



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

## Notice of Decision

Decision Date: October 27, 2015

NY State of Health Number: [REDACTED]  
Appeal Identification Number: APM0025

[REDACTED]

Dear [REDACTED]

On September 14, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's May 3, 2015 eligibility determination, May 4, 2015 disenrollment, and May 7, 2015 denial of a special enrolment 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 Code of 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

Decision Date: October 27, 2015

NY State of Health Number: [REDACTED]  
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## Issues

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

Did the Marketplace properly determine that you were no longer eligible to enroll in a qualified health plan through New York State of Health, effective May 31, 2015?

Did the Marketplace properly determine on May 6, 2015 that you did not qualify to for a special enrollment period within which to enroll in a qualified health plan outside the open enrollment period?

## Procedural History

On December 18, 2014, and again on January 3, 2015, the Marketplace issued a notice of eligibility determination stating that you were “conditionally eligible” to receive advance premium tax credits and cost sharing reductions, effective January 1, 2015. The notice further requested that you provide documentation confirming your income and citizenship status before March 19, 2015.

On December 26, 2014, the Marketplace issued a notice confirming your enrollment in silver-level qualified health plan and a dental plan. That notice also informed you of your monthly premium responsibilities for both plans.

On May 3, 2015, the Marketplace issued a notice of eligibility redetermination stating that you were no longer eligible to enroll in health insurance through the Marketplace because you had not confirmed your citizenship status on time. The notice further stated that your eligibility will effective May 31, 2015.

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On May 4, 2015, the Marketplace issued a disenrollment notice that stated your enrollment in your silver-level qualified health plan and your dental plan will terminate effective May 31, 2015.

On May 6, 2015, you spoke with the Marketplace's Account Review Unit and appealed the Marketplace's determination insofar as you had been denied a special enrollment period that same day and, therefore, could not enroll in a qualified health plan outside the open enrollment period.

On May 7, 2015, the Marketplace issued a notice of eligibility redetermination that you were eligible for receive up to \$238.00 per month in advance premium tax credits and, if you select a silver-level qualified health plan, eligible for cost sharing reductions effective June 1, 2015. That notice also provided information on how to pick a health plan.

Also on May 7, 2015, the Marketplace issued a letter acknowledging your request for a telephone hearing on May 6, 2015 on the basis that "Consumer lost coverage for failing to submit proof of Citizenship. Consumer states he was unaware of this because he faxed in his passport when he enrolled. Notifications went to his email which he states he never received. [He] entered his Naturalization Information and system is no longer requesting Proof of Citizenship. Consumer requested SEP. He is [ineligible] for SEP. Consumer wants to appeal this."

On September 14, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and was held open for up to fifteen days to allow you the opportunity to submit proof of citizenship.

On September 18, 2015, the Appeals Unit received a one page fax from you, consisting of a copy of your Certificate of Naturalization. This document was made part of the record as "Appellant's Exhibit A" and the record was closed the same day.

## **Findings of Fact**

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

- 1) According to your Marketplace application on December 14, 2014, you were listed as a United States citizen and not as a Naturalized citizen.
- 2) You testified that you faxed in a copy of your United States passport to the Marketplace in the middle of January 2015, and believed submitting this document satisfied the proof of citizenship requirement. You testified that you sent the fax from a Kinko's store located in the Buffalo, NY area, but did not retain a copy of that fax or the paid receipt.

- 3) You testified that you first learned that your coverage under your dental plan would end May 31, 2015, when you tried to make a dentist appointment for that month.
- 4) You testified that you then contacted your health plan at that time and were told the same thing by them.
- 5) You testified that this information prompted you to contact the Marketplace on May 6, 2015, and that you were told you were being disenrolled from your health and dental plans on May 31, 2015, because you had not provided proof of your citizenship status as previously directed.
- 6) You testified that you explained to the Marketplace that you had faxed in a copy of your United States passport in the middle of January 2015, and believed that proved your citizenship status.
- 7) You testified that the Marketplace denied having received that January 2015 fax from you.
- 8) There is no evidence in the record to show that the Marketplace received your citizenship documentation before the March 19, 2015 deadline.
- 9) According to your Marketplace account and your testimony, you provided information over the telephone to the Marketplace on May 6, 2015, to prove you became a naturalized citizen on October 2, 1997, and had lived in the United States since August 21, 1996. That day, your Marketplace account and application were corrected to reflect this information.
- 10) According to your Marketplace account, the Marketplace was able to verify your citizenship status through federal hub sources on May 6, 2015, based on the citizenship information you had provided to the Marketplace that day.
- 11) You testified that on May 6, 2015, the Marketplace representative told you that you did not need to do anything else, except wait for your appeal to be heard.
- 12) You testified that, when you inquired further, the Marketplace representative told you not to pay any more premiums to your health or dental plans, not to pick health and dental plans, and to wait for your appeal to be heard.
- 13) You submitted to the Appeals Unit a copy of your Certificate of Naturalization as documentary support of your citizenship ( [REDACTED] ) (Appellant's Exhibit A).
- 14) You testified that you did not receive any notice from the Marketplace after the December 18, 2014 and January 3, 2015 notices telling you that you

needed to submit any form of documentation in order to confirm your citizenship status and your Marketplace account reflects that none were issued.

- 15) The Marketplace's May 7, 2015 letter, acknowledging your request for a telephone hearing, indicates that you are appealing being denied a special enrollment period within which to re-enroll in health and dental plans.
- 16) You are seeking reinstatement of your health and dental insurance coverage as of the present time and not retroactive to June 1, 2015.
- 17) You currently reside in Erie County, New York.

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 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)).

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)).

### 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).

## Special Enrollment Period

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 providing a triggering event has occurred. During a special enrollment period, a qualified individual may enroll in a QHP, and an enrollee may change their enrollment to another plan. One such triggering event is when 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 (45 CFR § 155.420(d)(4)).

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)).

## **Legal Analysis**

The issue under review is whether the Marketplace properly determined that you were no longer eligible to enroll in a qualified health plan and dental plan through the Marketplace, effective May 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 notices of eligibility determination issued on December 18, 2014 and January 3, 2015, you were advised that your eligibility was only conditional, and that you needed to confirm your citizenship status before March 19, 2015. You testified that you were aware that you needed to provide additional information and did so via fax mid-January 2015.

However, the record reflects that the Marketplace did not receive the requested citizenship documentation before the deadline despite your testimony to the contrary and there is no documentation that your passport was submitted at that time anywhere in the Marketplace system or your account.

Therefore, the May 3, 2015 eligibility redetermination and May 4, 2015 disenrollment notices were correct when made and are AFFIRMED.

On May 6, 2015, you spoke with the Marketplace and were denied a special enrollment period. The record does not contain a notice of eligibility determination or redetermination on the issue of the special enrollment period. However, it does contain a May 7, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issue on appeal regarding the denial of a 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 May 7, 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 Appeal 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 were properly denied a special enrollment period as of May 6, 2015.

As of that date, however, as you credibly testified and the record reflects, you provided to the Marketplace your naturalization certificate number as proof of citizenship, which was issued October 2, 1997. In addition, the record reflects that the Marketplace was able to verify your citizenship using federal hub sources that same day.

Since the issue of your citizenship had been resolved as of May 6, 2015, the Marketplace was able to redetermine your eligibility for advance premium tax credits and cost sharing reductions, effective June 1, 2015, and your ability to pick a health plan.



However, you credibly testified that you were told by the Marketplace not to do anything until after your appeal was heard. Therefore, you did not select a health plan so that coverage could resume. Since your non-enrollment was inadvertent as the result of Marketplace misrepresentation, you qualify for a special enrollment period. Therefore, your case is returned to the Marketplace to redetermine your eligibility and, accordingly, issue a notice of eligibility redetermination.

Therefore, your case is RETURNED to the Marketplace to redetermine your eligibility for health insurance.

You are granted a special enrollment period of up to 60 days from the date that of this decision.

## **Decision**

The May 3, 2015 notice of eligibility determination and May 4, 2015 disenrollment notices are AFFIRMED.

However, your case is RETURNED to the Marketplace to verify your documentation and redetermine your eligibility for financial assistance.

You are granted a special enrollment period of up to 60 days from the date of this decision within which to select and confirm your enrollment in health and dental plans, if you so desire.

**Effective Date of this Decision:** October 27, 2015

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

Your previous coverage under your silver-level qualified health plan and dental plan ended as of May 31, 2015.

However, your case is being sent back to the Marketplace to redetermine your eligibility based on a one-person household and an expected annual household income of \$17,385.36 for an individual residing in Erie County, New York.

You will have 60 days from the date of that eligibility redetermination to select and confirm your enrollment in the health and dental plans you have selected, if you so desire.

## **If You Disagree with this Decision (Appeal Rights)**

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).

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 May 3, 2015 notice of eligibility determination and May 4, 2015 disenrollment notices are **AFFIRMED**.

However, your case is **RETURNED** to the Marketplace to verify your documentation and redetermine your eligibility for financial assistance.

You are granted a special enrollment and will have 60 days from the date of this decision to select and confirm your enrollment in the health and dental plans you have selected, if you so desire.

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**

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

