



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

Notice of Decision

Decision Date: August 26, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007528

[REDACTED]

Dear [REDACTED],

On August 18, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's 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).

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DEPARTMENT OF HEALTH
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Decision

Decision Date: August 26, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007528

[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 and your spouse do not qualify to select a health plan outside of the open enrollment period?

Procedural History

On February 29, 2016, NYSOH received your application for health insurance. That day, a preliminary eligibility determination was prepared stating that you were eligible to receive up to \$81.00 per month in advance premium tax credits (APTC).

Also on February 29, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as the amount of financial assistance you were eligible for.

On March 1, 2016 NYSOH issued an eligibility determination notice based on the February 29, 2016 application stating that you were newly eligible to receive up to \$81.00 per month in APTC. You also qualified to select a health plan outside of the open enrollment period for 2016.

Also on March 1, 2016 you updated your NYSOH application to include your spouse as seeking insurance.

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On March 2, 2016 NYSOH issued an eligibility determination notice stating that you were eligible, and your spouse was conditionally eligible, to receive up to \$535.00 per month in APTC, and if you enrolled in a silver level qualified health plan, cost-sharing reductions. Your spouse's eligibility was contingent on him providing documentation of his immigration status. You and your spouse also qualified to select a health plan outside of the open enrollment period. The notice asked you to select a health plan by April 30, 2016.

You and your spouse did not select a health plan before April 30, 2016.

On August 18, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing you and your spouse offered testimony. You both stated that your issue was no longer the amount of financial assistance you were eligible for but instead you were seeking the ability to select a health plan outside of the open enrollment period. Accordingly, the Hearing Officer amended the issue under appeal. The record was developed during the hearing and remained open for 15 days to allow you and your spouse time to submit a readable copy of your spouse's VISA. On August 23, 2016 a copy of your spouse's VISA was received by the Appeals Unit by fax. It was incorporated into the record as Appellant's Exhibit #1 and the record was closed.

Findings of Fact

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

- 1) The record indicates that you submitted your initial application for 2016 health insurance coverage on February 29, 2016. On March 1, 2016, your application was updated to include your spouse.
- 2) You testified that at the time of the March 1, 2016 application you did not enroll into a qualified health plan because you had been given incorrect information by NYSOH representatives that led you to believe that the deductible associated with the plans was unaffordable to you.
- 3) You testified that you spoke to NYSOH representative's in April and you were again provided with incorrect information regarding deductibles.
- 4) You testified that you spoke with someone outside of NYSOH in July who informed you how a deductible worked. After you received this information, you attempted to select a health plan but were unable to because you were outside of the open enrollment period.
- 5) You testified that had you been provided the correct information in March, you and your spouse would have enrolled in a qualified health plan at that time.

- 6) You testified during the hearing that you are concerned about incurring a tax penalty as a result of being without coverage.
- 7) You testified during the hearing that you intend to file your 2016 income tax return with a tax filing status of married filing jointly and will claim no dependents on that tax return.
- 8) You testified that your household's income has changed since filing your March application. You testified that you expect to receive about \$20,683.00 in income. Your spouse testified that he expects to receive about \$17,000.00 in income.

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

On February 29, 2016, you spoke to NYSOH's Account Review Unit and appealed the amount of financial assistance you were eligible for. You and your spouse stated that your issue was no longer the amount of financial assistance you were eligible for but instead you were seeking the ability to select a health plan outside of open enrollment period.

The record does not contain a notice of eligibility determination or redetermination on the issue of 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 submitted a completed application for you and your spouse on March 1, 2016 and were granted a special enrollment period. You and your spouse were given to April 30, 2016 in order to select a health plan. However, no health plan was selected before April 30, 2016 deadline.

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.

The credible evidence of record indicates that at the time of the March 1, 2016 application and in April 2016 you did not enroll into a qualified health plan because you had been given incorrect information by NYSOH representatives

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that led you to believe that the deductible associated with the plans was unaffordable to you. You testified that you spoke with someone outside of NYSOH in July who informed you how a deductible worked. After you received this information, you attempted to select a health plan but were unable to because you were outside of the open enrollment period.

You testified that had you been provided the correct information in March you and your spouse would have enrolled in a qualified health plan at that time. Since your and your spouse's non-enrollment in a qualified health plan was unintentional as the result of misrepresentations made by an NYSOH representative, you should be granted a special enrollment period.

You testified that your household's income has changed since filing your March application. You testified that you expect to receive about \$20,683.00 in income. Your spouse testified that he expects to receive about \$17,000.00 in income.

Therefore, your case is RETURNED to NYSOH to do the following:

- 1) Redetermine your and your spouse's eligibility for financial assistance based on a household of two people, with an expected annual income of \$37,683.00 residing in New York County.
- 2) Verify your spouse's VISA that you submitted by fax to the Appeals Unit.
- 3) Grant you and your spouse a special enrollment period allowing you 60 days from the date of your redetermination of eligibility to select a qualified health plan.

During the hearing, you testified that you are concerned about receiving a tax penalty as a result of being without coverage.

Sometimes after an appeal decision, an appellant can claim an exemption from the requirement to have health insurance. You might qualify for a health coverage exemption in 2016 if you didn't have health coverage while you were waiting for an appeal decision about coverage eligibility or savings and your appeal was eventually successful.

You must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, NYSOH does not accept hardship exemption applications.

You will find the information you need to claim the exemption due to an appeal decision at <https://www.healthcare.gov/exemptions-tool/#/results/2016/details/eligible-based-on-appeal>. You can also call 1-800-318-2596.

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Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word “pending” in column “c” and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

Decision

Your case is RETURNED to NYSOH to do the following:

- 1) Redetermine your and your spouse’s eligibility for financial assistance based on a household of two people, with an expected annual income of \$37,683.00 residing in New York County.
- 2) Verify your spouse’s VISA that you submitted by fax to the Appeals Unit.
- 3) Grant you and your spouse a special enrollment period allowing you 60 days from the date of your redetermination of eligibility to select a qualified health plan.

Effective Date of this Decision: August 26, 2016

How this Decision Affects Your Eligibility

You and your spouse qualify for a special enrollment period.

Your case is being returned to NYSOH to redetermine your eligibility and provide you with the opportunity to select a health plan.

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

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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 case is RETURNED to NYSOH to do the following:

- 1) Redetermine your and your spouse's eligibility for financial assistance based on a household of two people, with an expected annual income of \$37,683.00 residing in New York County.
- 2) Verify your spouse's VISA that you submitted by fax to the Appeals Unit.
- 3) Grant you and your spouse a special enrollment period allowing you 60 days from the date of your redetermination of eligibility to select a qualified health plan.

You and your spouse qualify for a special enrollment period.

Your case is being returned to NYSOH to redetermine your eligibility and provide you with the opportunity to select a health plan.

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:

