



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

Notice of Decision

Decision Date: August 8, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP0000000006947

[REDACTED]

Dear [REDACTED],

On August 3, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's November 22, 2015 disenrollment notice.

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 at the top of this notice.

Legal Authority

We are sending you this notice in accordance with Code of Federal Regulation (CFR) 45 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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DEPARTMENT OF HEALTH
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Decision

Decision Date: August 8, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP0000000006947

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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 that your enrollment in a gold-level qualified health plan ended on December 31, 2015?

Procedural History

According to your NYSOH account, you were enrolled in a gold-level qualified health plan (QHP) as of July 1, 2015 and your advance payment of the premium tax credit (APTC) of \$155.00 per month was applied as of that date.

On November 22, 2015, NYSOH issued a disenrollment notice informing you that your 2015 coverage in your gold-level QHP would end effective December 31, 2015.

On November 23, 2015, NYSOH issued a cancellation notice that stated your request to cancel insurance coverage with your gold-level QHP was cancelled on November 17, 2015, and that you would not have coverage with that plan as of that date.

On December 6, 2015, NYSOH issued an enrollment notice confirming that on December 2, 2015, you had enrolled in a catastrophic plan with coverage to begin on January 1, 2016.

On February 8, 2016, you spoke with a representative from NYSOH's Account Review Unit and appealed the December 31, 2015 disenrollment date of your

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gold-level QHP insofar as you believed it was cancelled as of November 17, 2015 as stated in the November 23, 2015 notice. In the alternative, you are looking for your 2015 coverage to end November 30, 2015.

On June 30, 2016, you failed to appear for a scheduled hearing and a notice of dismissal of your appeal was issued.

On July 8, 2016, NYSOH's Appeals Unit approved your request to vacate the dismissal and a hearing was rescheduled for August 3, 2016.

On August 3, 2016, you had a telephone hearing with a Hearing Officer from the 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) According to your NYSOH account and your testimony, you contacted NYSOH on November 17, 2015 to request that your gold-level QHP with Excellus Blue Cross Blue Shield (BCBS) be cancelled.
- 2) You testified that you received the November 23, 2015 cancellation notice and believed your coverage in your QHP had been cancelled effective November 17, 2015, as stated in that notice.
- 3) You did not seek any medical attention after November 17, 2015 nor during December 2015, for which you filed or will file claims with BCBS.
- 4) You testified that you contacted NYSOH on December 2, 2015, and with the assistance of an account counselor selected a Catastrophic Plan to begin January 1, 2016, through the same health insurance company, Excellus BCBS.
- 5) You testified that in mid-December 2015, you received an invoice from your BCBS health plan that stated you owed \$418.47 for your QHP coverage for December 2015 and \$209.14 for your Catastrophic Plan coverage to begin January 2016.
- 6) You testified that you contacted BCBS and were informed you still had coverage in December 2015 and that NYSOH had not sent the requisite information to them for your QHP to be cancelled as of November 17, 2015.

- 7) You further testified that you were told by a BCBS representative that you owed the premium for December 2015 and had to pay it and, if you tried to pay just the January 2016 premium for your Catastrophic Plan, it would be applied to the December 2015 premium amount due on your QHP and you would continue to be behind in payments going forward.
- 8) You testified that since you had no choice you paid both premiums.
- 9) You testified that NYSOH did not resolve this issue with your QHP by February 8, 2016, so you filed an appeal.
- 10) You want your QHP cancelled effective November 17, 2015, as stated in the notice, or as of November 30, 2015 at the latest; your premium for the month of December 2015 reimbursed; and APTC of \$155.00 that month to be charged back.

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

Applicable Law and Regulations

The Marketplace must permit an enrollee to terminate his or her coverage with a qualified health plan, including when an enrollee obtains minimum essential coverage, with appropriate notice to the Marketplace or qualified health plan (45 CFR § 155.430(b)(1), (d)).

For enrollee-initiated terminations, the last day of coverage is either:

- 1) The termination date specified by the enrollee, if the enrollee provides reasonable notice (at least 14 days before the requested termination date);
- 2) Fourteen days after the enrollee requests the termination, if they do not provide reasonable notice; or
- 3) On a date on or after the date the enrollee requests the termination, if the enrollee's qualified health plan issuer and the enrollee agree to such a date

(45 CFR § 155.430(d)(2)(i)-(iii)).

Legal Analysis

The issue under review is whether NYSOH properly determined that the coverage provided by your qualified health plan ended on December 31, 2015, and not November 17, 2015 or November 30, 2015.

Enrollees must be allowed to terminate their coverage with a qualified health plan if they provide appropriate notice to NYSOH or to their health plan.

You testified that you paid the premium to your gold -level QHP for your 2015 health insurance coverage, but that you did not pay the premium for December 2015, because you had requested that coverage be cancelled the month before and received notice that it had been cancelled as of November 17, 2015. However, the record reflects that you did not request to terminate your health insurance coverage through NYSOH until November 17, 2015, which was on the 14th day before you wanted your coverage to end. By law, you were required to give 14 days' notice **before** the cancellation date, which was November 16, 2015 (emphasis added). Therefore, NYSOH ordinarily would be correct in terminating your insurance coverage with BCBS effective December 31, 2015, which is the last day of the month following your request plus 14 days, or December 1, 2015.

Since you did not provide reasonable notice to NYSOH or QHP, generally, your coverage cannot be terminated effective any earlier, unless the QHP agrees to do so. However, the record reflects that following the November 22, 2015 disenrollment notice that stated your coverage would end effective December 31, 2015, NYSOH issued a cancellation notice on November 23, 2015, based on your November 17, 2015 request, stating your coverage ended as of November 17, 2015. Coverage end dates generally take place at the end of the month, so it is unclear why a November 17, 2015 date was stated on the November 23, 2015 notice, but it is clear it was in error. Although this formal written notice was issued with an incorrect end date of coverage, you had every right to rely upon it as being binding and did not seek any medical treatment after November 17, 2015 nor in December 2015. Further, you credibly testified that you did not pay the December 2015 premium until you were forced to for your coverage in 2016 to take effect.

Therefore, by this decision, NYSOH is directed to make the effective date of your cancellation of your BCBS QHP, effective as of the end of the month; that is effective November 30, 2015.

To bring the notices in line with this decision, the following changes are to be made:

- 1) The November 22, 2015 disenrollment notice is MODIFIED to state that your coverage in your BCBS QHP will end November 30, 2015; and

- 2) The November 23, 2015 cancellation notice is MODIFIED to state your coverage in your BCBS QHP ended effective November 30, 2015.

NYSOH will coordinate any adjustment to the APTC amount applied in December 2015 and issue a corrected Form 1095-A Statement.

You will need to coordinate with BCBS whether the premium amount you paid for December 2015 is to be either reimbursed to you or applied as a credit toward upcoming premium payments on your catastrophic plan.

Decision

The November 22, 2015 disenrollment notice is MODIFIED to state that your coverage in your BCBS QHP ended effective November 30, 2015; and

The November 23, 2015 cancellation notice is MODIFIED to state your coverage in your BCBS QHP ended effective November 30, 2015.

NYSOH will coordinate any adjustment to the APTC amount applied in December 2015 and issue a corrected Form 1095-A Statement for 2015.

Effective Date of this Decision: August 8, 2016

How this Decision Affects Your Eligibility

Your coverage through your BCBS QHP ended effective November 30, 2015.

You did not have health insurance coverage with your BCBS QHP during the month of December 2015, and did not have any other health insurance coverage through NYSOH that month.

You are not responsible for the December 2015 premium payment.

You will need to coordinate with BCBS whether the premium amount you paid for December 2015 is to be either reimbursed to you or applied as a credit toward upcoming premium payments on your catastrophic plan.

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 after the date 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 date 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
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- By fax: 1-855-900-5557

Summary

The November 22, 2015 disenrollment notice is MODIFIED to state that your coverage in your BCBS QHP ended effective November 30, 2015; and

The November 23, 2015 cancellation notice is MODIFIED to state your coverage in your BCBS QHP ended effective November 30, 2015.

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NYSOH will coordinate any adjustment to the APTC amount applied in December 2015 and issue a corrected Form 1095-A Statement for 2015.

Your coverage through your BCBS QHP ended effective November 30, 2015.

You did not have health insurance coverage with your BCBS QHP during the month of December 2015, and did not have any other health insurance coverage through NYSOH that month.

You are not responsible for the December 2015 premium payment.

You will need to coordinate with BCBS whether the premium amount you paid for December 2015 is to be either reimbursed to you or applied as a credit toward upcoming premium payments on your catastrophic plan.

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:

