



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

Notice of Decision

Decision Date: July 14, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007495

[REDACTED]

Dear [REDACTED]

On July 7, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health’s February 18, 2016 cancellation notice and the April 5, 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]
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Issues

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

Did NY State of Health (NYSOH) properly terminate 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 select a health plan outside of the open enrollment period?

Procedural History

On October 22, 2015 NYSOH issued a renewal notice stating that based on the information from federal and state data sources a decision could not be made about whether you qualify for financial assistance. You were asked to update your NYSOH account by December 15, 2015 or the financial assistance you were receiving might end.

On December 21, 2015 NYSOH issued an eligibility determination notice stating that you were newly eligible to purchase a qualified health plan at full cost through NYSOH, effective January 1, 2016. The notice stated that you were not eligible for financial assistance because you did not respond to the renewal notice in the required time frame.

On December 22, 2015 NYSOH issued an enrollment confirmation notice stating that you were enrolled into a silver level qualified health plan, with \$0.00 advance premium tax credits applied, and that your coverage would start January 1, 2016.

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Also on December 22, 2015 NYSOH received your updated application for financial assistance. That day, a preliminary eligibility determination was prepared stating that you were eligible to receive up to \$171.00 per month in advance premium tax credits and cost-sharing reductions that would start as of February 1, 2016.

On January 5, 2016 NYSOH issued an enrollment confirmation notice stating that you were enrolled into a silver level qualified health plan and that your coverage would start January 1, 2016. The notice stated that your advance premium tax credit would be applied to your monthly premium effective February 1, 2016.

On February 18, 2016 NYSOH issued a cancellation notice stating that your insurance with your qualified health plan had been cancelled effective January 1, 2016 because a premium payment was not received by your plan within the required time frame.

February 29, 2016, you spoke to NYSOH's Account Review Unit and appealed because your request for a special enrollment period to enroll into a health plan was denied.

On April 5, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to receive an advance premium tax credit of up to \$171.00 per month and cost-sharing reductions, effective April 1, 2016. It further stated that you do not qualify to select a health plan outside of the open enrollment period for 2016.

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 were auto enrolled into your qualified health plan at full cost effective January 1, 2016.
- 2) The record indicates that you updated your application for financial assistance on December 21, 2016 and that you became eligible for advance premium tax credits effective February 1, 2016.
- 3) You testified you called NYSOH to inquire about the amount of premium payment you should make to your qualified health plan for January and February 2016. You testified that you were told by an NYSOH

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representative that you should pay the amount of your premium minus the amount of tax credit you were eligible for.

- 4) You testified that you paid your January and February premiums minus the amount of tax credits you thought you were eligible for.
- 5) The record indicates that on February 18, 2016 your coverage in your qualified health plan was terminated as of January 1, 2016 because a premium payment had not been made.

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: (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 to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

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:

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- (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 NYSOH properly terminated your enrollment in your qualified health plan effective January 1, 2016 because of non-payment of premiums.

The record indicates that you updated your application for financial assistance on December 21, 2016 and that you became eligible for advance premium tax credits effective February 1, 2016. You testified you called NYSOH to inquire about the amount of premium payment you should make to your qualified health plan for January and February 2016. You testified that you were told by an NYSOH representative that you should pay the amount of your premium minus the amount of tax credit you were eligible for.

On February 18, 2016 NYSOH issued a cancellation notice stating that your insurance with your qualified health plan had been cancelled effective January 1, 2016 because a premium payment was not received by your plan within the required time frame.

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 to vacate dismissal made by the New York State of Health Appeals Unit.

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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 non-payment of premiums. Therefore, your appeal of the February 18, 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, in the April 5, 2016 eligibility determination notice.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. 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.

Generally, the loss of health insurance coverage is considered a triggering event. Here, your enrollment was terminated effective January 1, 2016 because you did not pay your premiums to your health plan on time. The Marketplace considers the failure to pay premiums a voluntary action causing the termination of your coverage; therefore, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis. As discussed above, the Appeals Unit does not have the authority to decide whether or not your premiums were in fact made on time.

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, the April 5, 2016 eligibility determination notice is **AFFIRMED** because Marketplace properly denied your request for a special enrollment period.

Decision

Your appeal of the February 18, 2016 cancellation notice is **DISMISSED**.

The April 5, 2016 eligibility determination notice is **AFFIRMED**.

Effective Date of this Decision: July 14, 2016

How this Decision Affects Your Eligibility

You do not qualify to select a health plan outside of the open enrollment period.

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).

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:
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- By fax: 1-855-900-5557

Summary

Your appeal of the February 18, 2016 cancellation notice is **DISMISSED**.

The April 5, 2016 eligibility determination notice is **AFFIRMED**.

You do not qualify to select a health plan outside of the open enrollment period.

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Legal Authority

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

A Copy of this Decision Has Been Provided To:

