



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

Notice of Decision

Decision Date: August 09, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006974

[REDACTED]

Dear [REDACTED],

On July 8, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's determination that you were ineligible to change your health plan as of February 9, 2016, as well as the February 26, 2016 eligibility determination 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 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 Date: August 09, 2016

NY State of Health Account ID: [REDACTED]
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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 prevent you from switching plans as of February 9, 2016?

Did NYSOH properly determine that you were eligible for a special enrollment period to switch plans outside the open enrollment period, as reflected in the February 26, 2016 eligibility determination notice?

Procedural History

On December 29, 2015, NYSOH received your application for health insurance.

On December 30, 2015, NYSOH issued a notice of eligibility determination based on the information contained in the December 29, 2015 application. It stated that you were newly eligible to receive an advance premium tax credit (APTC) of up to \$161.00 per month and, if you selected a silver-level plan, eligible for cost-sharing reductions (CSR). This eligibility determination was effective February 1, 2016.

Also on December 30, 2015, NYSOH issued a notice of enrollment confirming your December 29, 2015 selection of and enrollment in Fidelis Care Silver ST INN Pediatric Dental Dep25 (Fidelis Care Silver) as your medical plan at a premium rate of \$192.19 per month, after applying the \$161.00 APTC, and EssentialSmile 111 NS INN Family Dental Dep 29 (Essential Smile) as your

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dental plan at a premium rate of \$15.31 per month. Coverage for each plan would be effective January 1, 2016.

On January 13, 2016, NYSOH issued disenrollment notices confirming your January 12, 2016 request to end your Essential Care Silver and Essential Smile coverage. The notice stated that your coverage under each of these plans would end effective January 31, 2016.

Also on January 13, 2016, NYSOH issued a notice of enrollment confirming your January 12, 2016 selection of and enrollment in Ind align, Platinum, NS, OON, Dep25, tiered benefit (BCBS) as your medical plan at a premium rate of \$351.98 per month, after applying the \$161.00 APTC, effective February 1, 2016.

On January 16, 2016, NYSOH issued a cancellation notice confirming your January 15, 2016 request to cancel your insurance coverage with BCBS. The notice stated that you would not have coverage with BCBS effective February 1, 2016, and if you had selected a new plan, you would be sent a separate notice confirming your coverage information.

Also on January 16, 2016, NYSOH issued a notice of enrollment confirming your January 15, 2016 selection of and enrollment in Fidelis Care Gold ST INN Pediatric Dental Dep25 (Fidelis Care Gold) as your medical plan at a premium rate of \$271.64 per month, after applying the \$161.00 APTC, effective February 1, 2016.

On February 9, 2016, you spoke to NYSOH's Account Review Unit and appealed your apparent inability to switch your health plan outside of the open enrollment period.

On February 25, 2016, NYSOH revised a revised application for health insurance.

On February 26, 2016, NYSOH issued an eligibility redetermination notice based on the information contained in the February 25, 2016 application. It stated that you are were eligible to receive an APTC of up to \$147.00 per month, but ineligible for CSR. The notice also stated that you qualified to select a health plan outside of the open enrollment period for 2016. It requested that you review your health plan opens and cover your selection no later than April 25, 2016. This eligibility determination was effective April 1, 2016.

Also on February 26, 2016, NYSOH issued a notice of enrollment confirming your February 25, 2016 enrollment in Fidelis Care Gold as your medical plan at a premium rate of \$285.64 per month, after applying the \$147.00 APTC. The application of your APTC was March 1, 2016.

On May 14, 2016, NYSOH issued an eligibility redetermination notice based on a determination of May 13, 2016. It reiterated that you are were eligible to receive an APTC of up to \$147.00 per month, but ineligible for CSR. The notice also stated that you no longer qualified to select a health plan outside of the open enrollment period for 2016. This eligibility determination was effective April 1, 2016.

Also on May 14, 2016, NYSOH issued a notice of enrollment confirming your May 13, 2016 enrollment in Fidelis Care Gold as your medical plan at a premium rate of \$285.64 per month, after applying the \$147.00 APTC, effective March 1, 2016.

On July 8, 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 indicated that you were found eligible for an APTC of up to \$161.00 per month and, if you selected a silver-level plan, eligible for CSR, effective January 1, 2016.
- 2) The record indicates that you submitted your initial application for 2016 health insurance coverage on December 29, 2015. At that time you enrolled in Fidelis Care Silver and Essential Smile as your medical and dental plans, respectively, for coverage beginning January 1, 2016.
- 3) You switched your coverage from Fidelis Care Silver and Essential Smile to BCBS on January 12, 2016. Your BCBS began as of February 1, 2016.
- 4) You again switched your coverage from BCBS to Fidelis Care Gold on January 15, 2016. Your Fidelis Care Gold coverage began as of February 1, 2016, and your BCBS coverage was also terminated as of that date.
- 5) You testified that after considering the monthly premium that was due for coverage under Fidelis Care Gold you attempted to switch back to Fidelis Care Silver on or about February 9, 2016, but were prevented from doing so by NYSOH since you had not qualified for a special enrollment period.
- 6) Based on a revised application submitted to NYSOH on February 25, 2016, you were found eligible for an APTC of up to \$147.00 per month, and ineligible for CSR, effective April 1, 2016. You were also found eligible for a special enrollment period at that time based on your

application which reflected that you became eligible for APTC without CSR. The eligibility determination notice advised you to select a new plan no later than April 25, 2016.

- 7) You testified that you spoke with NYSOH on March 1, 2016 and March 2, 2016, and were told that you could not change back to the Fidelis Care Silver plan you had originally been enrolled as of January 1, 2016.
- 8) You testified that you received the eligibility determination notice issued by NYSOH as of February 26, 2016 advising you to select a plan no later than April 25, 2016; however, you stated that when you called NYSOH, you were told that your option to select a plan had lapsed since your special enrollment period had lapsed.
- 9) You testified that you were seeking a special enrollment period going forward since it was difficult for you to afford coverage under the Fidelis Care Gold plan.

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;

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- (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 first issue under review is whether NYSOH properly denied you a special enrollment period to switch plans 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 December 29, 2015. Therefore, you completed 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.

You testified that on or about February 9, 2016, you attempted to switch your plan enrollment from Fidelis Care Gold because you found the plan to be too expensive. The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2016, and on February 9, 2016, when you attempted to switch your plan, no triggering events had occurred as of that time to qualify you for a special enrollment period.

Therefore, NYSOH's determination that you were not permitted to switch plan as of February 9, 2016 was correct and is AFFIRMED.

The second issue under review is whether you were properly found eligible for a special enrollment period to switch plans outside the open enrollment period, as reflected in the February 26, 2016 eligibility determination notice.

The record reflects that you revised your application on February 25, 2016 to reflect a slight increase in income. This application also reflected your request for a special enrollment period since you became eligible for APTC without CSR. As a result of this increase in income, NYSOH issued an eligibility determination notice on February 26, 2016 finding you eligible for an APTC of up to \$147.00 per month, effective April 1, 2016, and provided you a special enrollment period to select a plan no later than April 25, 2016.

Such a change in eligibility qualifies as a triggering life event.

When a triggering life event occurs, the qualified individual has sixty days from the date of that event to select a qualified health plan.

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Sixty days from February 25, 2016, the date of your revised application, was April 25, 2016; therefore, you would have qualified to switch your qualified health plan outside of the open enrollment period until April 25, 2016.

The credible evidence of record indicates that while you spoke with a NYSOH representative on March 1, 2016 and March 2, 2016 to discuss your new eligibility, you were prevented from switch plans at that time. While you may not have been eligible to select a plan that specifically included a CSR component at that time since you were no longer eligible for CSR, NYSOH representatives should have provided you with additional enrollment options to reduce your overall premium cost, pursuant to 45 CFR § 155.420(d)(6).

Therefore, while NYSOH was correct in issuing the February 26, 2016 eligibility determination notice stating that you qualified for a special enrollment period to switch health plans no later than April 25, 2016, you were not allowed to change your plan in accordance with this determination. Therefore, the February 26, 2016 eligibility determination notice must be MODIFIED to reflect that you were 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 selecting a new health plan for the remainder of the 2016 plan year, with an effective date as early as April 1, 2016, which is the earliest any change in plan could have gone into effect had you been allowed to change your plan on March 2, 2016.

Decision

NYSOH's determination that you were not permitted to switch plan as of February 9, 2016 was correct and is AFFIRMED.

The February 26, 2016 eligibility determination notice is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this Decision, with an effective date as early as April 1, 2016.

Your case is RETURNED to NYSOH to assist you in considering the effect of disenrolling from your former coverage, selecting a new health plan for the remainder of the 2016 plan year, and selecting the start of any such coverage.

Effective Date of this Decision: August 09, 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 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

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Summary

NYSOH's determination that you were not permitted to switch plan as of February 9, 2016 was correct and is AFFIRMED.

The February 26, 2016 eligibility determination notice is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this Decision, with an effective date as early as April 1, 2016.

Your case is RETURNED to NYSOH to assist you in considering the effect of disenrolling from your former coverage, selecting a new health plan for the remainder of the 2016 plan year, and selecting the start of any such coverage.

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:

