



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

Notice of Decision

Decision Date: August 5, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007157



Dear [REDACTED],

On July 6, 2016, you appeared by telephone at a hearing on your appeal of the cancellation of your health insurance plan because of non-payment of premiums, and NYSOH's determination to deny you 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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Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Was your health insurance coverage, through NY State of Health, properly cancelled because of non-payment of premiums?

Did NY State of Health properly determine that you did not qualify for a special enrollment period?

Procedural History

On January 14, 2015, New York State of Health (NYSOH) issued an eligibility determination notice stating that you were eligible to purchase a qualified health plan at full cost through NYSOH, effective as of February 1, 2015.

Also on January 14, 2015, NYSOH issued an enrollment notice confirming that as of January 13, 2015, you were enrolled in Healthfirst Bronze Leaf Premier NS INN Family Dental Dep25 Family Vision (Healthfirst) with a plan enrollment start date of February 1, 2015.

On October 24, 2015 NYSOH issued a notice stating that they did not have enough information from federal and state data sources to determine if you could get help paying for your insurance or what kind of coverage your child could have for next year. The notice directs you to return to your account by December 15, 2015 to provide more information or the financial assistance you are receiving may end.

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On December 15, 2015, NYSOH issued an eligibility determination notice stating that you were eligible to purchase a qualified health plan at full cost through NYSOH, effective as of January 1, 2016.

Also on December 15, 2015, issued an enrollment notice confirming that as of December 14, 2015 you were enrolled in Healthfirst with a plan enrollment start date of January 1, 2016.

On February 18, 2016, NYSOH issued a notice confirming that on February 17, 2016, you requested a telephone hearing to review, "Denial of Special Enrollment Period." The description of the appeal was "[i]nsurer error resulting dis-enrollment for the consumer."

On July 6, 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 proceeding.

Findings of Fact

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

- 1) According to your NYSOH account and testimony, you were enrolled in Healthfirst Bronze Leaf Premier NS INN Family Dental Dep25 Family Vision (Healthfirst) in 2015.
- 2) You testified that you were receiving "sporadic" health insurance premium invoices from Healthfirst in 2015.
- 3) You testified that you received a premium invoice in late October 2015 from Healthfirst requesting payment for two months of health insurance premiums.
- 4) You testified that you contacted Health in November 2015 to confirm that Healthfirst received payment for the two months of health insurance premiums and was told that your premiums were paid through December 31, 2015.
- 5) On December 15, 2015, NYSOH issued an enrollment notice confirming that as of December 14, 2015 you were enrolled in Healthfirst Bronze Leaf Premier NS INN Family Dental Dep25 Family Vision (Healthfirst) with a plan enrollment start date of January 1, 2016 ([REDACTED]).
- 6) You testified that on December 28, 2015 you discovered a notice from Healthfirst in your mailbox stating that your December 2015 health insurance premium was late.

- 7) You testified that you contacted Healthfirst on or about December 28, 2015. The representative stated that if your December 2015 was not received by the end of December 2015, your coverage would be retroactively terminated to November 30, 2015. However, if your January 2016 health insurance premium was received by January 10, 2016, your 2016 coverage would not be terminated.
- 8) You testified that you contacted Healthfirst in early January 2016 and was given an extension to submit the December 2015 health insurance premium.
- 9) You testified that on January 5, 2016, your December 2015 and January 2016 health insurance premiums were mailed to Healthfirst, and the checks were cashed on January 8, 2016.
- 10) You testified that you contacted Healthfirst in February 2016 because you had not received a health insurance card or welcome packet. The representative stated that they had no record of your 2016 health insurance policy.
- 11) On February 18, 2016, NYSOH issued a notice confirming that on February 17, 2016, you requested a telephone hearing to review, "Denial of Special Enrollment Period." The description of the appeal was "[i]nsurer error resulting dis-enrollment for the consumer" ([REDACTED]).
- 12) You testified that Healthfirst contacted you in early March 2016. A Healthfirst representative notified you that your December 2015 health insurance premium was late, which caused your 2015 health insurance policy to be retroactively terminated to November 30, 2015. Furthermore, it resulted in your 2016 health insurance policy to be terminated.
- 13) You testified that Healthfirst refunded the December 2015 and January 2016 health insurance premiums in late March 2016.
- 14) According to your NYSOH account, your 2016 health insurance coverage through NYSOH is active.
- 15) You testified that you are seeking a special enrollment period because Healthfirst had wrongfully terminated your health insurance coverage.

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

Applicable Law and Regulations

Appealable Issues

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An applicant has the right to appeal: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination and (5) a denial of a request to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

Enrollment in a Qualified Health Plan

The 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)).

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).

Special Enrollment Periods

After each open enrollment period ends, the 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.

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- (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)).

Special Enrollment Period – Voluntary Termination

A special enrollment period is granted when including a qualified individual or his or her dependent loses certain health insurance coverage.

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

"voluntary termination of coverage or other loss due to—

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(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)).

Legal Analysis

The first issue under review is your health insurance coverage, through NYSOH, was properly terminated because of non-payment of premiums.

You testified that you were told by a representative of Healthfirst in March 2016 that your 2016 health insurance policy, through NYSOH, was cancelled because the December 2015 health insurance premium was late.

The New York State of Health Appeals Unit only has the authority to review issues related to the following: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) a determination of eligibility for an enrollment period (4) an eligibility determination for an exemption, (5) a failure by the Exchange to provide timely notice of an eligibility determination and (6) a denial of a request to vacate dismissal made by the New York State of Health Appeals Unit.

Since the Appeals Unit is not given the authority to review termination of enrollment due to non-payment of premiums, we cannot reach the merits as to whether or not you were properly terminated from your health plan for non-payment of premiums. Therefore, the issue of whether Healthfirst terminated your 2016 health insurance policy, for non-payment of premiums, is **DISMISSED** as a non-appealable issue.

However, Healthfirst may be able to help you with your request for coverage. If you have not already been assisted with your current coverage issue, please contact Healthfirst directly.

In addition, since your issue concerns a health insurer and/or payment, reimbursement, coverage, benefits, rates and premiums, you can contact NY Department of Financial Services at their Consumer Hotline at (800) 342-3736 (Monday through Friday, 8:30 AM to 4:30 PM); or locally to (212) 480-6400; or you can file a complaint at <http://www.dfs.ny.gov/consumer/fileacomplaint.htm>

The second issue under review is whether NYSOH properly denied you a special enrollment period.

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The record does not contain a notice of eligibility determination or redetermination regarding the issue of denying you a special enrollment period (SEP). It does, however, contain a February 18, 2016 notice in which NYSOH acknowledges “Denial of Special Enrollment Period (SEP)” as an issue on appeal.

The lack of a notice of eligibility determination on the issue of SEP does not prevent the Appeals Unit from reaching the merits of the case. Under 45 CFR § 155.505(b), you are entitled to appeal a determination of eligibility for an enrollment period. Since the Appeals Unit review of NYSOH’s determinations are performed on a *de novo* basis, no deference would have been granted to the notice of eligibility determination had it been issued.

The NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record reflects that you enrolled in a Healthfirst plan on December 14, 2015, with a plan enrollment start date of January 1, 2016.

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 through NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

Based on your testimony, Healthfirst cancelled your 2015 health insurance policy retroactively to November 30, 2015, and your 2016 policy because the health insurance company alleges they did not receive your December 2015 health insurance premium in a timely manner.

Generally, the loss of health insurance coverage is considered a triggering event. Based on the available record, your enrollment was terminated because the health plan did not receive the health insurance premiums in a timely manner. As discussed above, the Appeals Unit does not have the authority to decide whether or not your premiums were in fact made on time. NYSOH considers the failure to pay premiums a voluntary action causing the termination of your coverage; therefore, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis.

The credible evidence of record indicates that no other triggering events has occurred that would qualify you and your spouse for a special enrollment period.

Therefore, the denial of a special enrollment period is **AFFIRMED**.

Decision

Your appeal of Healthfirst properly cancelling your 2016 health insurance policy, through NYSOH, because of non-payment of premiums is **DISMISSED**.

NYSOH determination to deny you a special enrollment period is **AFFIRMED**.

Effective Date of this Decision: August 5, 2016

How this Decision Affects Your Eligibility

You do not qualify for a special enrollment period to enroll in a qualified health plan 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

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Summary

Your appeal of Healthfirst properly cancelling your 2016 health insurance policy, through NYSOH, because of non-payment of premiums is DISMISSED.

The first issue concerns a health insurer and/or payment, reimbursement, coverage, benefits, rates and premiums. You can contact NY Department of Financial Services at their Consumer Hotline at (800) 342-3736 (Monday through Friday, 8:30 AM to 4:30 PM); or locally to (212) 480-6400; or you can file a complaint at <http://www.dfs.ny.gov/consumer/fileacomplaint.htm>

NYSOH determination to deny you a special enrollment period is AFFIRMED.

You do not qualify for a special enrollment period to enroll in a qualified health plan 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:

