



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: AP000000007043

[REDACTED]

Dear [REDACTED],

On July 12, 2016, your spouse appeared by telephone at a hearing on your appeal of NY State of Health’s verbal denial of your request to enroll in a different health plan after the conclusion of open enrollment 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: AP000000007043



## 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 and your spouse were not eligible to enroll in a different qualified health plan after the conclusion of the 2016 open enrollment period?

## Procedural History

On October 29, 2015, NYSOH issued a renewal notice stating that it was time to renew your health coverage. The notice stated that, if you wanted to keep your present health plan and the information in your application was still accurate, you didn't need to do anything else, as NYSOH had re-enrolled you and your spouse in your current health plan for another year, effective January 1, 2016.

On November 25, 2015, NYSOH issued a notice of enrollment confirmation, confirming your enrollment and your spouse's enrollment in your couple's platinum qualified health plan (QHP) with a monthly premium of \$1,501.52, beginning January 1, 2016.

On February 12, 2016, you spoke to NYSOH's Account Review Unit and appealed the fact that you were verbally denied a special enrollment period to allow you to change to a different QHP outside of open enrollment.

On July 12, 2016, your spouse appeared at 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 were notified that you and your spouse were being re-enrolled into your platinum-level QHP in a renewal notice dated October 29, 2015.
- 2) Your spouse testified that you received the October 2015 renewal notice, and that, at that time, you and your spouse wanted to remain in your platinum plan coverage.
- 3) Your spouse testified that you decided you wanted to change to a less expensive plan in February 2016, because your spouse was not working and you had less work coming in than you had anticipated.
- 4) Your spouse testified that there have been no major changes in your household since you applied for insurance, such as a birth, death, or marriage.
- 5) Your spouse testified that there are still two people in your household, and that you are both seeking insurance.
- 6) The record reflects that you live in New York County, and your spouse testified that you have not moved to a different county since you applied for health insurance.
- 7) Your spouse testified that you filed this appeal because you are trying to change to a less costly QHP.

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 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

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**

On February 12, 2016, you spoke with NYSOH's Account Review Unit and requested a special enrollment to select a new health plan. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period. It does contain a February 13, 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 (SEP)."

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's 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 13, 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's 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 as of February 12, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you were re-enrolled into your couple's platinum-level QHP at full cost in a renewal notice of October 29, 2015, and an enrollment confirmation notice of November 25, 2015. Therefore, you were enrolled in coverage for 2016 during the open enrollment period.

However, on February 12, 2016, after open enrollment had ended, you contacted NYSOH and made a request to enroll in a different QHP.

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.

Your spouse testified that you wish to change to a different QHP because the premiums for your current QHP are too expensive. However, a household's determination that QHP premiums are not affordable is not a circumstance that would trigger 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 and your spouse are not eligible for a special enrollment period at this time.

## **Decision**

You are not eligible for a special enrollment period.

**Effective Date of this Decision:** August 2, 2016

## **How this Decision Affects Your Eligibility**

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

You are not eligible to change to a different health plan 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).

## **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**

You are not eligible for a special enrollment period.

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

You are not eligible to change to a different health plan at this time.

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**A Copy of this Decision Has Been Provided To:**

