MARKETPLACE ELIGIBILITY APPEAL FINAL DECISION

Dear [Consumer Name]:

The Patient Protection and Affordable Care Act (ACA) gives Marketplace applicants and enrollees the right to appeal certain eligibility determinations. Eligibility appeals are reviewed “de novo,” meaning, without regard to any prior eligibility determinations made in the matter being appealed. Applicants and enrollees may appeal decisions made by a State Exchange appeals entity directly to the Department of Health and Human Services Marketplace Appeals entity. See 45 CFR § 155.505(c).

Before we issued this notice, we considered the information used in the State Exchange Eligibility Determination and in the eligibility appeal with the State Exchange, as well as any additional relevant evidence presented during the course of this Federal Marketplace eligibility appeal. See id.

This is the final resolution of your Federal Marketplace eligibility appeal.

Procedural History

On October 14, 2021, the appellants, [consumer name], [dependent name], [dependent name], and [dependent name] were automatically re-enrolled into a Qualified Health Plan (QHP) through YHI for the 2022 benefit year. The appellants were not determined eligible for advance payments of the premium tax credits, (APTC or “tax credits”), during this automatic re-enrollment.

On June 17, 2022, the appellants submitted an appeal with the State Exchange, Your Health Idaho (YHI), because the appellants are seeking a special enrollment period (SEP) to enroll in a qualified health plan (QHP) through YHI.
On June 24, 2022, YHI sent the appellants an email notification indicating that because the appeal was received beyond the 30-calendar days requirement in which to file an appeal, it was untimely. However, YHI further stated in the email notice that they, as a “courtesy”, granted the appellants APTC effective March 1, 2022. In this notice, the appellants were not granted a SEP to enroll in or change plans for the 2022 benefit year. Further, the appellants were informed they must pay the total QHP premium amount for January and February 2022, or risk termination of coverage due to non-payment of premiums.

On July 27, 2022, the appellants submitted a second appeal with YHI seeking a SEP to enroll in a QHP.

On August 12, 2022, YHI sent the appellants an email notification indicating that the appeal was untimely because the appeal was received more than the 30-calendar days requirement in which to file an appeal; and therefore an invalid appeal.

On August 14, 2022, the Federal Marketplace Appeals Center received the appellants' second-tier appeal. The appellants were requesting a SEP to enroll in YHI coverage for the 2022 benefit year.

On October 14, 2022, a Federal Hearing Officer (FHO) with the Federal Marketplace Appeals Center held a hearing at which appellant [consumer name] and authorized representative (AR) [representative name] were present. YHI was represented at the hearing by [YHI staff], of which only [YHI staff] provided testimony during the proceedings.

Legal Basis

The legal basis for this decision is contained in federal regulations in 45 Code of Federal Regulations part 155, subparts D, E, and F, which you can find at eCFR.gov.

Standard of Review

Federal Marketplace appeals are subject to de novo review, which means the appeal was treated as though the Federal Marketplace Appeals Center was the first decision-maker in the matter. The Federal Marketplace Appeals Center considers all the information in the eligibility and appeal records, as applicable, as well as any additional relevant evidence adduced before it during the appeal. See 45 CFR § 155.535(f). Accordingly, this Marketplace appeal decision is based on the evidence in the record, including all of the information available from the State Exchange Eligibility Determination, all of the information available from the State Exchange appeal, testimony provided during the Federal Marketplace appeal hearing, and any additional relevant evidence presented during the course of the Federal Marketplace appeal. See 45 CFR § 155.535(e).

Findings of Fact

1. In this appeal the appellants are [consumer name], [dependent name], [dependent name], and [dependent name].

2. [Consumer's spouse] is the Authorized Representative (AR) for the appellants.

3. The record reflects that the appellants were automatically re-enrolled in a QHP with SelectHealth, a YHI plan, on October 14, 2021, for the 2022 benefit year. The appellants were enrolled in the QHP effective January 1, 2022, without tax credits or cost-sharing reductions (CSRs) because the record indicates, and the AR testified
at the federal hearing, that the appellants did not request financial assistance.

4. The record reflects that on March 14, 2022, the AR completed an application on behalf of appellants with the State Exchange, YHI. YHI determined that the appellants reside in a household size of 5, with 4 people seeking coverage, with a projected 2022 annual household income of $69,265.20, which is equal to 223.15 percent of the federal poverty level (FPL).

5. The record reflects that on March 14, 2022, YHI issued an eligibility determination notice informing the appellants that they were eligible for monthly tax credits of $1,740.00 and CSRs at level 04, beginning on March 1, 2022. The appellants were not granted a SEP to enroll at that time.

6. The record reflects that, in their June 17, 2022, YHI appeal, the appellants sought a SEP to enroll in a QHP because “we failed to understand that the month of February needed to be paid by us. It was not until this week did we realize that the tax credit was applied to our family health plan but Select Health had already terminated our coverage. Hopefully the tax credit can be made retroactive as our insurance broker was unaware as well that we did not have coverage.”

7. YHI responded to the appellants’ June 17 2022 appeal with an email, also dated June 17, 2022, stating that they received, and were reviewing, the appellants’ appeal.

8. On June 20, 2022, YHI sent another email to the AR stating in-part:

   “Your Health Idaho (YHI) has received your Appeal Request postmarked on 06/17/2022. YHI is researching information that will be used to determine your eligibility including documents and records provided to date. Based upon this review, YHI will issue an informal decision on your Appeal Request in the next thirty (30) days.”, and

   “If you are satisfied when you receive the informal decision, no further action will be required. If you are dissatisfied with the outcome of the informal resolution process, your right to an appeal hearing will be preserved. You must resolve any defects in your appeal request as listed or notify YHI within the required timeframe to schedule your appeal hearing. At that point, YHI will complete a second review of the appeal or confirm the appeal hearing request within thirty (30) days of receipt.”

9. The record reflects that on June 24, 2022, YHI sent an email to the AR stating:

   “Your Appeal Request has not been accepted and is not valid for the following reason: Your Appeal Request was not received within thirty (30) days from the date of your notice of eligibility determination (3/14/2022)”, and

   “Your Appeal Request is not within the jurisdiction of Your Health Idaho; for reinstatement requests or billing questions, you must contact your carrier directly”.

The email continued:

   “If you are satisfied with the informal decision, no further action is required. If you are dissatisfied with the outcome of the informal resolution process, your right to an appeal hearing is preserved. You must
notify YHI within ten (10) days of the date of receiving the decision to schedule your appeal hearing.”

In YHI’s documentation submission to the Federal Marketplace Appeals Center for this Federal Marketplace appeal, YHI listed this email notice document in the record as “Informal Resolution Letter”.

10. The record reflects that on July 6, 2022, YHI sent the AR an email notification stating that the appellants’ Marketplace plan, SelectHealth, terminated their 2022 benefit year coverage due to non-payment of the QHP premiums for January and February 2022, retroactively to January 31, 2022.

11. The record reflects that on July 7, 2022, YHI and the AR exchanged emails where the AR requested reinstatement of APTC to cover the premiums for January and February 2022. YHI stated that, as a “courtesy”, YHI was reinstating the appellants’ APTC as of March 1, 2022. However, YHI informed the AR that the “APTC eligibility determination” was not retroactive to January 1, 2022, and therefore, did not apply APTC for January or February 2022. YHI informed the AR that the appellants were responsible for payment of the full QHP premium of $1378.67 for those two months.

12. The record reflects that on July 19, 2022, the AR emailed YHI with an additional request for reinstatement of the appellants’ QHP with APTC. Per the AR’s email correspondence on July 19 2022, Select Health needed a new PID (plan identification) number to reinstate the appellants, since they were terminated for non-payment under the old PID. The appellants did not request retroactivity at that time, only reinstatement.

13. The record reflects that on July 21, 2022 YHI informed the AR that the appellants were ineligible for reinstatement in their QHP using a new PID, since they were terminated for non-payment of premiums. In this email, YHI also informed the AR that the appellants would need a new qualifying life event (QLE) within the past 60 days to be eligible for a SEP to enroll outside of the Open Enrollment (OE) period.

14. The record reflects that the appellants filed a second appeal electronically to YHI on July 27, 2022, with an additional request for reinstatement of the appellants’ QHP with APTC.

15. The record reflects that on August 12, 2022, YHI sent an email notice to the AR stating “Your Appeal Request has not been accepted and is not valid for the following reason: Your Appeal Request was not received within thirty (30) days from the date of your notice of eligibility determination (3/14/2022)”. This email also states that “If you are dissatisfied with the outcome of the informal resolution process, your right to an appeal hearing is preserved. You must notify YHI within ten (10) days of the date of receiving the decision to schedule your appeal hearing.”

16. The record lacks evidence that YHI held a state exchange first-tier hearing to address either of the appellants’ appeal requests (the June 17, 2022 and July 27, 2022 appeal requests). Further, the record lacks evidence that the appellants made a request for a hearing, for either appeal, with the state exchange appeal entity.

17. The record lacks evidence that YHI issued to the appellants or to the AR any appeal decision or appeal dismissal notice.

18. On October 14, 2022, an FHO with the Federally Facilitated Marketplace Appeals Center held a hearing (“federal hearing”), during which the appellants provided an opening statement requesting restoration of their QHP coverage for the 2022 benefit year, retroactive to June 1, 2022.
19. During the federal hearing, [staff] from YHI, declined the offer to make an opening statement.

20. During the federal hearing, the AR, [spouse], made an opening statement indicating that the appellants did not make premium payments for January and February 2022, but the appellants were working with their insurance agent, [Agency Name], to have tax credits applied retroactively to January 1, 2022.

21. AR [spouse] also testified, and the record reflects, that the personal premium responsibility due (which is the amount that the appellants would have to pay toward the monthly premium after the monthly tax credits were applied) was $1,378.67 for each month in both January 2022 and February 2022. However, this premium responsibility was reduced to $0.00, effective March 1, 2022, since the tax credits granted by YHI would cover the entire premium amount the appellants owed for the months of March 2022 through the end of the 2022 benefit year.

22. AR [spouse] further testified that she believed that the SelectHealth coverage was terminated retroactively effective January 1, 2022.

23. During the hearing, the AR testified that the [agency name] representative, [agent name], assisted the family with the application update on March 14, 2022. The purpose of the March 14, 2022, application update was to revise the projected 2022 household income and request APTC and CSRs. The AR confirmed that the appellants filed an appeal with YHI on June 17, 2022.

24. The AR also testified that the appellants were not seeking tax credits when they were automatically re-enrolled with SelectHealth on October 14, 2021.

25. During the federal hearing, [staff] from YHI provided additional testimony that the appellants’ application update on March 14, 2022, resulted in a tax credit of $1,740.00 per month, of which $1,378.67 per month was applied to cover the entire premium amount, effective April 1, 2022.

26. During the federal hearing, the FHO asked the YHI representative, if the eligibility determination notice (EDN), dated March 14, 2022, was available, since it was not included in the electronic file transfer (EFT) documents that YHI submitted on October 11, 2022. [YHI staff] testified that YHI did not have the March 14, 2022, eligibility determination readily available, but they could submit it after the hearing. The record reflects that on October 21, 2022, YHI submitted the March 14, 2022 EDN.

27. During the federal hearing, YHI representative also testified that YHI sent a notice to the appellants on June 24, 2022, indicating that the appeal request dated June 17, 2022, was determined invalid due to being outside the 30-day requirement for filing appeals with YHI. YHI representative also testified that an additional notice was sent to the appellants on August 12, 2022, indicating that the appeal requested by the appellants on July 27, 2022, was also invalid due to timeliness. Both YHI notices included information regarding the appellants’ right to request a hearing within 10 days of receipt of the notices.

28. YHI representative [staff] further testified that no requests for a hearing were made by the appellants within the required timeframe, and no dismissal notices were sent to the appellants by YHI, either via postal mail or electronic communication.
29. YHI representative [staff] explained that since the application was updated on March 14, 2022, YHI was able to use the effective date of March 1, 2022 to apply the tax credit, which is allowable per YHI regulations. In addition, YHI representative [staff] confirmed that the retroactive application of tax credits effective March 1, 2022, was completed on June 27, 2022.

30. YHI representative [staff] also explained that no SEP was granted with the March 14, 2022, eligibility determination, as the appellants were already enrolled in a SelectHealth plan. Further, since the appellants were enrolled in a SelectHealth plan when the original appeal was filed on June 17, 2022, no SEP was granted with the decision dated June 24, 2022, which dismissed the appeal for untimely filing.

31. YHI representative [staff] also explained that a SEP may be granted in cases where the appellants update an application for a change in income to allow the appellants to shop for a different plan. Per YHI, the “window of opportunity” opens automatically when the income is updated on the application, and the appellants are supposed to be notified through their preferred communication method, as indicated.

32. During the hearing, YHI representative [staff] also testified that the application of tax credits retroactively to March 1, 2022, was executed manually on June 27, 2022. Since the execution was manual, no notification granting a SEP was sent to the appellants. YHI representative [staff] confirmed that a notification granting a SEP should have been sent to the appellants, but was omitted in error by YHI and therefore no notification was sent.

33. The record reflects that, according to the YHI policy manual, (page 20), YHI may grant an “APTC and CSR Effective Date SEP” for consumers who are currently enrolled through the Exchange without financial assistance and gain eligibility for APTC, they will have their new APTC amount applied to their premiums effective the date of eligibility, if received within 60 days of the eligibility start date, referencing 45 CFR 155.310 and 45 CFR 155.340.

34. The record reflects that the March 14, 2022, EDN granted the appellants tax credits retroactively effective March 1, 2022, but failed to provide a SEP for the appellants to enroll.

35. During the federal hearing, AR [spouse] provided a closing statement that the appellants were unfamiliar with YHI’s enrollment processes, and did not knowingly do anything inappropriate. In addition, conflicting information from YHI caused the appellants stress due to the family being without health insurance coverage.

36. During the federal hearing, YHI representative [staff] argued in YHI’s closing statement that since the appellants have not exhausted their state level appeal rights, YHI requests that the FHO dismiss this appeal.

37. At the close of the hearing, the FHO declined to dismiss the appeal.

Conclusions of Law

Federal regulations provide that an applicant or enrollee must have the right to appeal an eligibility determination made by a Health Insurance Exchange. See 45 CFR § 155.505. Specifically, applicants and enrollees have the right to appeal the following:
1. An eligibility determination, including an initial eligibility determination and a redetermination of eligibility;
2. A determination of eligibility for an enrollment period;
3. An eligibility determination for an exemption;
4. A failure of the Exchange to provide timely notice of an eligibility determination;
5. A denial by a State Exchange appeals entity of a request to vacate a dismissal of an appeal filed with the State Exchange appeals entity; and
6. An appeal decision by a State Exchange appeals entity upon exhaustion of the State Exchange entity’s appeal process. See 45 CFR §155.505 (b) and (c).

The first issue in this matter is whether the appellants exhausted their state-level appeal process rights, which includes the appellants’ request that YHI vacate the dismissal of appellants’ appeal.

Federal regulations at 45 CFR §155.520 (b) provide that the Exchange and the appeals entity must allow an applicant or enrollee to request an appeal within -

(1) 90 days of the date of the notice of eligibility determination; or

(2) A timeframe consistent with the state Medicaid agency’s requirement for submitting fair hearing requests, provided that timeframe is no less than 30 days, measured from the date of the notice of eligibility determination.

YHI appeal requirements apply a 30-day appeal filing timeframe, in accordance with 45 CFR §155.520 (b)(2).

Regulations at 45 CFR §155.520 (d)(2) outline appeal request acknowledgement requirements if the appeal request is invalid:

(1) Upon receipt of an appeal request that is not valid because it fails to meet the requirements of this section or § 155.505(b), the appeals entity must -

(i) Promptly and without undue delay, send written notice to the applicant or enrollee informing the appellant:

(A) That the appeal request has not been accepted;

(B) About the nature of the defect in the appeal request; and

(C) That the applicant or enrollee may cure the defect and resubmit the appeal request by the date determined under paragraph (b) or (c) of this section, as applicable, or within a reasonable timeframe established by the appeals entity.

(D) That, in the event the appeal request is not valid due to failure to submit by the date determined under paragraph (b) or (c) of this section, as applicable, the appeal request may be considered valid if the applicant or enrollee sufficiently demonstrates within a reasonable timeframe determined by the appeals entity that failure to timely submit was due to exceptional circumstances and should not preclude the appeal.
Regulations at 45 CFR §155.520 (d)(2) outline appeal informal resolution requirements:

(a) Informal resolution. The HHS appeals process will provide an opportunity for informal resolution and a hearing in accordance with the requirements of this section. A State Exchange appeals entity may also provide an informal resolution process prior to a hearing. Any information resolution process must meet the following requirements:

(1) The process complies with the scope of review specified in paragraph (e) of this section;

(2) The appellant's right to a hearing is preserved in any case in which the appellant remains dissatisfied with the outcome of the informal resolution process;

(3) If the appeal advances to hearing, the appellant is not asked to provide duplicative information or documentation that he or she previously provided during the application or informal resolution process; and

(4) If the appeal does not advance to hearing, the informal resolution decision is final and binding.

Regulations at 45 CFR §155.530 outline appeal dismissal requirements:

(a) Dismissal of appeal. The appeals entity must dismiss an appeal if the appellant -

(1) Withdraws the appeal request in writing or by telephone, if the appeals entity is capable of accepting telephonic withdrawals.

   (i) Accepting telephonic withdrawals means the appeals entity -

      (A) Records in full the appellant's statement and telephonic signature made under penalty of perjury; and

      (B) Provides a written confirmation to the appellant documenting the telephonic interaction.

   (ii) [Reserved]

(2) Fails to appear at a scheduled hearing without good cause;

(3) Fails to submit a valid appeal request as specified in § 155.520(a)(4); or

(4) Dies while the appeal is pending, except if the executor, administrator, or other duly authorized representative of the estate requests to continue the appeal.

(b) Notice of dismissal to the appellant. If an appeal is dismissed under paragraph (a) of this section, the appeals entity must provide timely written notice to the appellant, including -

(1) The reason for dismissal;

(2) An explanation of the dismissal's effect on the appellant's eligibility; and
(3) An explanation of how the appellant may show good cause why the dismissal should be vacated in accordance with paragraph (d) of this section.

(c) Notice of the dismissal to the Exchange, Medicaid, and CHIP. If an appeal is dismissed under paragraph (a) of this section, the appeals entity must provide timely notice to the Exchange, and to the agency administering Medicaid or CHIP, as applicable, including instruction regarding -

(1) The eligibility determination to implement; and

(2) Discontinuing eligibility provided under §155.525, if applicable.

(d) Vacating a dismissal. The appeals entity must -

(1) Vacate a dismissal and proceed with the appeal if the appellant makes a written request within 30 days of the date of the notice of dismissal showing good cause why the dismissal should be vacated; and

(2) Provide timely written notice of the denial of a request to vacate a dismissal to the appellant, if the request is denied.

Regulations at 45 CFR §155.545 outline appeal decision requirements, which include in part:

(a) Appeal decisions. Appeal decisions must -

(1) Be based exclusively on the information and evidence specified in §155.535(e) and the eligibility requirements under subpart D or G of this part, as applicable, and if the Medicaid or CHIP agencies delegate authority to conduct the Medicaid fair hearing or CHIP review to the appeals entity in accordance with 42 CFR 431.10(c)(1)(ii) or 457.1120, the eligibility requirements under 42 CFR parts 435 and 457, as applicable;

(2) State the decision, including a plain language description of the effect of the decision on the appellant's eligibility;

(3) Summarize the facts relevant to the appeal;

(4) Identify the legal basis, including the regulations that support the decision;

(5) State the effective date of the decision; and

(6) If the appeals entity is a State Exchange appeals entity -

(i) Provide an explanation of the appellant’s right to pursue the appeal before the HHS appeals entity, including the applicable timeframe, if the appellant remains dissatisfied with the eligibility determination; and

(ii) Indicate that the decision of the State Exchange appeals entity is final, unless the appellant pursues the appeal before the HHS appeals entity.
In this case, the appellants filed an appeal with YHI on June 17, 2022. On June 24, 2022, YHI responded via email that the appeal request was invalid because it was not filed within 30 days of the date of the eligibility determination notice required for filing appeals. The YHI representative confirmed at the federal appeals hearing that no dismissal notices were sent to the appellants by YHI. The YHI email notification indicated that the appeal was invalid due to untimeliness, and that the appellants had 10 days from receiving the email notice to request a hearing. The date of the relevant eligibility determination notice in this appeal is March 14, 2022. The appellants did not request a hearing. YHI did not issue an appeal decision or dismissal notice to appellants or provide the appellants an explanation of how the appellants can show good cause as to why the dismissal should be vacated.

On July 27, 2022, the appellants filed a second appeal, which YHI again determined to be invalid due to untimeliness, on August 12, 2022. Again, YHI sent an email notice to the appellants indicating that appellants had 10 days from receiving the notice to request a hearing. YHI did not issue an appeal decision or dismissal notice to appellants or provide the appellants an explanation of how the appellants can show good cause as to why the dismissal should be vacated. The appellants did not request a hearing for their second appeal to YHI.

YHI argues in response to appellants’ filing of this Federal Marketplace appeal, that their records show the appellants have not exhausted their appeal hearing rights with YHI. YHI representative [staff] testified that if an appellant does not request a hearing within the 10 day period post-invalidation notice period, the appeal is closed and no additional action is taken by YHI. Further, [staff] testified, and the record confirms, that no dismissal notices were sent to the appellants. There is also no record of YHI sending any final appeal decision to appellants.

The email responses that YHI sent to appellants on June 24, 2022 and August 12, 2022, in response to appellants’ appeal requests of June 17, 2022 and July 27, 2022, respectively, contain hybrid elements of what the regulations prescribe for both Appeal Request Invalidation and Informal Resolution notices. These email responses indicate “Your Appeal Request has not been accepted and is not valid for the following reason: Your Appeal Request was not received within thirty (30) days from the date of your notice of eligibility determination (3/14/2022)” (see appeal acknowledgement requirements at 45 CFR §155.520 (d)), and “If you are satisfied with the informal decision, no further action is required. If you are dissatisfied with the outcome of the informal resolution process, your right to an appeal hearing is preserved. You must notify YHI within ten (10) days of the date of receiving the decision to schedule your appeal hearing.” (see Informal Resolution requirements at 45 CFR §155.535 (a)). Neither of these email responses contain language that would suggest appeal closure, such as through an appeal dismissal notice or through an appeal decision. See 45 CFR §155.530 (b) and §155.545.

If we were to interpret these email notices as informal resolution notices, then the next step in the appeals process, if appellants did not respond to such notices, would be for YHI to issue either a final appeal decision or a dismissal notice. See id. However, YHI did not issue any additional notices, decisions, or other pertinent correspondence to either the AR or the appellants regarding either of the appeals, following the June 17, 2022 and July 27, 2022 YHI emails. If it is YHI’s position that these notices were informal resolution notices, and that they consider such notices automatically became appeal “decisions” when the 10 calendar day period had expired, then such decisions would be classified as appeal decisions issued by a State Exchange, and would invoke appellants’ right to appeal such to the HHS appeals entity (Federal Marketplace Appeals Center). See 45 CFR §155.505 (c)(2). However, it is YHI’s asserted position that the appellants did not exhaust their appeal rights with YHI.

We interpret that the outcome that YHI intended for the June 17, 2022 and July 27, 2022 YHI emails, was to invalidate the appeal requests due to untimely filing, and that YHI considered the appeals closed when appellants did not respond to the YHI emails, to request hearings. YHI argues that the appellants did not exhaust their appeal
hearing rights with YHI. It is technically true the appellants did not respond within ten (10) days of the respective YHI emails (which emails appear to have been at least in part intended as informal resolution attempts), to request a hearing with the YHI appeals entity; however, since that hearing request time expired, and as YHI makes no suggestion of any offer to extend such hearings request period and does not otherwise suggest any additional appeal step available to or remaining for appellants at the YHI appeals level at present, then YHI’s argument that appellants have not exhausted YHI’s appeal process would be inaccurate, based upon YHI’s own logic and procedures that they applied in this appeal. There doesn’t appear to be any remaining hearing rights that YHI is offering to appellants at this time. Since appellants did not request a hearing, those hearing rights with YHI are now “exhausted,” and since YHI has offered no additional appeal option for appellants at the YHI appeals level, then YHI’s position according to their actions, appears to be that the appeals are now closed. If the appeal cases are closed, as YHI seems to suggest based on their actions at the YHI appeals level, then the appellants have exhausted the State Exchange appeals process, and the case would be ripe for appeal to the Federal Marketplace Appeals Center. See 45 CFR §155.505 (b) and (c).

We conclude, however, that YHI’s appeal “closure” of appellants’ case was incomplete. YHI’s June 17, 2022 and July 27, 2022 emails to appellants in response to appellants’ appeal requests, both emphasize that the appeal requests were not accepted and are not valid because the requests were “not received within thirty (30) days from the date of your notice of eligibility determination (3/14/2022).” The appeals entity must dismiss an appeal if the appellant fails to submit a valid appeal request, which includes the requirement to file an appeal within the requisite timeframe. See 45 CFR §155.520(a)(4), 45 CFR §155.530 (a)(3). YHI did not err in what we interpret as their initial intent to permit appellants the opportunity to “cure the defect” in appellants’ appeal request, and in response to YHI’s invalidation of those appeal requests (see § 155.520(d)(2)); however, if YHI ultimately concluded that appellants did not cure the appeal request defect (which seems to be YHI’s position in this case) by either resubmission of a valid appeal request or by requesting a hearing to be able to show that failure to timely submit the appeal requests was due to exceptional circumstances, then the proper appeal “closure” would be an appeal dismissal and to issue appellants an appeal dismissal notice, in both appeal request instances. See 45 CFR §155.520(a)(4), §155.530 (a)(3), § 155.520(d)(2).

In this case, the record, and testimony from YHI representatives at hearing, confirm that YHI did not issue any appeal dismissal notices to the appellants. Similarly, even if YHI were to argue that the appeal request email responses that YHI messaged to appellants were intended by YHI to serve as some form of appeal dismissal notices, the email responses did not contain the requisite components of an appeal dismissal notice, particularly explaining the opportunity for appellant to request that such dismissal be vacated. See 45 CFR §155.530 (b)(3).

Therefore, since no dismissal notices were provided to the appellants, and since YHI’s email responses to appellants’ appeal requests did not explain to appellants how to request that YHI vacate the appeal dismissals, YHI did not satisfy the appeal dismissal notice requirements of 45 CFR §155.530 (b)(3), and appellants were not aware of and did not have the opportunity to request that the dismissal be vacated and to show good cause as to why the dismissal should be vacated, as part of their second-tier SBE appeal. Thus, while YHI is technically correct that appellants did not exhaust their state-level appeal process rights, we find good cause to determine that appellants were not aware of their right to request that the appeal dismissals be vacated at the state exchange appeal level.

YHI must provide appellants in this case with appeal dismissal notices in writing and, among other requirements, must provide the appellants an explanation of how the appellants can show good cause as to why the dismissal should be vacated, and must now present the appellants with such opportunity to request to vacate dismissal. See 45 CFR §155.530 (b)(3). If appellants then submit to YHI a request to vacate dismissal, in accordance with 45 CFR
§155.530 (d), YHI must review such request and adjudicate accordingly. During such adjudication, YHI must determine whether appellants had good cause for filing the original appeals after the appeal filing deadline (if their appeals were related to the March 14, 2022 YHI eligibility determination) including whether the appellants were actually appealing any other YHI eligibility determinations, such as but would not be limited to, a SEP denial (verbal or written), which determinations may have been made within the respective thirty (30) day periods preceding the dates appellants filed their two appeals to YHI.

Accordingly, we opine a second issue in this case is whether YHI should have granted the appellants a SEP following appellants’ application update for a change in income, which resulted in new eligibility for tax credits.

If an applicant or enrollee seeks to change their QHP enrollment, they must qualify for a SEP. In order to be eligible for a special enrollment period through the Exchange, an individual must have experienced a qualifying life event or special circumstance. Additionally, the individual must have reported the event or circumstance to the Exchange within the required timeframe.

Federal regulations set forth the reasons that applicants and/or enrollees may qualify for a special enrollment period. Those reasons are specified at 45 CFR 155.420, and include in part as follows:

(d) The Exchange must allow a qualified individual or enrollee, and, when specified below, his or her dependent, to enroll in or change from one QHP to another if one of the following triggering events occur:

   (6) Newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions.

      (i) The enrollee is determined newly eligible or newly ineligible for advance payments of the premium tax credit or has a change in eligibility for cost-sharing reductions;

      (ii) The enrollee’s dependent enrolled in the same QHP is determined newly eligible or newly ineligible for advance payments of the premium tax credit or has a change in eligibility for cost-sharing reductions;

Further, 45 CFR 155.420 (c) specifies that when an individual experiences a triggering event that qualifies for a SEP, the individual shall have 60 days from the date of the triggering event to select a QHP. In other words, an applicant has 60 days from the date of the triggering event to report the event and to use a SEP to enroll in a plan offered through the Exchange.

We note that while we will opine on this important SEP matter herein to inform YHI of how the SEP should have been applied in the March 14, 2022 eligibility determination and should be applied if YHI ultimately determines to vacate the appeal dismissal in this case and subsequently review the merits of the eligibility subject matter, we are not officially ordering action on or ruling regarding the matter of SEP eligibility, as our current jurisdiction in this specific case is over the specific procedural matter discussed above, of whether the appellant exhausted their state-level appeal rights prior to making this appeal to the Federal Marketplace Appeals Center. Because we are remanding this case to the YHI appeals entity, for the YHI appeals entity to provide appellants the opportunity to exhaust their appeal rights with YHI, we do not have jurisdiction over and will not herein rule upon the merits of any eligibility matters present in this case.

The record reflects that the appellants were auto-enrolled in a SelectHealth plan through YHI for the 2022 benefit
Because the appellants became newly eligible for APTC and CSRs as a result of the March 14, 2022 application update, the appellants were eligible at that time for a SEP, and YHI should have granted the appellants a SEP at that time and included notice of such SEP eligibility award in the March 14, 2022 eligibility determination. See 45 CFR § 155.420(d)(6). The record reflects that on March 14, 2022, YHI determined the appellants newly eligible for APTC based upon the change in the estimated 2022 household income. The record reflects that the appellants were determined eligible for APTC in the amount of $1,740.00 per month. YHI initially applied the appellants’ APTC effective April 1, 2022. However, the appellants were not granted a SEP to enroll in coverage at that time.

According to testimony from YHI representative [staff] the normal YHI procedure is that if an application is updated for a change in income, a “window of opportunity” automatically opens to allow individuals to shop for a different plan, and the individual is supposed to be notified of this opportunity. However, in this case, YHI manually changed the enrollment effective date to March 1, 2022, but YHI did not send an automatic notification of a SEP to the appellants to update their enrollment status.

Based upon these facts, the appellants are eligible for a special enrollment period. Based upon the evidence in the record and testimony given during the hearing, the appellants provided sufficient proof to verify that they experienced a qualifying life event due to their change in income, which made them newly eligible for APTC, and that they reported the event within the required timeframe. See 45 CFR 155.420(d)(6)(i) and(ii).

Upon consideration of the entire record in this case, we conclude that YHI did not properly close the appeal at the YHI appeals level, and did not inform the appellants regarding the process for requesting that an appeal dismissal be vacated and how to show good cause as to why the dismissal should be vacated. Therefore, while YHI is correct that appellants did not exhaust the state-level appeal process, such is no fault of appellants, and we conclude that YHI must now provide appellants with that opportunity, in accordance with 45 CFR §155.530 (b)(3). YHI must find good cause in this case to waive the vacate request original timely filing requirement that would have applied following the original appeal dismissal, if YHI had issued such dismissal. YHI must re-start the vacate request timeliness clock upon issuance of a new and written appeal dismissal notice to appellants, in accordance with the conclusions of this decision and the appeal dismissal notice requirements outlined in 45 CFR §155.530 (b)(3).

We also conclude that the determination made by YHI for the appellants on the March 14 eligibility determination correctly awarded appellants with APTC and CSR eligibility; however, the eligibility determination incorrectly excluded a SEP eligibility award. The contested eligibility determination notice, dated March 14, 2022, should be OVERTURNED for YHI to include a SEP eligibility award for the appellants.

Order

The YHI appeals entity is now ordered to provide appellants in this case with formal appeal dismissal notices in writing and, among other requirements, must provide the appellants an explanation of how the appellants can show good cause as to why the dismissal should be vacated, and must now present the appellants with such
opportunity to request to vacate dismissal. The timeliness clock for appellants to request to vacate the dismissal begins when YHI issues the formal dismissal notices. See 45 CFR §155.530 (b)(3).

This matter is remanded to YHI for further action consistent with this decision. YHI is directed to effectuate this eligibility appeal decision promptly and without delay, based upon the findings of facts and conclusions identified above.

This appeal decision is final and binding. Please keep this notice for your records.

SO ORDERED,

Crystal Walker
Federal Hearing Officer

December 7, 2022

Next Steps for Appellant

We have sent a copy of this decision to YHI instructing them to take further action consistent with this appeal decision.

For more information about how this decision affects you, you may contact YHI at YourHealthIdaho.org or 1-855-944-3246.

For More Help
If you have questions about your appeal call the Marketplace Appeals Center at 1-855-231-1751. TTY users can call 711. Hours of operation are Monday through Friday, 7:00 a.m. to 8:30 p.m. Eastern Time (ET).

Language Assistance Services
If you need help with your appeal in a language other than English, you have the right to get information in your language at no cost. Call the Marketplace Appeals Center at 1-855-231-1751. Hours of operation are Monday through Friday, 7:00 a.m. to 8:30 p.m. Eastern Time (ET).

Accessibility
To request appeal forms and notices in an alternate format like Braille, large print, data CD, audio CD, or to request a qualified reader, you can call the Marketplace Appeals Center at 1-855-231-1751. TTY users can call 711. Hours of operation are Monday through Friday, 7:00 a.m. to 8:30 p.m. Eastern Time (ET). You can also make a request in writing by fax (1-877-369-0130) or mail (Marketplace Appeals Center, P.O. Box 311, Pittston, PA 18640). Accommodations are provided at no cost to you.

Privacy Act Statement
The Marketplace protects the privacy and security of information about you that you have provided. To view the Privacy Act Statement, go to HealthCare.gov/individual-privacy-act-statement/. This notice was generated by the Marketplace based on 45 CFR part 155, subpart F. The information used to create this notice was collected from the application you filled out, from your appeal request and other associated materials you may have submitted,
and from other data sources through the electronic eligibility verification process to get an eligibility
determination for enrollment in a qualified health plan through the Marketplace and insurance affordability
programs. For more information about the privacy and security of your information, visit
HealthCare.gov/privacy/.

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The Health Insurance Marketplace doesn’t exclude, deny benefits to, or otherwise discriminate against any
person on the basis of race, color, national origin, disability, sex, or age. If you think you’ve been discriminated
against or treated unfairly for any of these reasons, you can file a complaint with the Department of Health and
Human Services, Office for Civil Rights by calling 1-800-368-1019 (TTY: 1-800-537-7697), visiting
hhs.gov/ocr/civilrights/complaints, or writing to the Office for Civil Rights/ U.S. Department of Health and Human
Services/200 Independence Avenue, SW/ Room 509F, HHH Building/ Washington, D.C. 20201.
This Notice has Important Information. This notice has important information about your Marketplace eligibility appeal. Look for key dates in this notice. You may need to take action by certain deadlines. You have the right to get this information and help in your language at no cost. Call 1-855-231-1751 and tell the agent the language you need and you’ll be connected with an interpreter.


Italiano (Italian) Questo avviso contiene informazioni importanti. Questo avviso contiene informazioni importanti relative all’appello da lei presentato a Marketplace circa la sua idoneità. Cerchi nell’avviso le date chiave: potrebbe essere richiesto di agire entro certe scadenze. Lei ha diritto a ricevere gratuitamente aiuto e spiegazioni nella sua lingua. Chiami il numero 1-855-231-1751 e dica all’operatore la lingua di cui ha bisogno; l’operatore la metterà in contatto con un interprete.

日本語 (Japanese) 本通知には重要な情報が含まれています。本通知には、Marketplace資格申請に関する重要な情報が含まれています。本通知内の主な日付を確認してください。指定された日付に申立を行う必要があります。あなたは、本情報を取得する権利があり、無料の言語翻訳サービスを受けることができます。1-855-231-1751 にお電話いただければ、あなたの国の言語で話すことができる通訳者につながります。

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