



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

Notice of Decision

Decision Date: August 2, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007027

[REDACTED]

Dear [REDACTED],

On June 30, 2016, you appeared by telephone at a hearing on your request for a special enrollment period to switch your qualified health plan after the conclusion of the open enrollment period for 2016.

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

Decision Date: August 2, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007027



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 were not permitted to change your qualified health plan during 2016, after the conclusion of the open enrollment period?

Procedural History

On November 17, 2015, NYSOH issued a notice stating that it was time to renew your NY State of Health coverage for 2016. This notice confirmed that you were qualified to enroll in qualified health plan (QHP) and eligible to receive up to \$118.95 per month in advance payments of the premium tax credit (APTC), effective January 1, 2016. The notice also confirmed that you had been reenrolled in your Empire QHP for coverage beginning January 1, 2016.

On December 15, 2015, NYSOH received your updated application for health insurance.

On December 16, 2015, NYSOH issued an eligibility determination notice based on information contained in the December 15, 2015 application. It stated that you were eligible to receive up to \$177.00 per month in APTC, effective January 1, 2016.

On December 16, 2015, NYSOH issued a notice of enrollment confirming your selection of a Fidelis Care QHP, with such coverage beginning January 1, 2016.

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On December 17, 2015, NYSOH issued a notice of disenrollment confirming that your request to cancel your insurance coverage under your Empire QHP was received on December 15, 2015. Accordingly, NYSOH found that you would not have coverage under the Empire QHP, effective January 1, 2016.

On February 11, 2016, you spoke to NYSOH's Account Review Unit and requested an appeal insofar as you were not provided with a special enrollment period to switch your QHP after the conclusion of the open enrollment period.

On June 30, 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 you submitted your application for 2016 health insurance coverage on December 15, 2015. At that time, you were found eligible to enroll in a QHP and receive an APTC of up to \$177.00 per month, beginning January 1, 2016.
- 2) On December 15, 2015, you enrolled in a Fidelis Care QHP with such coverage to begin on January 1, 2016.
- 3) The record reflects that no additional applications were received by NYSOH after December 15, 2015.
- 4) You testified that you selected Fidelis Care as your QHP, mistakenly believing that your [REDACTED] physician accepted this plan. However, you further testified that it was your [REDACTED] who accepted this plan, and not your [REDACTED].
- 5) You testified that you were seeking to switch your QHP since the closest [REDACTED] physician that accepts Fidelis Care is approximately 2 hours away.
- 6) You testified you made no independent inquiry of whether your [REDACTED] physician accepted Fidelis Care prior to you plan selection on December 15, 2015.
- 7) You testified that you attempted to switch your QHP on or about February 11, 2016, but were unable to do so.

- 8) The record reflects that there was no eligibility determination notice issued by the NYSOH confirming that you were not eligible to switch plans during 2016 because you had not qualified for a special enrollment period.

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

Applicable Law and Regulations

De Novo Review

The Marketplace 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).

Marketplace Eligibility Determinations

When an individual applies for insurance through the Marketplace, the Marketplace must determine that person’s eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 CFR § 435.1200(b)(3)(iii)).

The Marketplace is required to provide “timely written notice to an applicant of any eligibility determination” made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual Marketplace (45 CFR § 155.310(g)).

An applicant or enrollee has the right to appeal an eligibility determination or redetermination or a failure by the Marketplace to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

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

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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

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- (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

You testified that you attempted to switch your QHP on or about February 11, 2016. The record reflects that no determination was made with respect to your eligibility for a special enrollment period to switch your QHP during 2016 after the conclusion of the open enrollment period.

Although the Marketplace did not issue a notice of eligibility determination with respect to your eligibility for a special enrollment period, this does not prevent the Appeals Unit from reaching the merits of your case on your February 11, 2016 appeal request. Under 45 CFR § 155.505(b), you are as entitled to appeal a Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Also, since the Appeals Unit reviews Marketplace determinations on a de novo basis, no deference would have been granted to that written determination had it been issued before you filed your appeal.

The issue under review is whether you were eligible for special enrollment period to switch your QHP after the conclusion of the open enrollment period on January 31, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record reflects that you submitted a completed application on December 15, 2015, and selected Fidelis Care as your QHP that same day. 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.

While you testified that you inadvertently selected Fidelis Care as your QHP on December 15, 2016 under the mistaken belief that your [REDACTED] accepted that plan, 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.

Since the credible evidence of record confirms that you did not experience any triggering events after the open enrollment period concluded on January 31, 2016, you are not eligible for a special enrollment period at this time.

Decision

You are not eligible for a special enrollment period at this time.

Effective Date of this Decision: August 2, 2016

How this Decision Affects Your Eligibility

Your eligibility is not affected by this Decision.

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 calling the Customer Service Center at 1-855-355-5777
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Summary

You are not eligible for a special enrollment period at this time.

Your eligibility is not affected by this Decision.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

