



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

## Notice of Decision

Decision Date: April 15, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000005492

[REDACTED]

Dear [REDACTED],

On March 17, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's denial of your request to be allowed to change qualified health plans for December 2015.

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.

### Legal Authority

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

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: April 15, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000005492



## Issues

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

Did NY State of Health properly deny your request to be allowed to enroll in a different qualified health plan for December 2015?

Did NY State of Health timely determine and properly notify you that you were not eligible for a special enrollment period?

## Procedural History

According to your NY State of Health (NYSOH) account, you were enrolled in a silver-level qualified health plan (QHP) through Health Republic Insurance of New York (Health Republic) and received advance payments of premium tax credits (APTC) and cost-sharing reductions, effective January 1, 2015.

On October 30, 2015, NYSOH issued a letter notifying you that Health Republic would no longer be able to offer you health care coverage beginning December 1, 2015. The notice informed you that you needed to select a new plan by November 15, 2015 to maintain health care coverage for the month of December 2015.

On November 4, 2015, NYSOH issued a disenrollment notice confirming that your silver-level QHP through Health Republic would end November 30, 2015.

On November 7, 2015, NYSOH issued an enrollment notice confirming your selection of a bronze-level QHP through Blue Cross Blue Shield of Western New

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York (BCBS), with a \$49.95 monthly premium after your APTC of \$229.00 was applied and an enrollment start date of December 1, 2015.

On December 9, 2015, you spoke with a representative from NYSOH's Account Review Unit and appealed your inability to change plans for December 2015.

On March 17, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed and held open for up to fifteen days to allow you the opportunity to submit supporting documentation.

As of April 4, 2016, the Appeals Unit had not received any documents from you and none were viewable in your Marketplace account. Therefore, the record was closed that same day and this decision is based on the record as developed at the March 17, 2016 telephone hearing.

## **Findings of Fact**

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

- 1) NYSOH's October 30, 2015 letter informing you that you needed to select a plan for December 2015 coverage contained the following statements:

### **Transitional Care**

It is possible that your current health care provider may not be in the network of your new health plan. You should be aware that in certain circumstances, enrollees who are pregnant, or who are in on-going treatment for a serious condition, qualify for transitional care that allows them to continue to receive care from their current health care provider for up to 60 days even if that provider does not participate with their new health plan. If you have questions about whether your provider is in the network of your new health plan, you should call the health plan you are considering joining. Member service contact information can be found at <http://info.nystateofhealth.ny.gov/PlanCustomerService>.

### **Annual Deductible**

If you are enrolled in a Health Republic plan that has an annual deductible, the NYS Department of Financial Services is working to ensure that your new health plan will not charge you for the amount of deductible you already met in 2015. Keep your records. You may need to provide your new plan with evidence that you have met all or part of the 2015 deductible.

The NY State of Health Customer Service Center and our certified in-person assistors are available to help you with a smooth transition to a new health plan starting on December 1, 2015.

- 2) You testified that you tried to call the NY State of Health Customer Service Center several times but no one answered so you were unable to obtain any assistance in selecting a plan.
- 3) You testified that you reviewed the bronze-level QHP through BCBS online via your NYSOH account and compared it with other QHP plans. You further testified that the screen for the BCBS bronze-level QHP showed there was a \$200.00 or \$300.00 deductible associated with that plan. You testified that you also reviewed the coverage tiers for pharmaceuticals being offered in that QHP because you wanted the best available tier to cover the cost of your medications.
- 4) You testified that you did not take a snapshot of that online screen because you were not anticipating any problem.
- 5) You testified that, on November 6, 2015, you selected the BCBS bronze-level QHP on your own, which showed a \$200.00 or \$300.00 deductible and which covered the prescription medications you take.
- 6) You further testified that this was the best option for you since you had already met the \$200.00 or \$300.00 deductible amount during 2015 with Health Republic and believed that your deductible payments would be carried over and applied to your deductible with BCBS in December 2015.
- 7) You testified that when you received the BCBS bronze-level QHP information in the mail, it stated you had a \$6,600.00 annual deductible.
- 8) You testified that, as a result, you contacted BCBS and were told you had to pay your monthly premium responsibility for December 2015 and meet the \$6,600.00 deductible before any claims for prescription medications and medical services could be processed by them.
- 9) You testified that you were directed by BCBS to contact NYSOH and were told by a NYSOH representative on December 9, 2015 that there was no error regarding the plan details for bronze-level BCBS QHP you had selected and that you could not switch health plans. That representative did not comment on the QHP information you reviewed online on November 6, 2015.
- 10) According to a December 9, 2015 telephone recording, you were told by a NYSOH Account Review Unit representative that NYSOH is not responsible for the plan selection you made. Your request for an appeal

and a manual request to change plans were processed by this representative on your behalf.

- 11) The December 9, 2015 entry on the Appeal Summary, dated February 19, 2016 as prepared by NYSOH stated that:

On 10/30/15, appellant Nicole P. was sent a notice ( [REDACTED] ) indicating the need to pick a plan for December 2015 since appellant's coverage with Health Republic would be ending 11/30/2015. On 11/06/2015, the appellant accessed her account online and enrolled in Value, Bronze, NS, INN, Dep25 with BCBS of Western NY effective 12/01/2015. The appellant requests to appeal the inability to change her QHP for December 2015.

(Document [REDACTED] p. 2).

- 12) On December 10, 2015, NYSOH issued a letter acknowledging your request for a telephone hearing to review your "[i]nability to change plans for December (Document [REDACTED])
- 13) You testified that you would not have selected a health plan with a \$6,600.00 deductible for one month and paid the premium for that month because, in effect, it was the equivalent of you having no coverage and having to pay for that month's premium anyway, as well as out-of-pocket expenses for prescription medications and a doctor's visit.
- 14) According to your NYSOH account and your testimony, you were not allowed to change plans for December 2015.
- 15) You testified that you paid the health insurance premium of \$49.95 for December 2015, along with all of your medical expenses that month, including \$175.00 for prescription medications that BCBS had previously pre-authorized and then refused to pay, \$10.00 for another prescription medication, and \$180.00 for a doctor's visit.
- 16) You testified that these expenses were not covered by BCBS on the basis that you had not met the \$6,600.00 deductible.
- 17) You testified that the deductibles you had paid to Health Republic were not carried over and applied to your BCBS bronze-level QHP, but that it only mattered if the BCBS QHP deductible was \$200.00 or \$300.00 annually since you had met that amount and not the \$6,600.00 deductible amount BCBS was asserting must first be met.

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

## **Applicable Law and Regulations**

### Free Look Law

During a specified period of time of not less than ten days nor more than twenty days from the date the policy is delivered to the policyholder, he or she may surrender the policy to the insurer together with a written request for cancellation of the policy. In such event, the insurer will refund any premium paid, including any policy fees or other charges for health insurance coverage (NY Ins. Law § 3216(c)(10)). A notice to this effect is to be prominently printed on the first page of the packet or in an attached notice (*Id.*).

### De Novo Review

NYSOH 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).

### NYSOH Eligibility Determinations

When an individual applies for insurance through NYSOH, NYSOH must determine that person’s eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 CFR § 435.1200(b)(3)(iii)).

NYSOH 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 NYSOH to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

### Enrollment Periods

NYSOH 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

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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, NYSOH provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a QHP, and an enrollee may change their enrollment to another plan. This is permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent involuntarily loses certain health insurance coverage:
  - (a) Health insurance considered to be minimum essential coverage...
- (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; or...
- (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...

(45 CFR § 155.420(d)(1(a), (4), and (9)).

For a special enrollment period that is triggered by circumstances as described in paragraphs (4) and (9) above, the Exchange must ensure that coverage is effective on an appropriate date based on the circumstances of the special enrollment period. (45 CFR § 155.420(b)(2)(iii)).

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)).

### Appealable Issues

An applicant has the right to appeal: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an

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eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination and (5) a denial of a request to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

## **Legal Analysis**

Initially, the record does not support that you exercised your right to a “free look” and returned the insurance policy to the health insurer, BCBS, within ten to twenty days of receipt of the same with a written request to cancel it. Therefore, this decision does not address timely cancellation of that policy.

The issue turns to whether, on December 9, 2015, NYSOH properly denied your request to enroll in a different QHP for the month of December 2015 by not affording you a special enrollment period for that month.

The record does not contain any notice in response to your request, however, it does contain a December 10, 2015 notice in which NYSOH acknowledges receipt of an appeal request and identifies the issues on appeal as “Inability to change plans for December.”

In this particular case, the lack a notice on the issue of your request to change QHPs 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 December 10, 2015 notice, which acknowledges your request change QHPs in December 2015 and the December 9, 2015 entry on the Appeal Summary, dated February 19, 2016, together permit the inference that NYSOH did not provide timely and proper notice of its denial of your request to change health plans in December 2015.

Since Appeal Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to a formal denial of your request to change health plans that month had a notice been issued. Therefore, currently at issue is whether you were properly denied a special enrollment period to change QHPs as of December 1, 2015.

NYSOH provided an open enrollment period from November 15, 2014 until February 15, 2015, which was later extended to February 28, 2015 for people who could not complete their application by the February 15, 2015 deadline. The record reflects that you had coverage with Health Republic since January 1, 2015 and, therefore, completed your application during the open enrollment period.

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

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QHP offered in NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

The record reflects that your health insurance coverage with Health Republic ended on November 30, 2015, because that company was no longer authorized to do business and offer health insurance in New York State as of that date. This event constitutes an involuntary loss of coverage during the year and is considered a triggering life event for purposes of a special enrollment period.

Initially, you were granted a special enrollment period as of October 30, 2015, based on the fact that you were to lose minimum essential coverage with Health Republic as of November 30, 2015. Therefore, you were properly permitted to enroll in coverage for December 2015 after the open enrollment period ended in February 2015.

On November 6, 2015, you chose a health plan, and on November 7, 2015, you were sent an enrollment notice confirming that your coverage in your bronze-level QHP, and the application of the APTC for which you were found eligible, would both begin effective December 1, 2015.

However, you credibly testified that the deductible/coinsurance listed online through your Marketplace account for the bronze-level plan you selected was stated as \$200.00 or \$300.00, and that you relied on that online information when you chose your health plan on November 6, 2015. You testified that you became aware that this information was incorrect when you received information from BCBS in the mail about the bronze-level QHP you had selected, which showed you had a \$6,600.00 deductible. The record reflects that you had a lengthy telephone conversation with a Marketplace representative and he did not comment on whether or not NYSOH had incorrect information on the day that you selected the bronze-level QHP. He did confirm that at the time of your call, the deductible for that plan was listed as \$6,600.00. Notwithstanding an lacking evidence to the contrary, you credibly testified and the record reflects that you conducted in-depth research when you selected a new QHP and would not have picked a plan with a \$6,600.00 deductible for one month, which as you stated is the equivalent of having to pay a premium for no insurance at all for the month of December 2015. Also, you testified and the record reflects that you made a request to change your QHP during this same phone call, but were told that a special request would have to be put in for approval for this change.

A special enrollment period can be triggered when a person's 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. In this instance, you inadvertently enrolled in a BCBS bronze-level QHP, which you believed, based on the QHP information provided online through your NYSOH account, had a \$200.00 or \$300.00 deductible/coinsurance. As such, your unintentional enrollment in the BCBS bronze-level QHP was based on

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misinformation provided to you by NYSOH via your online account and, therefore, triggers a special enrollment period.

Therefore, NYSOH's decision to deny you a special enrollment period for 2015, after you relied on misinformation provided by NYSOH, was not correct and is **RESCINDED**. By this decision, you are being granted a 60 day special enrollment period from the date of this decision within which to select a new QHP.

Ordinarily, the start date of an individual's enrollment in a QHP is based on the date the plan was selected. A plan selected between the first day and fifteenth day of the month goes into effect on the first day of the following month.

However, the effective date of a special enrollment period can depend on the circumstances by which it was triggered. As stated above, you should have been eligible for a special enrollment period based on the fact that you were provided with misinformation by NYSOH via your online account regarding the QHP you initially enrolled in for December 2015. In the case of a special enrollment period triggered by unintentional enrollment in a health plan caused by error or misrepresentation by NYSOH, NYSOH must ensure that coverage is effective on a date that is appropriate for the circumstances.

In this instance, the appropriate date for the circumstances is the date on which you would have been enrolled in a plan fitting your desired criteria, but-for the misinformation you reviewed online through your NYSOH account. Since your enrollment in the BCBS bronze-level QHP was effective December 1, 2015, you are eligible for coverage effective December 1, 2015.

Since you were entitled to a special enrollment period with a coverage effective date of December 1, 2015, your case is **RETURNED** to NYSOH to facilitate your enrollment in a QHP of your choosing as of December 1, 2015. By this decision, you are being granted a 60 day special enrollment period from the date of this decision within which to select a new QHP. NYSOH is also directed to facilitate your enrollment in a QHP of your choosing and application of your \$229.00 APTC to your monthly premium for the month of December 2015, provided you enroll and pay your premium responsibility.

You will be responsible for premium payments for the month of December 2015 in the QHP you select.

Lastly, we note that you expressed concern at the hearing that the Health Republic deductible amount you paid/met in 2015 was not being carried over and applied to your deductible amount for the month of December 2015 in your QHP for that month. This is not an appealable issue over which the Appeals Unit has jurisdiction and, therefore, we lack authority to rule on the matter. Since your issue concerns a health insurer and application of the 2015 deductible to the new

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QHP you may select for December 2015, you can seek assistance from the NYS Department of Financial Services by contacting them at their Consumer Hotline at (800) 342-3736 (Monday through Friday, 8:30 AM to 4:30 PM); or locally to (212) 480-6400; or you can file a complaint at <http://www.dfs.ny.gov/consumer/fileacomplaint.htm>

## **Decision**

NYSOH's denial of a special enrollment is RESCINDED.

By this decision, you are being granted a 60 day special enrollment period from the date of this decision within which to select a new QHP.

Your case is RETURNED to NYSOH to facilitate your enrollment in a QHP of your choosing as of December 1, 2015, and to facilitate application of your \$229.00 APTC to your monthly premium for the month of December 2015, provided you enroll and pay your premium responsibility.

**Effective Date of this Decision:** April 15, 2016

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

You are eligible for a special enrollment period of 60 days from the date of this decision to select a QHP of your choosing to be effective December 1, 2015.

You are eligible to have your \$229.00 APTC applied to your premium, effective December 1, 2015.

NYSOH will facilitate your enrollment in a QHP of your choosing as of December 1, 2015 and will facilitate application of your \$229.00 APTC to your December 2015 premium.

You are responsible for the payment of your portion of the December 2015 premium.

## **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.

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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**

NYSOH's denial of a special enrollment is **RESCINDED**.

By this decision, you are being granted a 60 day special enrollment period from the date of this decision within which to select a new QHP.

Your case is **RETURNED** to NYSOH to facilitate your enrollment in a QHP of your choosing as of December 1, 2015, and to facilitate application of your \$229.00 APTC to your monthly premium for the month of December 2015, provided you enroll and pay your premium responsibility.

You are eligible for a special enrollment period of 60 days from the date of this decision to select a QHP of your choosing to be effective December 1, 2015.

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You are eligible to have your \$229.00 APTC applied to your premium, effective December 1, 2015.

NYSOH will facilitate your enrollment in a QHP of your choosing as of December 1, 2015 and will facilitate application of your \$229.00 APTC to your December 2015 premium.

You are responsible for the payment of you portion of the December 2015 premium.

### **Legal Authority**

We are issuing this determination in accordance with 45 CFR § 155.545.

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

