



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

Notice of Decision

Decision Date: July 14, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006818

[REDACTED]

Dear [REDACTED]

On June 21, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 2, 2016, eligibility determination.

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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NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006818



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 select a different health plan outside of the open enrollment period?

Procedural History

On December 6, 2015, NYSOH received your application for health insurance.

On December 7, 2015, NYSOH issued a notice of eligibility determination that stated that you are eligible to receive an advance premium tax credit of up to \$112.00 per month. This eligibility was effective January 1, 2016.

On December 7, 2015, an enrollment confirmation notice was issued confirming your enrollment in a Silver level health plan effective January 1, 2016.

On February 2, 2016, an eligibility determination notice was issued finding you eligible to receive an advance premium tax credit of up to \$112.00 per month effective January 1, 2016. The notice further explained you did not qualify to select a health plan outside of the open enrollment period. You must have a qualifying event to enroll in a plan outside of open enrollment.

On February 3, 2016, you spoke to NYSOH's Account Review Unit and appealed the February 2, 2016, eligibility determination insofar as you were not eligible to enroll in a Bronze level health plan outside of the open enrollment period.

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On May 12, 2016, a disenrollment notice was issued terminating your coverage in your Silver level health plan effective February 29, 2016 because a premium payment was not received by your health plan.

On June 21, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and kept open 15 days to provide income documentation from you Unemployment Insurance Benefits for the month of March 2016. As of the date of the close of the record, no documentation was received and will not be considered for purposes of your appeal.

Findings of Fact

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

- 1) The record indicates that you submitted your initial application for 2016 health insurance coverage on December 6, 2015.
- 2) You testified, and the record reflects, you contacted NYSOH on February 3, 2016 to try and switch your Silver level health plan to a Bronze level health plan.
- 3) You testified that you lost health insurance coverage on February 29, 2016 because you were not able to make a premium payment requested by your health plan.
- 4) You testified you had contacted your health plan, and they were willing at first to let you switch plans by providing you a 90 day window and that they could adjust the premiums, but you stated you were waiting for an appeal hearing and did not elect to take that offer.
- 5) You testified your income has changed since you originally applied on December 6, 2015 because of seasonal employment, you testified you recently became employed again, but expect to make approximately \$300.00 less per week for 2016.
- 6) The record reflects based upon the events tab in your NYSOH account, you selected your health plan online on your own.
- 7) You testified you believe you had originally enrolled in a Bronze level health plan effective January 1, 2016. You did not provide a specific description of what made you believe you had selected a Bronze level plan.

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

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, 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)).

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)).

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

- (1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or
- (2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128”

(45 CFR § 155.420(e)(1)(2)).

Legal Analysis

The issue under review is whether NYSOH properly denied you a special enrollment period, effective January 1, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on December 6, 2015, and enrolled in a Silver level qualified health plan effective January 1, 2016.

You then contacted NYSOH on February 3, 2016 to try and switch your Silver level health plan to a Bronze level health plan. Therefore, you did not complete your enrollment in a Bronze level health plan 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 health plan offered in NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

You testified that your previous insurance coverage ended February 29, 2016, because of a failure to pay the premium payment for your qualified health plan. However, a loss of health insurance coverage such as that referenced above does not include, "voluntary termination of coverage or other loss due to a failure to pay premiums on a timely basis."

A special enrollment period can be granted if a qualified individual's enrollment or non-enrollment into a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of NYSOH or its instrumentalities as evaluated and determined by the NYSOH.

The record reflects based upon the events tab in your NYSOH account, you selected your health plan online on your own. You testified you believe you had originally enrolled in a Bronze level qualified health plan effective January 1, 2016. You did not provide a specific description of what made you believe you had selected a Bronze level plan. Additionally, the enrollment confirmation notice which was issued on December 7, 2015, provided a specific description of your Silver level qualified health plan including premium responsibility and start date.

You testified you had contacted your health plan, and they were willing at first to let you switch plans by providing you a 90 day window and that they could adjust the premiums, but you stated you were waiting for an appeal hearing and did not elect to take that offer.

Although you were granted an appeal in order to challenge the denial of a special enrollment period by NYSOH, there was no misrepresentation by it, or it's

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instrumentalities that would make you decline an offer by your health plan to adjust premium payments or switch plans.

Since the record does not indicate that NYSOH, by action or inaction, made an error or misrepresented information, a special enrollment period cannot be granted.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2016, no other triggering events have occurred that would qualify you for a special enrollment period.

Therefore, NYSOH's February 2, 2016, eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

You testified your income has changed since you originally applied on December 6, 2015, because of seasonal employment, you testified you recently became employed again, but expect to make approximately \$300.00 less per week for 2016. The record was developed during your hearing and kept open 15 days for you to provide your income documentation to the NYSOH Appeal's Unit. As of the close of the record on July 6, 2016, no documentation was received, therefore an accurate determination of your eligibility or ineligibility for cost-sharing reductions cannot be obtained.

Decision

The February 2, 2016, eligibility determination is **AFFIRMED**.

Effective Date of this Decision: July 14, 2016

How this Decision Affects Your Eligibility

You do not qualify for a special enrollment period 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

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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 2, 2016, eligibility determination is AFFIRMED.

You do not qualify for a special enrollment period 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:

