



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

Notice of Decision

Decision Date: July 27, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006996

[REDACTED]

Dear [REDACTED]

On June 28, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 18, 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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Decision

Decision Date: July 27, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006996

[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 different health plan outside of the open enrollment period effective March 1, 2016?

Procedural History

On July 5, 2015, an account was created through NYSOH ([REDACTED]) and an application for health insurance was submitted on your behalf.

On July 6, 2015, NYSOH issued a notice of eligibility determination which stated you were eligible to purchase a qualified health plan at full cost. This eligibility was effective August 1, 2015. The determination was based on your household income of \$68,920.00 ([REDACTED]).

On July 6, 2015, an enrollment confirmation notice was issued confirming your enrollment in a Platinum level health plan with Health Republic effective August 1, 2015 ([REDACTED]).

On October 30, 2015, a notice was issued stating your insurance coverage with Health Republic would be ending on December 31, 2015. The notice explained you would need to update your account and select a new health plan for December 1, 2015 ([REDACTED]).

On November 4, 2015, a disenrollment notice was issued terminating your Health Republic platinum level health plan effective November 30, 2015 ([REDACTED]).

On November 6, 2015 a secondary NYSOH account was created ([REDACTED]) and an application for health insurance was submitted on your behalf.

On November 7, 2015 NYSOH issued a notice stating that you were eligible to purchase a qualified health plan at full cost, effective December 1, 2015 ([REDACTED]).

On November 9, 2015 NYSOH issued an enrollment confirmation notice confirming your enrollment in an Affinity Access Platinum health plan effective, December 1, 2015 ([REDACTED]).

On November 20, 2015, NYSOH issued a notice that you had not yet selected a new health plan for December 2015. As a result, you would be enrolled in a Fidelis Care Platinum qualified health plan effective December 1, 2015.

On November 22, 2015, a disenrollment notice was issued terminating your coverage in your Fidelis Care Platinum effective December 31, 2015 ([REDACTED]).

On November 23, 2015 NYSOH received your updated application for 2016 coverage in [REDACTED].

On November 24, 2015 NYSOH issued a notice stating that you were eligible to purchase a qualified health plan at full cost, effective January 1, 2016. ([REDACTED]).

On November 24, 2015, NYSOH issued an enrollment confirmation notice confirming your enrollment in an Affinity Access Platinum health plan effective January 1, 2016. ([REDACTED]).

On February 10, 2016, NYSOH received your updated application for health insurance in [REDACTED] and you attempted to enroll into a qualified health plan through this account.

Also on February 10, 2016, you spoke to NYSOH's Account Review Unit and appealed the denial of a special enrollment period insofar as you were not eligible change your health plan to a Fidelis Care Platinum plan effective March 1, 2016, outside of the open enrollment period. This appeal was filed using [REDACTED].

On February 18, 2016, an eligibility determination notice was issued finding you eligible to purchase a qualified health plan at full cost effective March 1, 2016. You did not qualify to select a health plan outside of the open enrollment period for 2016 [REDACTED].

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 kept open 15 days to provide documentation related to your enrollment in a Fidelis Gold level qualified health plan. The record closed on July 13, 2016. As of the close of the record no documentation was received by the NYSOH's Appeals Unit, and will not be considered for purposes of this appeal.

Findings of Fact

A review of the record support the following findings of fact:

- 1) You are seeking insurance for yourself.
- 2) The record indicates that you created two accounts with NYSOH.
- 3) You testified that you believed you had attempted to enroll in a Fidelis Gold level qualified health plan sometime in January, 2016.
- 4) The record indicates that you submitted your initial application in [REDACTED] for 2016 health insurance coverage on November 23, 2015.
- 5) The record shows you submitted an additional application through [REDACTED] on February 10, 2016.
- 6) You testified that you lost health insurance coverage on February 29, 2016 because you were not able to make a premium payment requested by your health plan.
- 7) The record shows you have two screen names in your online account for NYSOH [REDACTED], and [REDACTED].
- 8) The record supports you accessed your account under [REDACTED] on November 23, 2015. You deleted and added an enrollment on that day.
- 9) The record supports that an enrollment under your account [REDACTED] was for Fidelis Care Platinum with an effective date of December 1, 2015, and a disenrollment from that plan effective December 1, 2015.

- 10) The record supports that the enrollments for your account [REDACTED] shows an enrollment for December, 1, 2015 in Affinity Access Platinum plan which ended December 31, 2015. The next enrollment shows an enrollment in Affinity access health plan starting January 1, 2016, and ending April 30, 2016.
- 11) You testified that you have not recently moved.
- 12) You testified that your household has remained the same for the period in question.
- 13) You testified that you had a bad experience with Affinity health plan and were seeking to be allowed to enroll in a Fidelis care Gold plan instead.

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)).

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

(1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or

(2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128”

(45 CFR § 155.420(e)(1)(2)).

Legal Analysis

The issue under review is whether NYSOH properly denied you a special enrollment period, effective March 1, 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 November 23, 2015 through [REDACTED] and you enrolled into Affinity Health Plan effective January 1, 2016. You then submitted an additional application on February 10, 2016 through [REDACTED] because you wanted to enroll into a different health.

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.

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 the NYSOH.

The record shows you have two ID names in your online accounts for NYSOH [REDACTED], and [REDACTED]. Under those ID names, you accessed your account under [REDACTED] on November 23, 2015. You deleted and added an enrollment on that day.

The record supports that an enrollment under your account [REDACTED] was for Fidelis Care Platinum with an effective date of December 1, 2015, and a disenrollment from that plan effective December 1, 2015.

The enrollments for your account [REDACTED] shows an enrollment for December, 1, 2015 in Affinity Access Platinum plan which ended December 31, 2015. The next enrollment shows an enrollment in Affinity Access health plan starting January 1, 2016 and ending April 30, 2016.

According to the record your screen name accessed your account under [REDACTED] on November 23, 2015. You deleted and added an enrollment on that day. Since you were the individual who accessed your account to update your enrollments, no misrepresentation or inaction was the result of a NYSOH agent or instrumentality. Each enrollment was chosen by you and was a result of your actions in your online account. You did not testify that it was the result of conversations with NYSOH representatives.

Since the record does not indicate that NYSOH, 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, 2015, no other triggering events have occurred that would qualify you for a special enrollment period.

Therefore, NYSOH's February 28, 2016 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

Decision

The February 28, 2016 eligibility determination is **AFFIRMED**.

Your case is **RETURNED** to NYSOH to make one of your active NYSOH accounts ([REDACTED]) inactive.

Effective Date of this Decision: July 27, 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 11, 2016, and February 28, 2016 eligibility determination are **AFFIRMED**.

You do not qualify for a special enrollment period at this time.

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).

Your case is RETURNED to NYSOH to make one of your active NYSOH accounts ([REDACTED]) inactive.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:

