



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: AP000000007489

[REDACTED]

Dear [REDACTED],

On July 18, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 11, 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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: August 08, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007489

[REDACTED]

## 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 did not qualify to select a health plan outside of open enrollment for 2016 effective April 1, 2016?

## Procedural History

On October 29, 2015, NYSOH issued a renewal notice stating you could not be enrolled in your current health plan and dental plan for the next coverage year. You were asked to select a different health plan and another dental plan between November 16, 2015 and December 15, 2015 to continue your coverage.

On November 22, 2015, an enrollment confirmation notice was issued confirming your enrollment in a Silver level qualified health plan starting January 1, 2016.

On February 29, 2016, you spoke to NYSOH's Account Review Unit and appealed a denial of your enrollment in a dental plan starting January 1, 2016, as you believed you had enrolled in a dental plan for 2016 and had prepaid for enrollment in that plan.

On March 12, 2016, NYSOH issued a notice of eligibility determination that stated that you are eligible to purchase a qualified health plan at full cost through NYSOH, however, you did not qualify to select a health plan outside of the open enrollment period for 2016. This eligibility was effective April 1, 2016.

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On July 18, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and kept open 15 days for you provide documentation relating to your enrollment in a dental plan through NYSOH. Documentation was received by NYSOH in the form of a three page fax, and seven page fax and have been incorporated into the record as (Appellant's Exhibit 1) and (Appellant's Exhibit 2) respectively.

## Findings of Fact

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

- 1) You are seeking enrollment in a dental plan outside of open enrollment for 2016 for yourself.
- 2) The record indicates that you submitted your initial application for 2016 health insurance coverage on November 16, 2015, and November 19, 2015.
- 3) The record shows and your testimony supports you accessed your online application on your own on November 16, 2015, and then contacted NYSOH on November 19, 2015 and worked with a representative to enroll in 2016 coverage.
- 4) You testified that based on your notes you believe you had enrolled in a dental plan for 2016.
- 5) The record shows you contacted NYSOH on February 29, 2016 and requested to have a dental plan outside of the open enrollment period, as you had contacted NYSOH on November 19, 2015 and believed you had enrolled in a plan. See Incident # [REDACTED]
- 6) The record shows, a NYSOH representative reviewed a call from November 19, 2015, and stated "there were no other calls logged between that period of time, and there was no enrollment or mention of a dental plan between the consumer and agent, and no notice generated confirming enrollment in a dental plan." See Incident # [REDACTED]
- 7) You testified that you had prepaid for your enrollment in a dental plan to your insurance carrier for 2016.
- 8) During your telephone hearing you testified you received a refund from your dental plan for 2016 for the full amount of prepaid premiums in the amount of \$239.88 on February 19, 2016 (Appellant's Exhibit 1, pg. 3).

- 9) You testified that your household has not changed since initially applying for health insurance for 2016.
- 10) You testified that your income has not change significantly since your initial application.
- 11) You testified and the record supports you have not had a permanent move since initially applying for insurance.
- 12) You reside in New York, New York.

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)).

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 issue under review is whether NYSOH properly denied you a special enrollment period, effective April 1, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application for 2016 health insurance coverage on November 16, 2015, and November 19, 2015. Therefore, you did complete your application 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.

The record shows you contacted NYSOH on February 29, 2016 and requested to have a dental plan outside of the open enrollment period, as you had contacted NYSOH on November 19, 2015 and believed you had enrolled in a plan. See Incident # [REDACTED]

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 did not testify that a NYSOH agent told you had been enrolled in a dental plan and you relied upon that information. You did explain that based on your own belief and notes from that time period you believed you had enrolled in a qualified health plan and prepaid for dental coverage for 2016. During your telephone hearing you testified you received a refund from your dental plan for 2016 for the full amount of prepaid premiums in the amount of \$239.88 on February 19, 2016 (Appellant’s Exhibit 1, pg. 3).

The record shows, a NYSOH representative reviewed a call from November 19, 2015, and stated “there were no other calls logged between that period of time, and there was no enrollment or mention of a dental plan between the consumer and agent, and no notice generated confirming enrollment in a dental plan.” See Incident # [REDACTED]

The record supports there were no enrollment notices indicating your enrollment in a dental plan for 2016. There is a notice of enrollment for a qualified health plan that you had selected on November 19, 2015. The record shows and your testimony supports you accessed your online application on your own on November 16, 2015, and then contacted NYSOH on November 19, 2015 and worked with a representative to enroll in 2016 coverage.

On November 22, 2015, an enrollment confirmation notice was issued confirming your enrollment in a Silver level qualified health plan starting January 1, 2016.

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 11, 2016, eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

## **Decision**

The March 11, 2016, eligibility determination is **AFFIRMED**.

**Effective Date of this Decision:** August 08, 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)**

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).



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**

The March 11, 2016, eligibility determination is AFFIRMED.

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.

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**A Copy of this Decision Has Been Provided To:**

