



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

Notice of Decision

Decision Date: July 25, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006934

[REDACTED]

Dear [REDACTED]

On July 13, 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).

This page intentionally left blank.



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

Decision

Decision Date: July 25, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006934



Issue

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

Did NY State of Health (NYSOH) properly deny you the ability to select a health plan outside of the open enrollment period for 2016?

Procedural History

On October 21, 2015, NYSOH received your application for health insurance.

On October 29, 2015, NYSOH issued a renewal notice stating it was time to renew your health insurance for the next year. The notice explained that you would be re-enrolled in your current health plan for another year. Your Silver level health plan would begin January 1, 2016. There were no other actions required on your part.

On November 22, 2015, an enrollment confirmation notice was issued terminating your coverage with your Silver level health plan effective December 31, 2015, but that you would be automatically renewed in the same plan for 2016.

On November 25, 2015, an enrollment confirmation notice was issued confirming your enrollment in a Silver level qualified health plan with a premium responsibility of \$440.05 per month starting January 1, 2016.

On February 8, 2016, you spoke to NYSOH's Account Review Unit and appealed the verbal denial of the ability to change your plan outside of the open enrollment period for 2016.

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).

Also on February 8, 2016 you updated your NYSOH application.

On February 9, 2016, an eligibility determination notice was issued finding you eligible to purchase a qualified health plan at full cost effective January 1, 2016. The notice further stated you qualified to select a health plan outside of the open enrollment period for 2016. You were asked to review your health plan options and confirm your selection no later than April 30, 2016.

On July 13, 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 support the following findings of fact:

- 1) You testified that you are seeking insurance for yourself.
- 2) You testified that your employer reimburses you for your health insurance coverage, you are seeking to switch plans to a lower cost plan so that your company will provide reimbursement.
- 3) The record indicates that you were automatically enrolled in the same qualified health plan for 2016.
- 4) The record reflects and your testimony supports that the plan increased in price. As a result you contacted the NYSOH on February 8, 2016 to switch to a lower cost plan.
- 5) You testified that you were told you could not change plans outside of the open enrollment period for 2016.
- 6) You testified that you were not aware of the February 9, 2016 eligibility determination notice stating you qualified to select a health plan outside of the open enrollment period for 2016, and to choose a health plan no later than April 30, 2016.
- 7) The record reflects that on February 8, 2016 your screen name ID [REDACTED] accessed your account online and submitted an answer on your application for non-financial assistance that you would soon be losing your health insurance as of April 30, 2016.
- 8) You testified your income has not changed since initially applying for health insurance.

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).

9) You testified that you have not moved recently.

10) You testified that your household size has remained the same since initially applying for health insurance.

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

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).

- (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)).

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).

Legal Analysis

On February 8, 2016, you spoke with NYSOH's Account Review Unit and requested a special enrollment to select a new health plan. The record does not contain a notice of eligibility determination or redetermination on the issue of denial of special enrollment period. It does contain a February 8, 2016 notice in which the NYSOH acknowledges receipt of an appeal request and identifies one of the issues on appeal as "Denial of Special Enrollment Period (SEP)."

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. 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 February 8 notice, which acknowledges the appeal on the issue of special enrollment denial, permits an inference that the NYSOH did deny your special enrollment request.

Since the Appeals Unit review of NYSOH determinations are performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued. Therefore, the issue under review is whether you were properly denied a special enrollment period.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you were enrolled into a silver level qualified health plan, effective January 1, 2016.

The record indicates that you requested to change your qualified health plan enrollment on February 8, 2016, which is outside of the annual open enrollment period for 2016.

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 by NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering life event.

A special enrollment period can be granted if a qualified individual's previous insurance coverage ended.

Your online account with the NYSOH shows that your screen name ID [REDACTED] accessed your account online and submitted an answer on your application for non-financial assistance that you would soon be losing your health insurance April 30, 2016. However, during your hearing you testified that this was not the case, that in fact your employer reimburses you for your health insurance

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).

coverage, you are seeking to switch plans to a lower cost plan so that your company will provide reimbursement. You still are covered under your qualified health plan, but that your employer cannot reimburse you the full amount of premium that you had for the 2015 year.

Therefore, NYSOH's February 9, 2016, eligibility determination that you do qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you do not qualify for a special enrollment period for 2016.

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 determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

Decision

The February 9, 2016, eligibility determination is MODIFIED to state that you do not qualify for a special enrollment period.

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

Effective Date of this Decision: July 25, 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 must be done within four months of the Decision Date, which appears on the first page of this Decision.

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).

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 state that you do not qualify for a special enrollment period.

NYSOH's determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 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:

