



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

Notice of Decision

Decision Date: August 25, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007050

[REDACTED]

Dear [REDACTED],

On August 11, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 13, 2016 notice of an appeal for a 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: August 25, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007050

[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 were not eligible to change your health plan outside of the open enrollment period for 2016?

Procedural History

On December 9, 2015, NYSOH received your application for financial assistance with your health insurance.

On December 10, 2015, NYSOH issued a notice of eligibility determination that stated that you are eligible to receive an advance premium tax credit of up to \$178.00 per month as well as cost sharing reductions effective January 1, 2016.

On December 30, 2015, an enrollment confirmation notice was issued confirming your enrollment in a Silver level qualified health plan with a premium responsibility of \$329.33 per month, starting January 1, 2016.

On February 12, 2016, you spoke to NYSOH's Account Review Unit and requested an appeal in order to change your health plan to a less costly plan outside of the open enrollment period for 2016. A February 13, 2016 notice confirms this.

On July 11, 2016, a Hearing Officer from the NYSOH Appeals Unit contacted you and placed you under oath with the aid of Spanish Interpreter # [REDACTED] You

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testified during the hearing that you had to leave for work and could not continue the hearing. An adjournment was granted for a new date and time for a hearing.

On July 21, 2016, a new Notice of Telephone Hearing was issued stating your telephone hearing would be set for August 11, 2016 at 3:00 p.m.

On August 11, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit with the aid of Spanish Interpreter # [REDACTED]. 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 initial application for 2016 health insurance coverage on December 9, 2015.
- 2) You testified that you contacted NYSOH on February 12, 2016 to change plans to a less costly plan for 2016.
- 3) You testified that your income has not changed significantly since your initial application for 2016 coverage.
- 4) You testified that you were denied the ability to change your health plan as you were told you were outside of the open enrollment period for 2016.
- 5) There is no notice in the record denying your ability to qualify for a special enrollment period for 2016
- 6) You testified that you have not recently moved.
- 7) You testified that your household has not changed due to death, marriage, divorce, birth, or adoption.
- 8) You testified that you did not lose your prior health insurance, and are currently enrolled in your Silver level qualified health plan.
- 9) You testified that NYSOH representatives did not portray anything to you that turned out to be untrue.
- 10) You completed your application on your own.
- 11) You testified that you reside in Westchester, County.

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)).

Legal Analysis

A review of the record demonstrates that you spoke with NYSOH's Account Review Unit and requested a special enrollment period 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 the NYSOH acknowledges receipt of an appeal request to change your plan outside of the open 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

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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 your request to change plans, permits an inference that the NYSOH did deny your special enrollment request.

Since the Appeals Unit review of 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.

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 9, 2015. On December 10, 2015, NYSOH issued a notice of eligibility determination that stated that you were eligible to receive an advance premium tax credit of up to \$178.00 per month as well as cost sharing reductions effective January 1, 2016. You then enrolled in a qualified health plan, and an enrollment confirmation notice was issued confirming your enrollment in a Silver level qualified health plan with a premium responsibility of \$329.33 per month, starting January 1, 2016.

On February 12, 2016, you spoke to NYSOH's Account Review Unit and requested an appeal in order to change your health plan to a less costly plan outside of the open enrollment period for 2016.

Therefore, you did not complete your request during the open enrollment period in order to change your health plan.

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 you have not recently moved, and that your household has not changed due to death, marriage, divorce, birth, or adoption. You testified that you did not lose your prior health insurance, and are currently enrolled in your Silver level qualified health plan. You testified that your income has not changed significantly since your initial application for 2016 coverage.

You testified that NYSOH representatives did not portray anything to you that turned out to be untrue and that you completed your application on your own.

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.

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Therefore, NYSOH's February 13, 2016, notice is AFFIRMED, and you do not qualify to select a health plan outside of the open enrollment period for 2016 at this time.

Decision

The February 13, 2016 notice is AFFIRMED.

Effective Date of this Decision: August 25, 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):

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You can contact us in any of the following ways:

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Summary

The February 13, 2016 notice is AFFIRMED.

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:

