



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

Notice of Decision

Decision Date: July 26, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006754

[REDACTED]

Dear [REDACTED]

On June 17, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health's February 3, 2016 eligibility determination notice.

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 26, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006754

[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 your spouse did not qualify to select a health plan outside of the open enrollment period?

Procedural History

On January 6, 2016, NYSOH issued an eligibility determination notice, in relevant part, that your spouse was eligible to receive up to \$0.00 of advance premium tax credits per month effective as of February 1, 2016.

Also on January 6, 2016, NYSOH issued an enrollment notice, in relevant part, confirming that as of January 5, 2016, your spouse's "health coverage with Qualified Health Plan will not begin until you pick a plan."

On February 2, 2016, your NYSOH account was updated.

On February 2, 2016, you spoke to the NYSOH Account Review Unit and requested an appeal insofar as your spouse's eligibility for a special enrollment period.

On February 3, 2016, NYSOH issued an eligibility determination notice, in relevant part, that your spouse was eligible to receive up to \$0.00 of advance premium tax credits per month effective as of March 1, 2016. The notice also stated that your spouse did not qualify to select a health plan outside of the open enrollment period.

On June 15, 2016, you had a scheduled telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. You requested to adjourn your hearing, and it was rescheduled for June 17, 2016.

On June 17, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing, and you gave the Hearing Officer permission to review your conversations with NYSOH customer service.

The Hearing Officer requested a recording of your January 5, 2016, conversation with NYSOH customer service unit. That record has been 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 enroll your spouse in coverage through NYSOH.
- 2) You testified that you contacted NYSOH in January 2016 to enroll your spouse, but was told by a NYSOH customer service representative to call back after completing your 2015 federal income tax return to have an accurate depiction of your 2016 household income.
- 3) You testified that you were never notified by the NYSOH customer representative that your spouse needed to be enrolled during the open enrollment period to enroll in health coverage through NYSOH.
- 4) According to your NYSOH account, your NYSOH account was only updated on January 5, 2016, during the month of January 2016.
- 5) You did not mention enrolling your spouse in health coverage to the customer service representative on January 5, 2016 (Appellant Exhibit A).
- 6) According to your NYSOH account, your spouse was not enrolled in health coverage through NYSOH in 2015.
- 7) On January 6, 2016, NYSOH issued an enrollment notice, in relevant part, confirming that as of January 5, 2016, your spouse's "health coverage with Qualified Health Plan will not begin until you pick a plan." The notice also states, "You will be able to change your plan at any time during the open enrollment period. If you missed the deadline to enroll in a plan for 2015, you may not be able to enroll in a health insurance plan through NY State of Health until the next open enrollment period, unless you qualify for a special enrollment period" (Document [REDACTED]).

- 8) According to your NYSOH account, you contacted NYSOH on February 2, 2016, and attempted to enroll your spouse in a health plan.
- 9) On February 3, 2016, NYSOH issued an eligibility determination notice, in relevant part, that your spouse did not qualify to select a health plan outside of the open enrollment period (Document [REDACTED]).

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

Applicable Law and Regulations

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)).

CMS has defined misconduct to include misinformation misrepresentation, or inaction by individuals or entities providing formal enrollment assistance (like an insurance company, Navigator, certified application counselor, Call Center Representative, or agent or broker) resulting in (1) A failure to enroll the consumer in a plan; (2) Consumers being enrolled in the wrong plan against their wish; or (3) The consumer not receiving advance premium tax credits or cost-sharing reductions (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,

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2014, as retrieved on June 22, 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 your spouse a special enrollment period.

The NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record reflects that your spouse was not enrolled in health insurance coverage through NYSOH during the open enrollment period.

Once the annual open enrollment period ends, an applicant must qualify for a special enrollment period in order to enroll in health insurance coverage offered by NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

You testified that you contacted NYSOH in January 2016 to enroll your spouse, but was told by a NYSOH customer service representative to call back after completing your 2015 federal income tax return to have an accurate depiction of your 2016 household income. Furthermore, you testified that the representative never notified you that your spouse needed to be enrolled during the open enrollment period to enroll in health coverage through NYSOH.

The record reflects that your NYSOH account was only updated on January 5, 2016, during the month of January 2016. During that conversation, you did not mention enrolling your spouse in health coverage to the customer service representative. Furthermore, the January 6, 2016, enrollment notice stated that your spouse's "health coverage with Qualified Health Plan will not begin until you pick a plan." The notice also stated "[y]ou will be able to change your plan at any time during the open enrollment, period. If you missed the deadline to enroll in a plan for 2015, you may not be able to enroll in a health insurance plan through NY State of Health until the next open enrollment period, unless you qualify for a special enrollment period."

Based on the available record, your spouse's non-enrollment in health coverage was not the result of an error, misrepresentation, or inaction of an officer, employee, or agent of the NYSOH.

The record does not support that a triggering event has occurred and your spouse would qualify for a special enrollment period.

Therefore, NYSOH's February 3, 2016, eligibility determination notice stating, in relevant part, that your spouse does not qualify for a special enrollment period is **AFFIRMED**.

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Decision

The February 3, 2016, eligibility determination insofar as stating that your spouse is not eligible for a special enrollment period is **AFFIRMED**.

Effective Date of this Decision: July 26, 2016

How this Decision Affects Your Eligibility

Your spouse does not qualify for a special enrollment period to enroll in a qualified health plan at this time.

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.

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

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P.O. Box 11729
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- By fax: 1-855-900-5557

Summary

The February 2, 2016, eligibility determination insofar as stating that your spouse is not eligible for a special enrollment period is AFFIRMED.

Your spouse does not qualify for a special enrollment period to enroll in a qualified health plan at this time.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

