



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

Notice of Decision

Decision Date: July 11, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006699

[REDACTED]

Dear [REDACTED]

On June 15, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health's denying you a special enrollment period.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the Account ID 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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DEPARTMENT OF HEALTH
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Decision

Decision Date: July 11, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006699

[REDACTED]

Issue

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

Did NY State of Health (NYSOH) properly determine that you did not qualify to change health plans outside of the open enrollment period?

Procedural History

On December 21, 2015, NYSOH issued an eligibility determination notice stating you are eligible to purchase a qualified health plan at full cost through NY State of Health.

On December 22, 2015, NYSOH issued an enrollment notice confirming that as of December 21, 2015, you were enrolled in MVP Premier Plus Silver 2 NS INN Dep25 (MVP Health Care) with a plan enrollment of January 1, 2016.

On February 1, 2016, your NYSOH account was updated.

Also on February 1, 2016, you spoke to the NYSOH Account Review Unit and requested an appeal insofar as denying you a special enrollment period.

On February 2, 2016, NYSOH issued an eligibility determination notice stating you are eligible to purchase a qualified health plan at full cost through NY State of Health, effective as of March 1, 2016. The notice stated that you may qualify to select a health plan outside of the open enrollment period.

On June 15, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and the

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record was left open until June 15, 2016, to allow you submit additional documentation.

On June 15, 2016, you faxed two-pages of documents to the NYSOH's Appeals Unit. That fax was marked as "Appellant Exhibit A" and made part of the record. The record is now complete and closed.

Findings of Fact

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

- 1) You testified that you are seeking to change the qualified health plan that you are enrolled in through NYSOH.
- 2) According to your NYSOH account, you were enrolled in MVP Premier Plus Silver 2 NS INN Dep25 (MVP Health Care) in 2015 and was auto-enrolled in the same plan in 2016.
- 3) You testified that you logged into your NYSOH account during the last week of December 2015 or the first week of January 2016 and changed your qualified health plan from MVP Health Care to a Fidelis Care health plan.
- 4) You testified you discovered that your plan had not been changed from MVP Health Care to Fidelis Care when you received a health insurance premium statement, from MVP Health Care, at the end of January 2016.
- 5) You testified that you wanted to change your health plan to Fidelis Care because your doctors accept it, and they offer plans with lower premiums and deductibles.
- 6) You testified you contacted NYSOH's customer service on February 1, 2016, and were told that your qualified health plan was never changed, and you did not qualify for a special enrollment period.
- 7) According to the "Appeal Summary" in the evidence packet that was created in anticipation of your appeal, you are "appealing the inability to change [your] QHP outside of Open Enrollment."
- 8) You faxed a printout of a screen in your NYSOH account. The printout states that your enrollment in Fidelis Care Silver ST INN Pediatric Dental Dep25, with a coverage period of February 1, 2016 through December 31, 2016, was in progress. The printout also states:

Information about the plans that you have chosen for you and your household is below. You can print out this page for your records by clicking on **Print This Page**.

(Appellant Exhibit A p. 2).

- 9) You testified that you have paid all of your MVP Health Care health insurance premiums to date and have not used the coverage in 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).

Enrollment in a Qualified Health Plan

The NY State of Health (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)(1)).

For the benefit year beginning on January 1, 2016, the annual open enrollment period began on November 1, 2015, and extended through January 31, 2016 (45 CFR §155.410(e)(2)).

Special Enrollment Periods

After each open enrollment period ends, the 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 generally 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;

- (b) Enrolled in any non-calendar year health insurance policy, even if they have the option to renew the expiring non-calendar year individual health insurance policy; or
 - (c) Pregnancy-related coverage; or
 - (d) Medically needy coverage.
- (2) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care; or
 - (3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status; or
 - (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 a non-Exchange entity providing enrollment assistance or conducting enrollment activities; or
 - (5) The enrollee or dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee; or
 - (6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or has a change in eligibility for cost-sharing reductions; or
 - (7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move; or
 - (8) The qualified individual is an Indian, as defined by section 4 of the Indian Health Care Improvement Act, and may enroll in a QHP or change from one QHP to another one time per month; 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)).

HHS has issued guidance stating enrollment error is a situation that warrants a special enrollment period. Enrollment error is defined to include an error to include, “consumers enrolled through [NYSOH], but the insurance company didn’t get their information due to technical issues.” (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 June 17, 2016 at: <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/complex-cases-SEP-3-26-2014.pdf>).

Legal Analysis

The issue under review is whether the NY State of Health (NYSOH) properly denied you a special enrollment period.

The record does not contain a notice of eligibility determination or redetermination regarding the current issue under appeal. However, the “Appeal Summary” within the evidence packet states that you are “appealing the inability to change [your] QHP outside of Open Enrollment.”

The lack of a notice of eligibility determination on the issue of a special enrollment period 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 NYSOH’s failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the Appeal Summary, which acknowledges the appeal on the issue of eligibility of a special enrollment period, permits an inference that NYSOH did deny your request for a special enrollment period. 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.

The NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record reflects that you were enrolled in health insurance coverage effective as of January 1, 2016.

Once the annual open enrollment period ends, an enrollee must qualify for a special enrollment period in order to change their enrollment to another plan. In order to qualify for a special enrollment period, a person must experience a triggering event.

You credibly testified that you logged into your NYSOH account during the last week of December 2015 or the first week of January 2016 and changed your qualified health plan from MVP Health Care to a Fidelis Care health plan.

The record also contains a printout from your NYSOH account. The printout shows that your enrollment in Fidelis Care Silver ST INN Pediatric Dental Dep25 for the coverage period of February 1, 2016 through December 31, 2016 was in progress. The coverage period listed on the printout is consistent with your testimony that you attempted to change plans during the open enrollment period.

Furthermore the printout states:

Information about the plans that you have chosen for you and your household is below. You can print out this page for your records by clicking on **Print This Page**.

Based on the totality of the evidence, the record supports a finding that you attempted to change your qualified health plan during the open enrollment period and reasonably believed you changed plans based on the information in your NYSOH account.

Therefore, NYSOH's determination to deny you a special enrollment period is **RESCINDED**.

Your case is RETURNED to NYSOH to facilitate your re-enrollment in a qualified health plan. You have 60 days from the date of this decision to change the qualified health plan you are currently enrolled in.

Decision

NYSOH determination to deny you a special enrollment is period is **RESCINDED**.

Your case is RETURNED to NYSOH to facilitate your change in qualified health plans. You have 60 days from the date of this decision to change the qualified health plan you are currently enrolled in.

Effective Date of this Decision: July 11, 2016

How this Decision Affects Your Eligibility

You qualify for a special enrollment period and are eligible to change qualified health plans.

You have 60 days from the date of this decision to change qualified health plans.

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 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 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 determination to deny you a special enrollment is period is **RESCINDED**.

Your case is **RETURNED** to NYSOH to facilitate your change in qualified health plans.

You qualify for a special enrollment period and are eligible to change qualified health plans.

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).

You have 60 days from the date of this decision to change qualified health plans.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

