



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

Notice of Decision

Decision Date: July 1, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006935

[REDACTED]

Dear [REDACTED]

On June 7, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 9, 2016 and March 8, 2016 eligibility determination notices.

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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NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006935

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Issue

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

Did NY State of Health (NYSOH) properly determine in the February 9, 2016 and March 8, 2016 eligibility determination notices that you did not qualify to select a health plan outside of the open enrollment period?

Procedural History

Three updates were made to your account on November 24, 2015 over a span of less than ten minutes.

On November 25, 2015, NYSOH issued a notice of eligibility determination with regard to the last application submitted on November 24, 2015, stating that you were eligible to receive up to \$237.00 per month in advance payments of the premium tax credit (APTC), as well as cost-sharing reductions, effective January 1, 2016. You were also directed to pick a health plan.

There is no indication in your account that you enrolled in a plan at that time.

Your account was updated on January 21, 2016.

On January 22, 2016, an eligibility determination notice was issued finding you eligible to receive up to \$237.00 per month in APTC, as well as cost-sharing reductions, effective March 1, 2016. You were also directed to pick a health plan.

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Again, there is no indication in your account that you enrolled in a plan at that time.

On February 8, 2016, you contacted NYSOH Account Review Unit and requested an appeal regarding the denial of a special enrollment period to select a health plan outside of the open enrollment period.

On February 9, 2016, NYSOH issued an eligibility determination finding you eligible to receive up to \$237.00 per month in APTC, as well as cost-sharing reductions, effective March 1, 2016. However, you were found ineligible to select a health plan outside of the open enrollment period for 2016.

On March 8, 2016, NYSOH issued an eligibility determination notice stating that you were eligible to receive up to \$237.00 per month in APTC, as well as cost-sharing reductions, effective March 1, 2016. This determination notice found that you eligible to select a health plan outside of open enrollment for 2016. You were asked to review your health plan options and confirm your selection no later than April 30, 2016.

On June 2, 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 proceeding.

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 on November 24, 2016 you went to a Navigator to assist you in applying for insurance for 2016. The record reflects no enrollment was submitted at that time. You testified that you did not enroll at that time due to computer problems, and an inability to log into your account.
- 3) You testified that you did not receive the January 22, 2016 eligibility determination notice finding you eligible to receive up to \$237.00 per month in APTC, as well as cost-sharing reductions, effective March 1, 2016 and to choose a health plan until February 4, 2016.
- 4) You testified that you receive your notices by regular mail, and confirmed your address had not changed. However, there was a large snowstorm in your area during that time period, delaying mail being delivered to you.
- 5) The record reflects you contacted NYSOH on February 8, 2016, and were denied a special enrollment period. You then appealed that determination.

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- 6) On March 8, 2016 a representative of NYSOH reviewed your eligibility and found you eligible to enroll in a qualified health plan outside of open enrollment.
- 7) The March 8, 2016 eligibility determination notice indicated you could select a health plan by April 30, 2016. You testified you elected not to enroll in a health plan, as you had decided to wait for your appeal hearing to see how to proceed with selecting and enrolling in coverage due to the conflicting information being sent to you.
- 8) You testified that you had not had insurance for a few years.
- 9) You testified that you had not gained a dependent or become a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care.
- 10) You testified that your citizenship status had not changed, no qualified health plan (QHP) in which you were enrolled substantially violated a material provision of its contract in relation to you, you had not gained access to new QHPs as a result of a permanent move, and you are not an Indian as defined by section 4 of the Indian Health Care Improvement Act.
- 11) You testified that it may be the case that your non-enrollment in a QHP coverage for yourself was unintentional, inadvertent, or erroneous and the result of the error, misrepresentation, or inaction of an officer, employee, or agent of NYSOH.
- 12) You 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.
- 13) You did not testify to any exceptional circumstances that led to your non-enrollment in coverage.
- 14) You did not testify that you had not been enrolled in QHP coverage or had been eligible for but had not received advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Marketplace entity providing enrollment assistance or conducting enrollment activities.

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)).

Legal Analysis

The issue under review is whether the NY State of Health (NYSOH) properly denied you a special enrollment period, effective March 1, 2016.

On November 24, 2015, NYSOH received your application for financial assistance with your health insurance. You testified that on November 24, 2016 you went to a Navigator to assist you in applying for insurance for 2016. The record reflects no enrollment was submitted at that time. You testified that you did not select a plan at that time due to computer problems, and an inability to log into your account.

An eligibility determination notice was issued on January 22, 2016, finding you eligible to receive advance premium tax credits and cost-sharing reductions up to \$237.00 per month effective March 1, 2016. The next steps as indicated by the

notice was to choose a health plan, you would receive written confirmation once you selected a health plan.

You testified that you did not receive the January 22, 2016 eligibility determination notice finding eligible to receive advance premium tax credits and cost-sharing reductions up to \$237.00 per month effective March 1, 2016 and to choose a health plan.

The record reflects, and your testimony supports you receive your notices by regular mail. During your hearing you confirmed your address had not changed. You explained there was a large snowstorm in your area during that time period, delaying the mail being delivered to you. You explained that because of the storm, you did not receive the January 22, 2016 notice until February 4, 2016.

No notices mailed to you have been returned to NYSOH as undeliverable.

You then contacted NYSOH on February 8, 2016, to apply again for financial assistance and were denied a special enrollment period. You appealed that determination.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record reflects that your Navigator submitted your initial completed application for health insurance on November 24, 2015. 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 by NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

One of the triggering life events which would find an individual eligible to enroll in a qualified health plan outside of the open enrollment period would be if a qualified individual or enrollee, or their dependent, demonstrates that the individual meets other exceptional circumstances as the Exchange may provide.

Without waiting for a hearing, NYSOH considered your request and granted you a special enrollment period in the March 8, 2016 notice of eligibility determination. You were given until April 30, 2016 to enroll in a plan, and failed to do so.

It is found that, in response to your request, NYSOH has already granted you a special enrollment period, presumably acknowledging your complaint that the system was not working on November 24, 2015 when you initially tried to enroll and that you did not get the January 22, 2016 notice until February 4, 2016.

You had until April 30, 2016, more than a month, in which to enroll in a plan. Since you elected not to do so, without any credible explanation and not based on any further alleged error on the part of NYSOH, it is found that you were already provided the special enrollment period you requested and that there is no further basis to provide another.

Therefore, your request for a further special enrollment period is denied.

Decision

The February 9, 2016 and March 8, 2016 eligibility determination notices are **AFFIRMED**.

Effective Date of this Decision: July 1, 2016

How this Decision Affects Your Eligibility

Your prior special enrollment period has lapsed, and you will not be able to enroll in a 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.

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If You Have Questions about this Decision (Customer Service Resources):

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- By fax: 1-855-900-5557

Summary

The February 9, 2016 and March 8, 2016 eligibility determination notices are AFFIRMED.

You prior special enrollment period has lapsed, and you will not be able to enroll in a 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:

