



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

Notice of Decision

Decision Date: May 24, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006163

[REDACTED]

Dear [REDACTED],

On May 6, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health (NYSOH) denying your request to backdate your dental plan from February 1, 2016, to January 1, 2016.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of the 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 the NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification Number at the top of this letter.

Legal Authority

We are sending you this notice in accordance with 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

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NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006163



Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did the New York State of Health (NYSOH) properly determine that your Managed DentalGuard NY10 Family Plan, NS, INN, Adult/Family Dental, Dep25, Family Dental (Guardian) should be effective February 1, 2016?

Procedural History

On October 24, 2015, NYSOH issued a notice stating that based on the information from federal and state data sources, there was not enough to determine whether or not you qualified for financial assistance in paying for your health coverage. The notice directed you to return to your account by December 15, 2015 to provide more information or the financial assistance you are receiving may end.

On December 24, 2015, NYSOH issued an enrollment notice confirming that as of December 23, 2015, you were enrolled in Guardian with a plan enrollment start date of January 1, 2016.

On January 13, 2016, NYSOH issued a notice confirming that on January 12, 2016, you requested a telephone hearing to review: "Backdating of dental plan to 01/01/2016."

On May 6, 2016, you had a telephone hearing with a Hearing Officer from the NYSOH's Appeals Unit. Testimony was taken during the hearing under sworn testimony. The record is now complete and closed.

Findings of Fact

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

1. You are applying for health insurance through NYSOH for yourself.
2. According to the "Appeal Summary" in the Evidence Packet that was created for your telephone hearing with NYSOH Appeals Unit (Appeals Summary), you filed a complaint about NYSOH's website on December 9, 2015 (██████████).
3. According to the Appeal Summary, a defect was filed (██████████) on December 14, 2015, to address "We Are Sorry" error upon accessing account.
4. On December 24, 2015, the NYSOH issued an enrollment notice confirming that as of December 23, 2015, you were enrolled in Managed DentalGuard NY10 Family Plan, NS, INN, Adult/Family Dental, Dep25, Family Dental (Guardian) with a plan enrollment start date of January 1, 2016.
5. According to your NYSOH account, your Guardian plan has a start date of February 1, 2016.
6. You testified that you are unsure if you have any outstanding dental bills for January 2016.

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).

Stand-Alone Dental Plans

Each QHP and stand-alone dental plan that offers coverage through the Individual Marketplace enters a standard contract, and the same contract is used for both types of plans. In Appendix C of the contract, the term "QHP" is defined to include dental plans: "'Qualified Health Plan' or 'QHP' shall mean a health benefit plan that has received the Exchange's certification to be offered through

the Exchange, including a Stand-Alone Dental Plan except where otherwise noted.”

Special Enrollment Period

The NYSOH must provide an initial open enrollment period and 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, 2016, the Marketplace must ensure coverage is effective January 1, 2016, for QHP selections received by the Marketplace on or before December 15, 2015; however, the enrollment period was further extended to December 19, 2015 for individuals to have coverage effective January 1, 2016 (Press Release: NY State of Health Extends Enrollment Deadline for January 1

Coverage: https://www.health.ny.gov/press/releases/2015/2015-12-15_enrollment_deadline_extension.htm

Once the open enrollment period ends, the Marketplace must provide special enrollment period to qualified individuals when a triggering event occurs. During a special enrollment period, a qualified individual may enroll and enrollees may change QHPs (45 CFR § 155.420(a)(1)).

A special enrollment period is permitted when 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)(9)).

CMS has defined that error messages, which occurs when a consumer is not able to complete enrollment due to an error message, is a situation that would entitle an individual to a special enrollment period (Guidance for Issuers on Special Enrollment Periods for Complex Cases in after the Initial Open Enrollment Period, Affordable Exchange Guidance, Department of Health & Human Services, CMS, dated March 26, 2014, as retrieved on May 9, 2016 at: <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/complex-cases-SEP-3-26-2014.pdf>

Special Enrollment Period Effective Date:

Generally, the effective date for a QHP is the first day of the following month if the enrollment is received by the Marketplace on or before the fifteenth day of the month, and enrollments received after the fifteenth day of the month are effective the first day of the second following month (45 CFR § 155.420(b)(1)).

However, in the case of a qualified individual or enrollee eligible for a special enrollment period as described in 45 CFR § 155.420(d)(9), the NYSOH must

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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)).

Legal Analysis

The issue under appeal is whether or not NYSOH correctly determined that your enrollment start date in your dental plan should be February 1, 2016, not January 1, 2016.

The record does not contain a notice of eligibility determination or redetermination regarding the current issue under appeal. It does, however, contain a January 13, 2016 notice in which the NYSOH acknowledges receipt of an appeal request and identifies the issue on appeal as “Backdating of dental plan to 01/01/2016.”

The lack of a notice of eligibility determination on the issue of SEP does not prevent the Appeals Unit from reaching the merits of the case. 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 January 13, 2016 notice, which acknowledges the appeal on the issue of effective date of your dental plan, permits an inference that the Marketplace did deny your request to backdate your dental plan. Since the Appeals Unit review of NYSOH’s determinations are performed on a *de novo* basis, no deference would have been granted to the notice of eligibility determination had it been issued.

Enrollment in a qualified health plan (QHP) or stand-alone dental plan purchased through the Marketplace is governed by federal regulation and by a contract between the NYSOH and the insurance plans.

The Marketplace provided an open enrollment period from November 1, 2015 until December 15, 2015, which was later extended to December 19, 2015. Once the annual open enrollment period ends, a health plan applicant or enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered in the Marketplace. In order to qualify for a special enrollment period, a person must experience a triggering event.

A special enrollment period can be granted on the basis that an applicant or enrollee is not able to complete an enrollment due to an error message.

The record reflects that you filed a complaint regarding NYSOH’s website on December 9, 2015. Furthermore, a defect was filed on December 14, 2015, to address the “We Are Sorry” error message that appeared when accessing your NYSOH account.

Generally, when a qualified individual or their dependent enrolls in a qualified health plan through the Marketplace during a special enrollment period, the date in which the plan can take effect depends on the day a person selects the plan for enrollment.

However, when a qualified individual or enrollee is eligible for a special enrollment period based on 45 CFR § 155.420(d)(9), the NYSOH must ensure that coverage is effective on an appropriate date based on the circumstances of the special enrollment period.

The record reflects that you filed a complaint with the NYSOH on December 9, 2015, regarding an issue with the NYSOH's website. Therefore, had the situation been resolved on that date, you would have been enrolled in that plan on January 1, 2016.

Therefore, the NYSOH's determination that your Managed DentalGuard NY10 Family Plan, NS, INN, Adult/Family Dental, Dep25, Family Dental (Guardian) should be effective February 1, 2016 is RESCINDED.

Your case is RETURNED to the NYSOH to effectuate your coverage with Guardian effective January 1, 2016.

Decision

The NYSOH's determination that your Managed DentalGuard NY10 Family Plan, NS, INN, Adult/Family Dental, Dep25, Family Dental (Guardian) should be effective February 1, 2016 is RESCINDED.

Your case is RETURNED to the NYSOH to effectuate your coverage with Guardian effective January 1, 2016.

Effective Date of this Decision: May 24, 2016

How this Decision Affects Your Eligibility

Your Managed DentalGuard NY10 Family Plan, NS, INN, Adult/Family Dental, Dep25, Family Dental (Guardian) coverage is effective January 1, 2016

You will be responsible for any additional premiums for effectuating this coverage.

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

The NYSOH's determination that your Managed DentalGuard NY10 Family Plan, NS, INN, Adult/Family Dental, Dep25, Family Dental (Guardian) should be effective February 1, 2016 is RESCINDED.

Your case is RETURNED to the NYSOH to effectuate your coverage with Guardian effective January 1, 2016.

Your Managed DentalGuard NY10 Family Plan, NS, INN, Adult/Family Dental, Dep25, Family Dental (Guardian) coverage is effective January 1, 2016

You will be responsible for any additional premiums for effectuating this coverage.

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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:



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