



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

Notice of Decision

Decision Date: September 14, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007453

[REDACTED]

Dear [REDACTED],

On September 7, 2016 you appeared by telephone at a hearing on your appeal of NY State of 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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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 and your spouse are not eligible for a special enrollment period?

Procedural History

On November 20, 2015 NYSOH received your application for health insurance.

On November 22, 2015 NYSOH issued a notice of eligibility determination that stated that you and your spouse were eligible to enroll in a qualified health plan at full cost through NYSOH effective January 1, 2016.

On December 4, 2015 NYSOH issued an enrollment confirmation notice confirming your and your spouse's enrollment in a Select Care Platinum Plan through Emblem Health.

On February 26, 2016 you contacted NYSOH to request to change your and your spouse's health plan. This request was denied.

Also on February 26, 2016, you spoke to NYSOH's Account Review Unit and appealed the denial of the ability to enroll in a health plan outside of the open enrollment period.

On March 15, 2016, NYSOH issued a notice of eligibility determination that stated that you and your spouse are eligible to purchase a qualified health plan at

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full cost through NYSOH. It further stated that you do not qualify to select a health plan outside of the open enrollment period for 2016.

On September 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 supports the following findings of fact:

- 1) The record indicates that you submitted your initial application for 2016 health insurance coverage on November 20, 2016.
- 2) You testified that you selected the Select Care Platinum Plan through Emblem Health.
- 3) You testified that you were able to successfully enroll in the Select Care Platinum Plan through Emblem Health and remain covered by this plan.
- 4) You testified that you have had no lapse in coverage.
- 5) You testified that prior to selecting the plan you contacted your spouse's primary care provider to find out whether they accepted Emblem Health. You testified that you were advised that your spouse's primary care provider did accept Emblem Health. You testified that you were not advised that they do not accept Select Care through Emblem Health.
- 6) You testified that no misrepresentations were made to you by NYSOH regarding the plan you selected.
- 7) You testified that your efforts to investigate where the plan was accepted were to contact your doctors' offices and review the doctors' websites.
- 8) You testified that there are four people in your household.
- 9) You testified that only you and your spouse are seeking a special enrollment period in order to change plans.
- 10) You testified that there have been no significant changes in your income since applying for insurance.
- 11) You testified that there have been no changes in your immediate household.

- 12) You testified that you have not moved to a different county since applying for insurance.

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

The issue under review is whether NYSOH properly denied you a special enrollment period, effective March 15, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on November 20, 2015 and enrolled into a plan. On February 26,

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2016 you contacted NYSOH to switch the qualified health plan you and your spouse were enrolled in but your request was denied. Therefore, you did not request to change your and your spouse's qualified health plan during the open enrollment period.

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

You testified that your spouse's primary care provider's office told you they accept Emblem Health and you relied upon that information. However, your spouse's primary care provider's office is not an instrumentality or agent of NYSOH. Since the record does not indicate that NYSOH, by action or inaction, made an error or misrepresented information, a special enrollment period cannot be granted.

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 March 15, 2016 eligibility determination that you and your spouse do not qualify to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

Decision

The March 15, 2016 eligibility determination is AFFIRMED.

Effective Date of this Decision: September 14, 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)

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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
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- By fax: 1-855-900-5557

Summary

The March 15, 2016 eligibility determination is AFFIRMED.

You and your spouse do not qualify for a special enrollment period at this time.

Legal Authority

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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:

