



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

## Notice of Decision

Decision Date: July 26, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007241

[REDACTED]

Dear [REDACTED]

On July 12, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 12, 2016 cancellation notice and NYSOH's verbal denial of your request to enroll in a 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

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NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007241



## Issues

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

Can the NY State of Health (NYSOH) Appeals Unit consider your appeal regarding the cancellation of your enrollment in your qualified health plan effective January 1, 2016 because of non-payment of premiums?

Did NYSOH properly determine that you were not eligible to enroll in a different qualified health plan after the conclusion of the 2016 open enrollment period?

## Procedural History

On November 30, 2015, NYSOH received your application for health insurance.

On December 5, 2015, NYSOH issued a notice of eligibility determination that stated that you are eligible to purchase a qualified health plan (QHP) at full cost, effective January 1, 2016.

Also on December 5, 2015, NYSOH issued a notice of enrollment confirmation confirming your enrollment in a silver-level QHP, effective January 1, 2016.

On February 12, 2016, NYSOH issued a cancellation notice stating that your coverage in your silver level QHP was cancelled effective January 1, 2016 because a premium payment had not been received by your health plan.

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On February 19, 2016, you spoke to NYSOH's Account Review Unit and appealed the February 12, 2016 cancellation notice, as well as NYSOH's verbal denial of your request to enroll in a health plan outside of the open enrollment period.

On July 12, 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 initial application for 2016 health insurance coverage on November 30, 2015, and were enrolled in a silver level QHP effective January 1, 2016.
- 2) The record reflects that your coverage in this health plan was cancelled in a notice dated February 12, 2016, effective January 1, 2016, because the health plan had not received a premium payment.
- 3) You testified that you chose your health plan in early December and enrolled with NYSOH over the phone.
- 4) You testified that you left for Colorado a couple of days later to take care of your mother because she was not well, and that you were there for ten weeks.
- 5) You testified that you were under the impression that you had given credit card information to NYSOH at the time you enrolled in your QHP, and you didn't realize that the payment for your plan was not taken care of while you were away.
- 6) You testified that as soon as you returned from Colorado, you read your mail and saw that your coverage had been cancelled. You testified that you immediately contacted NYSOH, and when you couldn't re-enroll in coverage, you filed an appeal.
- 7) You testified that you have had no other changes in your household since you applied for insurance, such as a birth, death, or marriage.
- 8) The record reflects that you have lived in New York County since you applied for health insurance, and your testimony confirmed this.

- 9) You testified that you are seeking to re-enroll in health coverage retroactive to January 1, 2016, if possible, but, otherwise, to enroll going forward.

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

## **Applicable Law and Regulations**

### Appealable Issues

An applicant has the right to appeal to NYSOH's Appeals Unit: (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 (155.405), and (5) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

### 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

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:

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- (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)).

## **Legal Analysis**

The first issue under review is whether the Appeals Unit can consider your appeal regarding the cancellation of your enrollment in your QHP, effective January 1, 2016, because of nonpayment of premiums.

On February 12, 2016, NYSOH issued a cancellation notice stating that your coverage in your QHP was terminated effective January 1, 2016 because a premium payment had not been received.

You testified that you mistakenly believed that you had provided a credit card number to NYSOH when you enrolled in your health plan in early December 2015. You further testified that you were then out of the state for approximately ten weeks, so you did not realize that a payment had not been made to your health plan until you came home and reviewed the cancellation notice that had been mailed to you.

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) 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 for a special enrollment period.

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 nonpayment of premiums. Therefore, your appeal of the February 12, 2016 cancellation notice is DISMISSED as a non-appealable issue.

On February 19, 2016, you spoke with NYSOH's Account Review Unit and requested a special enrollment so that you could re-enroll in health insurance coverage. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period. It does contain a February 20, 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 20, 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 20, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a completed application on November 30, 2015 and subsequently enrolled in a QHP, with a plan enrollment start date of January 1, 2016. However, on February 12, 2016, NYSOH issued a cancellation notice stating that your coverage in your QHP was terminated effective January 1, 2016 for nonpayment of premiums. You then contacted NYSOH on February 19, 2016 to request an opportunity to re-enroll in health insurance coverage.

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 when an individual loses minimum essential coverage, a special enrollment period can not be granted if the loss of that coverage was due to a failure to pay premiums, as this is considered a voluntary loss of coverage.

The record reflects that your health insurance coverage was terminated effective January 1, 2016. However, it was terminated because your health plan informed NYSOH that you had not paid your monthly premium. Therefore, your loss of coverage due to nonpayment of premiums was not an event that would have triggered a special enrollment period.

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.

## **Decision**

Your appeal of the February 12, 2016 cancellation notice is **DISMISSED** as a non-appealable issue.

You are not eligible for a special enrollment period.

**Effective Date of this Decision:** July 26, 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

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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**

Your appeal of the February 12, 2016 cancellation notice is **DISMISSED** as a non-appealable issue.

You are not eligible for a special enrollment period.

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:**

