



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

Notice of Decision

Decision Date: August 12, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007513

[REDACTED]

Dear [REDACTED],

On August 8, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health's January 12, 2016 eligibility determination and the June 8, 2016 denial of a special enrollment period.

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).

This page intentionally left blank.



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

Decision

Decision Date: August 12, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007513



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 the application of advance premium tax credits to your qualified health plan, was effective February 1, 2016?

Did NYSOH properly determine that you were not eligible for a special enrollment period?

Procedural History

On September 11, 2014 NYSOH issued an eligibility determination notice stating that you were eligible for Medicaid, effective October 1, 2014.

On August 11, 2015 NYSOH issued a notice that it was time to renew your health insurance for the upcoming coverage year. That notice stated that, based on information from federal and state sources, you now qualify for a tax credit of up to \$264.04 per month as well as cost-sharing reductions, this eligibility was effective October 1, 2015.

On September 1, 2015 information in your NYSOH account was updated.

On September 3, 2015 NYSOH issued an eligibility determination notice stating that you were eligible to receive up to \$218.00 per month in advance premium tax credits and cost-sharing reductions, effective October 1, 2015.

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).

On September 5, 2015 NYSOH issued an enrollment notice confirming your enrollment in a silver level health plan with advance premium tax credits as of October 1, 2015.

On November 7, 2015 NYSOH issued a notice that it was time to renew your health insurance for the upcoming coverage year. That notice stated that, based on information from federal and state sources, NYSOH could not make a decision about whether you would qualify for financial help paying for your health coverage, and that you needed to update your account by December 15, 2015 or you might lose the financial assistance you were currently receiving.

No updates were made to your account by December 15, 2015.

On December 21, 2015 NYSOH issued an eligibility determination notice stating that you were eligible to enroll in a qualified health plan at full cost, effective January 1, 2016. The notice stated that you were not eligible to receive tax credits or cost-sharing reductions to help pay for the cost of insurance because you had not responded to the renewal notice and had not completed your renewal within the required time frame.

On December 23, 2015 NYSOH issued an enrollment notice confirming your enrollment in a full pay silver level qualified health plan as of January 1, 2016.

On January 11, 2016, NYSOH received your updated application for health insurance.

On January 12, 2016 NYSOH issued a disenrollment notice stating that you had requested to end your insurance coverage with your full pay silver level qualified health plan. The notice stated that you would not have coverage through your plan effective January 31, 2016.

Also on January 12, 2016, NYSOH issued a notice of eligibility redetermination stating that you were newly eligible to receive up to \$161.00 per month in advance premium tax credits and, if you selected a silver-level qualified health plan, for cost-sharing reductions. This eligibility was effective February 1, 2016.

Finally on January 12, 2016 NYSOH a notice confirming your enrollment in a bronze level qualified health plan with advance premium tax credits, effective February 1, 2016.

On February 25, 2016 NYSOH Accounts Review Unit received your written appeal request. That request stated that you were appealing not getting a tax credit for January 1, 2016 because you did not renew.

On May 18, 2016 you contacted NYSOH again and requested a special enrollment period because you had been disenrolled from your bronze level qualified health plan.

On June 8, 2016 your request for a special enrollment period was denied and you amended your appeal to also include this denial.

On August 8, 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) You testified, and the record indicates, that you were receiving Medicaid through NYSOH up until September 30, 2015.
- 2) You testified that in September you updated your NYSOH account and selected a silver level qualified health plan. You testified that you were under the impression that this renewal was good for another year.
- 3) Your NYSOH account indicates that you receive notices from NYSOH by regular mail.
- 4) You testified that you did not receive any notices from NYSOH telling you that you needed to update the information in your NYSOH account to ensure that your coverage would not be interrupted and that your financial assistance would continue for 2016.
- 5) No notices sent to you at the address listed on your NYSOH account have been returned as undeliverable.
- 6) You testified that you did not know you needed to renew your application for 2016 until you received a bill in December for double the amount of your usual premium.
- 7) You testified that you called the certified application counselor that assisted you in September 2015 who then contacted NYSOH.
- 8) You testified that because the issue was not resolved by your previous certified application counselor, you contacted an insurance broker with an insurance company for assistance in January.

- 9) The events tab in your NYSOH account indicates that on January 11, 2016 an insurance broker updated your enrollment in your silver level qualified health plan.
- 10) The events tab in your NYSOH account indicates that shortly after your broker updated your enrollment in your silver level qualified health plan, a NYSOH representative went in and deleted your enrollment. The NYSOH representative then enrolled you in a bronze level qualified health plan.
- 11) You testified that you did not want to be enrolled in a bronze level qualified health plan and that you wanted to remain enrolled in your silver level qualified health plan.
- 12) The record indicates that on May 18, 2016 you contacted NYSOH in regards to your appeal, at that time you also requested a special enrollment period to reenroll into your silver level qualified health plan.
- 13) On June 8, 2016 Complaint # [REDACTED] was closed and you were denied a Special Enrollment Period.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

Applicable Law and Regulations

Medicaid Renewal

In general, NYSOH must review Medicaid eligibility once every 12 months or “whenever it receives information about a change in a beneficiary’s circumstances that may affect eligibility” (42 CFR § 435.916(a)(1), (d)). NYSOH must make its “redetermination of eligibility without requiring information from the individual if able to do so based on reliable information contained in the individual’s account or other more current information available to the agency, including but not limited to information accessed through any data bases accessed by the agency” (42 CFR § 435.916(a)(2)).

Annual Eligibility Redetermination

Generally, NYSOH must conduct annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, such as tax credits and cost-sharing reductions, Medicaid, or Child Health Plus. In such cases, NYSOH is required to request that the qualified individual provide updated income and family size information for use in an eligibility redetermination for the upcoming year (see 45 CFR § 155.335(a) and (b)).

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).

NYSOH must send an annual renewal notice that contains the information by which NYSOH will use to redetermine a qualified individual's projected eligibility for that year (45 CFR § 155.335(c)(3)). If a qualified individual does not respond to the notice after a 30-day period, NYSOH must redetermine that individual's eligibility using the information provided in the annual renewal notice (45 CFR § 155.335(g), (h)). NYSOH must ensure this redetermination is effective on the first day of the coverage year or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)). The rules specified in 45 CFR § 155.330(f) are not pertinent here.

Redetermination During a Benefit Year

When an eligibility redetermination results in a change in the amount of APTC for a part of the benefit year, NYSOH must recalculate the amount of APTC in such a manner as to account for any advance payments already made (or not made) on behalf of the tax filer, such that the recalculated advance payment amount is projected to result in total advance payments for the benefit year that correspond to the tax filer's total projected premium tax credit for the overall benefit year (45 CFR § 155.330(g)).

Any change resulting from redeterminations during a benefit year should be made effective the first day of the month following the date of the notice of redetermination, except that redeterminations resulting from changes made after a date specified by the state, which can be no earlier than the 15th of the month, may not be made effective until the first day of the month after the month following the date of the notice of redetermination. (45 CFR § 155.330(f)(1) and (2)). New York has specified that changes made after the 15th of a given month will take effect the month after the following month.

De Novo Review

NYSOH Appeals Unit must review each appeal de novo and "consider all relevant facts and evidence adduced during the appeals process" (45 CFR § 155.535(f)). "De novo review means a review of an appeal without deference to prior decisions in the case" (45 CFR § 155.500).

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 first issue under review, is whether NYSOH properly determined that the application of advance premium tax credits to your qualified health plan, was effective February 1, 2016.

You testified, and the record indicates, that you were receiving Medicaid through NYSOH up until September 30, 2015.

When a person is receiving coverage through Medicaid, their eligibility must be redetermined every twelve months.

The record indicates that in September 2015, you updated your NYSOH account because your twelve months of Medicaid coverage was coming to an end. As a result, you became eligible for advance premium tax credits and cost-sharing reductions as of October 1, 2015. You testified that in September you selected a silver level qualified health plan for enrollment.

Unlike Medicaid which is on a twelve month renewal cycle, NYSOH must redetermine an individual's eligibility for advance premium tax credit and cost-sharing reductions annually for coverage beginning the first day of the new year. NYSOH must issue a renewal notice that contains the individual's projected eligibility. If an individual does not respond to this notice, NYSOH must issue an

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).

eligibility determination for the upcoming coverage year based on the information contained in the renewal notice.

Because you were now eligible for advance premium tax credits and cost-sharing reductions, the type of renewal cycle you were on changed. On November 7, 2015, NYSOH issued an annual renewal notice in your case for coverage that would begin the first of the New Year. That notice stated that based on information from federal and state sources, NYSOH could not make a decision about whether or not you would qualify for financial help with paying for your health coverage. You were asked to update the information in your account by December 15, 2015 or the financial help you were receiving might end.

Because there was no response to this notice, your eligibility for financial assistance was terminated effective December 31, 2015. You were then auto-enrolled into your silver level qualified health plan at full cost.

You testified that you did not receive any notice from NYSOH telling you that you needed to update the information in your NYSOH account. You testified, and your NYSOH account confirms, that you elected to receive notifications by regular mail. However, there is no evidence in the record that any of the notices that were sent to your mailing address were returned as undeliverable.

Therefore, the record reflects that NYSOH properly notified you of your annual renewal and that information in your NYSOH account needed to be updated in order to ensure your enrollment in your health plan and eligibility for financial assistance would continue.

The record shows that on January 11, 2016 you updated the information in your NYSOH account and submitted a request to enroll in a qualified health plan.

When an individual changes information in their application on or before the 15th of any month, NYSOH must make the redetermination that results from the change effective the first day of the following month.

Therefore, NYSOH's January 12, 2016 eligibility determination notice is AFFIRMED because they properly began your enrollment in your qualified health plan as well as your advance premium tax credits on February 1, 2016.

The second issue under review is whether NYSOH properly determined that you were not eligible to enroll in a qualified health plan outside of the open enrollment period as of June 8, 2016.

On May 18, 2016 you spoke with NYSOH's Account Review Unit and requested a special enrollment to select a new health plan outside of the open enrollment period. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period. It does contain a note

in Complaint # [REDACTED] stating that you were denied a Special Enrollment Period.

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you were autoenrolled into a silver level qualified health plan at full cost. The events tab in your NYSOH account indicates that on January 11, 2016 an insurance broker updated your enrollment in your silver level qualified health plan. Shortly thereafter, a NYSOH representative went in and deleted your enrollment. The NYSOH representative then enrolled you in a bronze level qualified health plan.

The record indicates that you were disenrolled from the bronze level plan and on May 18, 2016 you called to follow up on your appeal request and to reenroll into a health plan.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll into a qualified 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 NYSOH.

You credibly testified that you did not want to be enrolled in a bronze level qualified health plan at the time an NYSOH representative updated your account in January 2016 and that you wanted to remain enrolled in your silver level qualified health plan. You did not realize you had been enrolled into a bronze level plan until you received a bill stating what your coverage was.

Therefore, the record shows that your failure to enroll in a qualified health plan during the open enrollment period was "unintentional, inadvertent, or erroneous", and it was the result of the "error, misrepresentation, or inaction of an officer,

employee, or agent of the NYSOH; or a non-Exchange entity providing enrollment assistance”.

Therefore, your case is RETURNED to NYSOH to grant you a special enrollment period and allow you the opportunity to select a qualified health plan within 60 days from the date of this decision.

Decision

The January 12, 2016 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to grant you a special enrollment period and allow you the opportunity to select a qualified health plan within 60 days from the date of this decision.

Effective Date of this Decision: August 12, 2016

How this Decision Affects Your Eligibility

NYSOH properly began your eligibility for advance premium tax credits as of February 1, 2016.

Because an NYSOH incorrectly deleted your enrollment in your silver level health plan, you have been granted a special enrollment period to enroll into a qualified health plan within 60 days from the date of this decision.

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 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 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 January 12, 2016 eligibility determination notice is AFFIRMED.

NYSOH properly began your eligibility for advance premium tax credits as of February 1, 2016.

Your case is RETURNED to NYSOH to grant you a special enrollment period and allow you the opportunity to select a qualified health plan within 60 days from the date of this decision.

Because an NYSOH incorrectly deleted your enrollment in your silver level health plan, you have been granted a special enrollment period to enroll into a qualified health plan within 60 days from the date of this decision.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

