. The Marketplace considers the failure to pay premiums a voluntary action causing the termination of your coverage; therefore, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis.

Therefore, the Marketplace properly denied your request for a special enrollment period for you and your child.

Decision

The Marketplace's determination to deny you, your spouse and child a special enrollment is AFFIRMED.

Effective Date of this Decision: February 12, 2016

How this Decision Affects Your Eligibility

You, your spouse and child are not eligible to enroll in a qualified health plan through the Marketplace at this time.

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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 Marketplace's determination to deny you, your spouse and child a special enrollment is **AFFIRMED**.

You, your spouse and child are not eligible to enroll in a qualified health plan through the Marketplace at this time.

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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

