



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: AP000000007288

[REDACTED]

Dear [REDACTED]

On July 7, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 9, 2016 cancellation notice and February 9, 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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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 and your spouse's enrollment in your qualified health plan effective January 1, 2016 because of non-payment of premiums?

Did NYSOH properly determine that you and your spouse were not eligible for a special enrollment period as of February 8, 2016?

Procedural History

On December 15, 2015 NYSOH received your household's updated application for health insurance.

On December 16, 2015, NYSOH issued a notice of eligibility determination stating that you and your spouse were newly eligible to receive up to \$399.00 per month in advance payments of the premium tax credit (APTC) and newly eligible to receive cost-sharing reductions (CSR), effective January 1, 2016. The notice also stated that your two children were newly eligible to enroll in Child Health Plus (CHP) at a cost of \$15.00 per month, effective January 1, 2016.

On December 18, 2015, NYSOH issued an enrollment confirmation notice confirming your and your spouse's enrollment in a couple's silver-level qualified health plan (QHP), with a monthly premium of \$391.82 after the application of

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your APTC, and a plan enrollment start date of January 1, 2016. The notice also confirmed your children's enrollment in a CHP plan effective January 1, 2016.

On January 31, 2016, you updated the information in your NYSOH account, including your household income.

On February 1, 2016, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to receive up to \$475.00 per month in APTC, and eligible for CSR, effective March 1, 2016. The notice also stated that your children were eligible to enroll in CHP with a monthly premium of \$9.00, effective March 1, 2016.

Also on February 1, 2016, NYSOH issued an enrollment confirmation notice confirming your enrollment in your couple's silver-level QHP, with \$399.00 of your APTC applied to your monthly premium effective January 1, 2016. The notice also confirmed your children's enrollment in their CHP plan with a monthly premium of \$18.00, effective January 1, 2016.

On February 8, 2016, your NYSOH account was updated with regard to your children's CHP enrollment.

On February 9, 2016, NYSOH issued a cancellation notice notifying you that your coverage and your spouse's coverage in your QHP was cancelled effective January 1, 2016 because a premium payment had not been received by your health plan.

Also on February 9, 2016, NYSOH issued a cancellation notice notifying you that your children's CHP coverage was cancelled effective January 1, 2016 because a premium payment had not been received by their health plan.

On February 9, 2016, NYSOH issued a notice of eligibility determination, based on the updates that were made to your account on February 8, 2016, stating that you and your spouse were eligible to receive up to \$475.00 per month in APTC and eligible for CSR, but not eligible to select a health plan outside of the open enrollment period for 2016. This notice also stated that you children were eligible to enroll in CHP coverage with a \$9.00 per month premium, effective March 1, 2016.

Lastly, on February 9, 2016, NYSOH issued an enrollment confirmation notice confirming your children's enrollment in their CHP coverage with an \$18.00 monthly premium, effective March 1, 2016.

On February 22, 2016, you spoke to NYSOH's Account Review Unit and appealed the February 9, 2016 cancellation of your and your spouse's enrollment in your QHP, and the February 9, 2016 eligibility determination insofar as you

and your spouse were not eligible to enroll in a health plan outside of the open enrollment period.

On July 7, 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 and your spouse were found eligible for, and enrolled in, a QHP with APTC and CSR, effective January 1, 2016.
- 2) The record reflects that your coverage and your spouse's coverage through this QHP was cancelled effective January 1, 2016 because your QHP did not receive a premium payment.
- 3) You testified that your husband forgot to pay your January 2016 premium.
- 4) You testified that your health plan called you and advised you that you needed to make a payment or your coverage would be canceled.
- 5) You testified that you were not able to get through to your QHP right away to make a payment by phone because a blizzard caused your phone and internet service to be down for several days.
- 6) You testified that, by the time you were able to speak with someone at your health plan to make a payment, you were told that they could not take the payment, and that you needed to contact NYSOH.
- 7) You testified that your children are currently enrolled in coverage through CHP, and you are seeking to enroll in coverage for yourself and your spouse.

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

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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 45 CFR § 155.505, 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)).

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)).

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 and your spouse's enrollment in your QHP, effective January 1, 2016, because of nonpayment of premiums.

On February 9, 2016, NYSOH issued a cancellation notice stating that your coverage and your spouse's coverage in your QHP was terminated effective January 1, 2016 because a premium payment had not been received.

You testified that your spouse forgot to pay the January 2016 premium, and that you were not aware of this until you received a phone call from your health plan in early February 2016, alerting you that you needed to pay or your coverage would be cancelled. You testified that the next day there was a blizzard that took out your telephone and internet service for several days. You testified that you called your health plan after that, but that you were told that it was too late for you to make a premium payment at that point.

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 coverage for you and your spouse was properly terminated for nonpayment of premiums. Therefore, your appeal of the February 9, 2016 cancellation notice is DISMISSED as a non-appealable issue.

The second issue under review is whether NYSOH properly denied you a special enrollment period, effective February 9, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you updated your application during the open enrollment time period, and during your renewal time period, and were enrolled in a QHP effective January 1, 2016.

The record also reflects that your coverage and your spouse's was terminated in a notice dated February 9, 2016, retroactive to January 1, 2016, because your health plan had not received a premium payment. You tried to re-enroll in coverage on February 8, 2016.

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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 loss of insurance coverage can be an event that triggers a special enrollment period. However, if the loss of coverage is due to a failure to pay premiums on a timely basis, it is considered to be a voluntary loss of coverage, and it is not an event that triggers a special enrollment period. As stated above, the Appeals Unit does not have the authority to decide whether your coverage should have been cancelled for nonpayment of premiums.

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.

Therefore, NYSOH's February 9, 2016 eligibility determination stating that that you and your spouse do not qualify to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

Decision

Your appeal of the February 9, 2016 cancellation notice is **DISMISSED** as a non-appealable issue.

The February 9, 2016 eligibility determination notice is **AFFIRMED**.

Effective Date of this Decision: July 26, 2016

How this Decision Affects Your Eligibility

You and your spouse 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

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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 February 9, 2016 cancellation notice is **DISMISSED** as a non-appealable issue.

The February 9, 2016 eligibility determination notice is **AFFIRMED**.

You and your spouse 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.

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A Copy of this Decision Has Been Provided To:

