



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

## Notice of Decision

Decision Date: June 17, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000006762

[REDACTED]

Dear [REDACTED],

On June 14, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 3, 2016 eligibility determination notice denying you and your spouse a special enrollment period, and your request for a health insurance exemption for 2016.

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(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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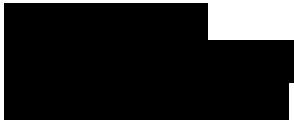


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## Decision

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NY State of Health Number: [REDACTED]  
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## Issues

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

Did the NY State of Health (NYSOH) properly determine that you and your spouse were not eligible for a special enrollment period?

Based on your interactions with the NY State of Health, do you qualify for a health insurance exemption for 2016?

## Procedural History

On February 2, 2016, NYSOH received your application for health insurance. In response to this application, NYSOH prepared a preliminary eligibility determination stating that you and your spouse were eligible for an advance premium tax credit (APTC) of up to \$223.00 per month. It did not make a decision on whether you and your spouse were eligible to enroll in a plan outside of the open enrollment period.

Also on February 2, 2016, you spoke to the NYSOH's Account Review Unit and appealed that eligibility determination insofar as both you and your spouse could not enroll in a health plan outside of the open enrollment period.

On February 3, 2016, NYSOH issued a notice of eligibility determination that stated that you and your spouse were eligible to receive an advance premium tax credit (APTC) of up to \$223.00 per month. Your spouse's eligibility was conditional pending receipt of documentation to confirm her citizenship status

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before May 2, 2016. It further stated that you and your spouse must have a qualifying event in order to select a plan outside of open enrollment.

On June 14, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

## **Findings of Fact**

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

- 1) The record reflects that you submitted your initial application seeking health insurance for you and your spouse on February 2, 2016.
- 2) You testified reflects that neither you nor your spouse had recently and involuntarily lost health insurance.
- 3) You testified, and the record reflects, that your household has not changed since your son was born on [REDACTED].
- 4) The record reflects that there has been no recent change in the citizenship status for either you or your spouse.
- 5) You testified that has been no recent change of your residence address.
- 6) The record reflects that neither you nor your spouse were not recently and newly eligible or ineligible for advance premium tax credits, nor was there a change in your eligibility for cost-sharing reductions.
- 7) You testified that you were contacted by a MetroPlus representative on or about January 29, 2016, which was a Friday during that week. You further testified that this person was forced to leave a voicemail message at that time since, due to religious observances, both you and your spouse were not permitted to answer the phone call.
- 8) You testified that you contacted the MetroPlus representative on February 2, 2016 to complete your application process. However, since you completed the application after January 31, 2016, you were no longer permitted to enroll in a plan outside of the open enrollment period.
- 9) You testified that you were not only seeking to enroll you and your spouse in a health plan for the remainder of 2016, you were seeking to avoid incurring a tax penalty during 2016 as a result of not having been permitted to enroll in a plan.

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

## **Applicable Law and Regulations**

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

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 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,

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employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange; 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; or
- (10) A qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities

(45 CFR § 155.420(d)).

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)).

### Exemptions

A shared responsibility payment may be imposed with respect to a non-exempt individual who does not maintain minimum essential coverage. However, a hardship exemption from this payment may be granted to an applicant if it is determined that certain circumstances existed (45 CFR § 155.605(d)).

Pursuant to federal regulations, NYSOH may defer to the US Department of Health and Human Services (HHS) on the matter of hardship exemptions (45 CFR § 155.625(c)), and it has elected to do so.

## Legal Analysis

The first issue under review is whether NYSOH properly denied you a special enrollment period.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record reflects that you submitted a complete application on February 2, 2016. Therefore, you did not complete your application during the open enrollment period.

You testified that due to religious observances you were not permitted to answer a phone call you received from a MetroPlus representative on Friday, January 29, 2016. You further testified that once you were able to check your voicemail, you contacted the MetroPlus representative on Tuesday, February 2, 2016 to complete your application process. However, at that time, you were outside the open enrollment period and unable to select a health plan.

Since the credible evidence of record reflects that you made no attempt to contact either NYSOH or MetroPlus the following two days, either January 30, 2016 or January 31, 2016, to complete your application, and such actions by the MetroPlus plan representative do not rise to the level of an error, misrepresentation, or inaction of an officer, employee, or agent of the NYSOH or HHS, or its instrumentalities as evaluated and determined by the NYSOH, we are unable to award you and your spouse a special enrollment period on that basis.

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

The credible evidence of record further indicates that no triggering events have occurred that would qualify you or your spouse for a special enrollment period.

Therefore, the NYSOH's February 3, 2016 eligibility determination notice that you and your spouse do not qualify to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

The second issue under review is whether you and your spouse qualify for a health insurance exemption for 2016.

New York has opted not to provide determinations on whether applicants are eligible for exemptions to the shared responsibility payment. Therefore, if you wish to be considered for a hardship exemption, which would exempt you and your spouse from paying a penalty for not having health insurance, check the Federal Marketplace website ([www.healthcare.gov](http://www.healthcare.gov)) for further information.

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## **Decision**

The February 3, 2016 eligibility determination notice is AFFIRMED.

NYSOH does not currently make determinations as to applicants' eligibility for an exemption from a shared responsibility payment.

**Effective Date of this Decision:** June 17, 2016

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

You and your spouse do not qualify for a special enrollment period to enroll in a qualified health plan at this time.

If you wish to pursue an exemption, you must apply through the federal government.

## **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  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The February 3, 2016 eligibility determination notice is AFFIRMED.

NYSOH does not currently make determinations as to applicants' eligibility for an exemption from a shared responsibility payment.

You and your spouse do not qualify for a special enrollment period to enroll in a qualified health plan at this time.

If you wish to pursue an exemption, you must apply through the federal government.

## **Legal Authority**

We are sending you this notice in accordance with 45 CFR § 155.545(a).

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

