



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: AP000000006970

[REDACTED]

Dear [REDACTED]

On June 28, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 9, 2016 denial of a Special Enrollment Period.

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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## Decision

Decision Date: July 1, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000006970

[REDACTED]

## 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 health plan outside of the open enrollment period?

## Procedural History

On December 24, 2015, NYSOH issued a notice confirming your re-enrollment in a Silver level qualified health plan at full cost with eligibility effective January 1, 2016.

On January 22, 2016, NYSOH received your updated application for health insurance.

Also on January 22, 2016, NYSOH received your request to cancel insurance coverage with the Silver level plan.

On January 23, 2016, NYSOH issued a notice of eligibility determination that stated that you were eligible to select a qualified health plan and receive an advance premium tax credit of up to \$94.00 per month with an eligibility effective date of March 1, 2016. The notice stated that you needed to pick a health plan.

Also on January 23, 2016, NYSOH issued a disenrollment notice confirming your January 22, 2016 cancellation of the Silver plan in which you were enrolled. This Notice stated that coverage in the Silver plan would end effective January 31, 2016.

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On February 2, 2016, you contacted NYSOH to enroll in a health plan and were told you were past the open enrollment period and that you were denied a special enrollment period.

On February 9, 2016, you spoke to NYSOH's Account Review Unit and appealed the denial of a special enrollment period. On February 10, 2016, NYSOH issued a notice confirming your request for an appeal and the reason for appeal as being "Denial of Special Enrollment Period."

On June 28, 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) The record indicates that on your NYSOH application you had requested automatic renewal of your health insurance plan.
- 2) The record indicates that NYSOH automatically renewed your health insurance coverage based on information in your account and on December 24, 2015 issued a letter confirming that you were enrolled in a Silver level qualified health plan at full cost effective January 1, 2016.
- 3) You testified that on January 22, 2016, you went to an application counselor and updated your account with NYSOH.
- 4) You testified, and the record reflects, that on January 22, 2016 you canceled the silver level qualified health plan that you were enrolled in. Coverage under that plan ended effective January 31, 2016.
- 5) You testified and the record reflects that on January 22, 2016, NYSOH redetermined your eligibility.
- 6) You testified that on January 22, 2016, the application counselor printed out and gave to you a list of health plans that were available for you to select. You testified you wanted to consider these plans before making your choice.
- 7) You testified you returned to the application counselor on February 2, 2016 and attempted to make a health plan selection. You testified that you were unable to return prior to February 2, 2016 due to inclement weather.

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

## **Applicable Law and Regulations**

### De Novo Review

NYSOH 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).

### 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 NYSOH properly denied you a special enrollment period, effective February 9, 2016.

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On February 9, 2016 you spoke with NYSOH's Account Review Unit and requested a special enrollment to select a new health plan outside of open enrollment. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period. It does contain a February 10, 2016 notice in which NYSOH acknowledges receipt of an appeal request and identifies one of the issues on appeal as "Denial of Special Enrollment Period."

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 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 10, 2016 notice, which acknowledges the appeal on the issue of special enrollment denial, permits an inference that NYSOH did deny your special enrollment request.

Since the Appeals Unit review of NYSOH determinations is 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.

The record indicates that you requested to be automatically renewed into your health coverage and on December 24, 2015 NYSOH issued a notice confirming your enrollment in a full pay qualified health plan as of January 1, 2016. You testified that you did not know you had been automatically enrolled into your health plan until you received a bill for your health insurance coverage.

On January 22, 2016, with the assistance of the application counselor, you canceled your existing enrollment in a qualified health plan. You testified that you did not select a another health plan for enrollment that day and that the application counselor printed out a list of health plans that you could select and gave this list to you. You testified you were going to consider these plans and then make your selection.

You testified that you returned to the application counselor on February 2, 2016 and attempted to make a health plan selection. You were told by NYSOH that the open enrollment period had ended.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you contacted NYSOH on February 2, 2016 and attempted to select a qualified health plan. Therefore, you did not select a health plan for enrollment 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.

Generally, the termination of health insurance may be considered a triggering event. Here, your enrollment in a qualified health plan was cancelled by your request. NYSOH considers your cancellation to be a voluntary action and therefore, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis.

Next, 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 NYSOH.

You testified that you were unable to return to your application counselor prior to February 2, 2016 to select a health plan due to inclement weather. While the record shows that your failure to enroll in a qualified health plan during the open enrollment period was "unintentional, inadvertent, or erroneous", it does not reflect that it was the result of the "error, misrepresentation, or inaction of an officer, employee, or agent of the NYSOH; or a non-Exchange entity providing enrollment assistance".

Since the record does not indicate that NYSOH or the application counselor, 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 9, 2016 denial of a special enrollment period to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

## **Decision**

The February 9, 2016 denial of a special enrollment period is AFFIRMED.

**Effective Date of this Decision:** July 1, 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.

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 **AFFIRMED**.

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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:**

