



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

## Notice of Decision

Decision Date: June 28, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000006863



Dear [REDACTED],

On June 23, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 9, 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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## Decision

Decision Date: June 28, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000006863



## 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 were not qualified to select a health plan outside of the open enrollment period for 2016?

## Procedural History

On February 4, 2016, NYSOH received your completed application for health insurance.

On February 5, 2016, NYSOH issued a notice of eligibility determination that stated that you were eligible to purchase a qualified health plan at full cost. That determination further stated you must have a qualifying event in order to select a plan outside of open enrollment period for 2016.

Also on February 5, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On February 9, 2016, NYSOH issued a notice of determination that stated you do not qualify to select a health plan outside of the open enrollment period for 2016.

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On June 23, 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 indicates that you submitted your initial application for 2016 health insurance coverage on February 4, 2016 under NYSOH account number [REDACTED].
- 2) You testified that you first attempted to set up a NYSOH account on January 29, 2016. However, there were technical problems and the account could not verify your identity. You went into this account on January 31, 2016 to complete your application but you were again unsuccessful due to identify verification issues.
- 3) You testified you tried repeatedly to contact NYSOH by phone but were unable to speak to anyone.
- 4) You testified you set up a new account on February 1, 2016 and still had identity verification problems. You testified you were able to speak to a NYSOH representative on February 4, 2016. At that time, they gave your specific directions on steps to take to rectify the identity proofing issues. You testified you followed the instructions and were then able to submit an application. This application is under [REDACTED], NYSOH account number [REDACTED].
- 5) A search of the NYSOH records shows that on January 29, 2016 an account was set up under name [REDACTED] and given NYSOH account number [REDACTED]. That account events tab reflects identity proofing failures during multiple attempts on January 29 and January 31, 2016.

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)).

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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 a triggering events occurs such as:

...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 (45 CFR § 155.420(d)(4)).

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)).

## **Legal Analysis**

The issue under review is whether NYSOH properly denied you a special enrollment period, as of February 9, 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 February 4, 2016. Therefore, you did not complete your application 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.

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 the [NYSOH] or [the U.S. Department of Health

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and Human Services], or its instrumentalities as evaluated and determined by the [NYSOH].

The credible evidence of record indicates that on January 29, 2016, you set up an account in the NYSOH website in order to select a health plan prior to the open enrollment period ending on January 31, 2016. The record reflects that this account was under the name of [REDACTED] and given NYSOH account number [REDACTED]. You were unable to complete your application under this account due to identity proofing failures. You accessed this account on January 31, 2016 and were again blocked from completing an application due to identity proofing failures. You credibly testified that you tried calling the Marketplace numerous times but were unable to get through.

Since you attempted to select a health plan during open enrollment period and were unable to because of system errors, your non-enrollment was unintentional, inadvertent or erroneous and was the result of error, misrepresentation, or inaction of an agent of the NYSOH, you should have been granted a special enrollment period as of February 9, 2016.

Therefore, NYSOH's February 9, 2016 eligibility determination that you did not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this decision.

## **Decision**

The February 9, 2016 eligibility determination is MODIFIED to state that you are eligible for a special enrollment period until 60 days from the date of this decision.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage.

**Effective Date of this Decision:** June 28, 2016

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

You qualify for a special enrollment period.

You have 60 days from the date of this decision to enroll into a plan.

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).

## **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 9, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this decision.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage.

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You qualify for a special enrollment period.

You have 60 days from the date of this decision to enroll into a plan.

### **Legal Authority**

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



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

