



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

Notice of Decision

Decision Date: August 08, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007244

[REDACTED]

Dear [REDACTED],

On July 5, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's January 28, 2016 cancellation notice and March 15, 2016 eligibility determination.

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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NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007244

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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 do not qualify for a special enrollment period as of March 15, 2016?

Procedural History

On December 19, 2015, NYSOH issued a notice of eligibility determination that stated that you were eligible to receive advance payments of the premium tax credit (APTC) of up to \$226.00 per month, and eligible for cost-sharing reductions (CSR), effective January 1, 2016.

Also on December 19, 2015, NYSOH issued an enrollment confirmation notice stating that you were enrolled in a silver level qualified health plan (QHP) effective January 1, 2016, with \$100.00 of your APTC applied to the premium effective January 1, 2016.

On January 19, 2016, your NYSOH account was updated.

On January 20, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to receive up to \$226.00 per month in APTC, and eligible for CSR, effective March 1, 2016.

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Also on January 20, 2016, NYSOH issued an enrollment confirmation notice stating that you were enrolled in a silver level QHP, effective January 1, 2016, with \$100.00 of your APTC applied to your monthly premium as of February 1, 2016.

On January 28, 2016, NYSOH issued a cancellation notice stating that your enrollment in your silver level QHP was cancelled effective January 1, 2016 because a premium payment had not been received by your health plan.

On February 19, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you and your spouse were not eligible to enroll in a health plan outside of the open enrollment period.

On March 15, 2016, NYSOH issued a notice of eligibility determination that reiterated that you were eligible to receive up to \$226.00 per month in APTC and eligible for CSR, effective April 1, 2016. It further stated that you did not qualify to select a health plan outside of the open enrollment period for 2016.

On July 5, 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 December 18, 2015 and you enrolled into a QHP that same day.
- 2) You testified that you were sent an insurance card approximately a week after you enrolled, but were never sent a bill for your premium.
- 3) You testified that you contacted your health plan on January 7th or 8th of 2016 and were told that your insurance had been cancelled because you didn't pay your premium.
- 4) You further testified that you told your plan you never received a bill, but they responded that your payment had been due the first of January, and that the only way to re-enroll into coverage was to contact NYSOH and reapply.

- 5) The record reflects that you contacted NYSOH on January 19, 2016 and reapplied for financial assistance. The record further reflects that you were found eligible to receive APTC and CSR as of March 1, 2016.
- 6) The events tab in your NYSOH account indicates that, on January 19, 2016, a NYSOH representative updated your enrollment in your QHP.
- 7) After the hearing, the Hearing Officer listened to the recording of your January 19, 2016 phone call with NYSOH in its entirety. The following findings of fact are derived from that conversation:
 - a. You informed the NYSOH representative that you had spoken with your health plan and been informed that you were cancelled for nonpayment of your premium.
 - b. The NYSOH representative told you that NYSOH does not have anything to do with your premium payments, but asked you if you wanted to reapply for insurance. You responded that you did.
 - c. The NYSOH representative updated your application for financial assistance, and informed you that you were eligible for APTC and CSR.
 - d. The NYSOH representative told you that you were now re-enrolled into your same plan, and that it showed you having coverage since January 2016.
 - e. The NYSOH representative indicated she was inputting your request to have only \$100.00 of the APTC for which you were found eligible applied to your monthly premium.
 - f. The NYSOH representative gave you a confirmation number which she said confirmed that you had been re-enrolled into coverage. The number was [REDACTED]
- 8) You testified that you waited to receive a bill after speaking with NYSOH on January 20, 2016, and still did not receive one.
- 9) You testified that you again contacted NYSOH in February 2016 and were told that through an error you were not put back into coverage, and that the only way to resolve the issue was to appeal.
- 10) You testified that you are seeking to be reinstated in coverage retroactive to January 1, 2016.
- 11) You testified that you have outstanding medical bills from being without coverage.

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 the Appeals Unit of NYSOH: (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) the denial of a request for a special enrollment period (45 CFR § 155.505, 45 CFR § 155.420(d)).

Open Enrollment

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 a triggering event occurs, such as an enrollment or non-enrollment because of an error, misrepresentation, or inaction of an officer, employee, or agent of NYSOH (45 CFR § 155.420(d)(4)).

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)).

Enrollment in a Qualified Health Plan

The effective date of coverage by a qualified health plan is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment, NYSOH must generally ensure that coverage is effective the first day of the following month for selections received by NYSOH from the first to the fifteenth of any month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(i)). For selections received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(ii)).

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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 January 28, 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 never received a bill from your health plan for the January premium, even though you received insurance cards. You testified that you contacted your health plan on January 7th or 8th, and were told that you had been cancelled because your payment was due by January 1.

The Appeals Unit of NYSOH 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) the 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 your coverage was properly terminated for nonpayment of premiums. Therefore, your appeal of the January 28, 2016 cancellation notice is **DISMISSED** as a non-appealable issue.

The second issue under review is whether NYSOH properly denied you and your spouse a special enrollment period, as of March 15, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that on December 19, 2015 you and your spouse were enrolled into a QHP. The record indicates that on January 28, 2016, you were retroactively terminated from that QHP for failure to pay premiums.

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 if a qualified individual's enrollment or non-enrollment into a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an

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officer, employee, or agent of NYSOH or its instrumentalities as evaluated and determined by the NYSOH.

The credible evidence of record indicates that you called NYSOH on January 19, 2016, informed the representative that you spoke with that you were being cancelled for non-payment of premiums, and completed a new application. The events tab in your NYSOH account indicates that on January 19, 2016, a NYSOH representative updated your enrollment in your qualified health plan. However, because you chose the same plan you had been enrolled in, the NYSOH representative updated the enrollment instead of adding the plan as a new enrollment. Because of this, it appears that your new enrollment was effectively cancelled by the January 28, 2016 cancellation notice.

Since January 19, 2016 was within the open enrollment period, the representative's failure to create a new enrollment for your QHP on that day qualifies you for a special enrollment period.

Therefore, NYSOH's March 15, 2016 eligibility determination notice stating that you do not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you and your spouse are eligible for a special enrollment period for 60 days from the date of this decision.

You testified that you want coverage retroactive to January 1, 2016. The date on which an individual's enrollment in a qualified health plan begins depends on when the plan was selected. A plan selected between the first and the fifteenth of the month goes into effect on the first day of the following month. In this case, your new application was completed on January 19, 2016, when you spoke with a representative from NYSOH. Therefore, if your enrollment of that day had gone into effect, your plan would have started on March 1, 2016.

Therefore, your case is RETURNED to NYSOH to facilitate your enrollment in a qualified health plan with the application of the amount of APTC that you choose to apply, and the application of CSR, with a plan start date of March 1, 2016, or a later date, at your option.

PLEASE NOTE - You will be responsible for all premium payments beginning with the first month in which you choose to begin your coverage.

The record indicates that NYSOH's failure to grant you a special enrollment period resulted in you being without insurance coverage for part of the 2016 coverage year.

Sometimes after an appeal decision, an appellant can claim an exemption from the requirement to have health insurance. You might qualify for a health coverage exemption in 2016 if you didn't have health coverage while you were

waiting for an appeal decision about coverage eligibility or savings and your appeal was eventually successful.

You must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, NYSOH does not accept hardship exemption applications.

You will find the information you need to claim the exemption due to an appeal decision at <https://www.healthcare.gov/exemptions-tool/#/results/2016/details/eligible-based-on-appeal>. You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word “pending” in column “c” and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

Decision

Your appeal of the January 28, 2016 cancellation notice is DISMISSED as a non-appealable issue.

The March 15, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a special enrollment period for 60 days from the date of this decision.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage, with coverage beginning March 1, 2016 or a later month of your choosing.

Effective Date of this Decision: August 08, 2016

How this Decision Affects Your Eligibility

You qualify for a special enrollment period.

You have 60 days from the date of this decision to enroll into a plan.

You can enroll in coverage beginning as early as March 1, 2016.

You are responsible for all premiums beginning with the month in which you choose to begin coverage.

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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

Your appeal of the January 28, 2016 cancellation notice is **DISMISSED** as a non-appealable issue.

The March 15, 2016 eligibility determination is **MODIFIED** to reflect that you are eligible for a special enrollment period for 60 days from the date of this decision.

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Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage, with coverage beginning March 1, 2016 or a later month of your choosing.

You qualify for a special enrollment period.

You have 60 days from the date of this decision to enroll into a plan.

You can enroll in coverage beginning as early as March 1, 2016.

You are responsible for all premiums beginning with the month in which you choose to begin coverage.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

