



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: AP000000007533

[REDACTED]

Dear [REDACTED],

On August 9, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health’s March 2, 2016 Appeal notice.

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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
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Decision

Decision Date: August 26, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007533

[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 you were not eligible for a special enrollment period to enroll in a new plan outside of the open enrollment period for 2016?

Procedural History

On October 29, 2015, a renewal notice was issued by NYSOH stating you had been automatically enrolled in your current health plan for another year. The notice stated you would be enrolled in a Platinum level health plan starting January 1, 2016.

On November 25, 2015, an enrollment confirmation notice was issued confirming your enrollment in a platinum level qualified health plan starting January 1, 2016.

On December 19, 2015, an enrollment confirmation notice was issued confirming your enrollment in a platinum level qualified health plan starting January 1, 2016.

On January 26, 2016, NYSOH received your updated application for health insurance.

On January 27, 2016, NYSOH issued a notice of eligibility determination that stated that you were eligible to purchase a qualified health plan at full cost effective March 1, 2016.

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Also on January 27, 2016, an enrollment confirmation notice was issued confirming your enrollment with a platinum level qualified health plan starting January 1, 2016.

On February 18, 2016, NYSOH received your updated application for health insurance.

On February 19, 2016, an eligibility determination notice was issued finding you eligible to purchase a qualified health plan at full cost effective April 1, 2016. The determination found you eligible to select a health plan outside of the open enrollment period for 2016. You were asked to please review your health plan options and confirm your selection no later than March 31, 2016.

On March 1, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you were not eligible to enroll in a health plan starting March 1, 2016, instead of January 1, 2016.

On March 2, 2016, a notice was issued confirming your request to appeal a NYSOH decision finding you unable to start your qualified health plan as of March 1, 2016.

On August 9, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Your appeal was amended during your telephone hearing to reflect that you were now seeking the ability to enroll in coverage outside of the open enrollment period for 2016. The record was developed during the hearing and kept open 15 days for you to provide documentation relating to your disenrollment from your health plan, and notes on your conversations with NYSOH representatives. On August 15, 2016, your documentation was received by the Appeals Unit in the form of a 53 page fax, and is incorporated into the record as (Appellant's Exhibit 1).

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 January 26, 2016.
- 2) The record shows updated enrollments in a Platinum level qualified health plan on November 17, 2015, and again on December 18, 2015. The first enrollment was based on a system run automatically enrolling you, the second was by a NYSOH representative over the phone.
- 3) You testified you are seeking insurance for yourself.

- 4) You testified that at the time you appealed your case on March 1, 2016, you were seeking a start date of March 1, 2016. You are now seeking to be found eligible to enroll in a qualified health plan in order to treat your current medical needs going forward for 2016.
- 5) You testified that your household has not changed since initially applying for health insurance.
- 6) You testified that you did not make premium payments to your health plan for December 2015, January 2016, and February 2016.
- 7) You testified that you were told by your health plan that you were showing as not actively enrolled in their system for January coverage.
- 8) You testified you applied in January 26, 2016 with the assistance of a certified application counselor.
- 9) You testified you believed you had been re-enrolled in a qualified health plan starting March 1, 2016 according to your certified application counselor and NYSOH representatives, but that your health plan shows no enrollment being received.
- 10) An Incident was filed with NYSOH [REDACTED]. Those records indicate that on February 26, 2016, "Per Empire, the delay in processing 2016 enrollment was due to the member being in a grace period for 2015, at which time the member was terminated for non-payment effective November 30, 2015. 2015 enrollment will not be updated at this time. If account updates were made on January 26, 2016, the member would still have owed the January premium if the coverage had been updated appropriately to terminate coverage 1/31/16, and re-enroll for 3/1/16."
- 11) According to your NYSOH account, no request to disenroll you from your qualified health plan was made.
- 12) The record shows according to Incident [REDACTED] recorded on February 26, 2016, "CAC logged in to account later the same day and updated enrollment again sending another change enrollment instead of cancelling enrollment to create a new enrollment."
- 13) The record shows according to Incident [REDACTED] recorded February 29, 2016 "the request for a SEP to change the start date of his plan has been denied. Even if plan was cancelled on 1/26/16 he would still be responsible for January and February's bill, due to not providing the 14 day notice however in regards to this decision he can file an appeal."

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)).

NYSOH must ensure that coverage is effective as of January 1, 2016, for qualified health plan selections received by on or before December 19, 2015 (45 CFR §155.410(f)(2)(i), Press Release: NY State of Health Extends Enrollment Deadline for January 1 Coverage, <http://info.nystateofhealth.ny.gov/news/press-release-ny-state-health-extends-enrollment-deadline-january-1-coverage>).

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

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- (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)).

De Novo Review

The 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).

Legal Analysis

A review of the record demonstrates that you spoke with NYSOH’s Account Review Unit and requested a special enrollment to select a new health plan. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period (SEP). However, it does contain an Incident [REDACTED] in which a NYSOH representative denies your request for the granting of a special enrollment period for 2016. In addition during your August 9, 2016, telephone hearing, your appeal was amended to reflect that you were now seeking the ability to enroll in coverage outside of the open enrollment period for 2016, and not to begin coverage in your qualified health plan as of March 1, 2016.

Here, the lack of a notice of eligibility determination on the issue of special enrollment period being denied 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’s 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 determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued. Therefore, the issue under review is whether you were properly denied a special enrollment period.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on December 18, 2015, and January 26, 2016. Therefore, you did complete your application during the open enrollment period. However, the plan that you had been enrolled in was terminated for non-payment.

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.

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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, and additionally non-Exchange entities providing enrollment assistance or conducting enrollment activities as evaluated and determined by the NYSOH.

You testified that you were told by your health plan that you were showing as not actively enrolled in their system for January 2016, despite NYSOH's system showing you as actively enrolled. You testified you applied with the assistance of a certified application counselor on January 26, 2016. You furthermore believed you had been re-enrolled in a qualified health plan starting March 1, 2016 according to your certified application counselor and NYSOH representatives.

According to your NYSOH account, no request to disenroll you from your qualified health plan that the NYSOH system was showing you as enrolled in was made, and instead, the same enrollment was updated by your certified application counselor. This is further demonstrated by an entry made in incident [REDACTED] "CAC logged in to account later the same day and updated enrollment again sending another change enrollment instead of cancelling enrollment to create a new enrollment."

It is therefore determined that your application counselor in conjunction with representatives of NYSOH did not provide you the proper enrollment per your request in order to effectuate a new enrollment based on your January 26, 2016 application. In effect, by denying your assertion that you had not been enrolled properly in a qualified health plan from the beginning of January 1, 2016, you were denied the ability to enroll in a new plan, or change your plan in order to start coverage March 1, 2016, because you were outside of the open enrollment period.

Therefore, you are granted a Special Enrollment Period to select a health plan outside of the open enrollment period for 2016 and the March 2, 2016 Appeal Notice is MODIFIED to reflect that your appeal was on the basis of being denied a special enrollment period to enroll in a new qualified health plan outside of the open enrollment period, and that you are eligible for a special enrollment period until 60 days from the date of this decision.

Decision

The March 2, 2016 Appeal Notice is MODIFIED to reflect that your appeal was on the basis of the denial of a special enrollment period, and that you are eligible for a special enrollment period until 60 days from the date of this decision.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage.

Effective Date of this Decision: August 26, 2016

How this Decision Affects Your Eligibility

You qualify for a special enrollment period.

You have 60 days from the date of this decision to enroll into a 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 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

The March 2, 2016 Appeal Notice is MODIFIED to reflect that your appeal was on the basis of the denial of a special enrollment period, and that you are eligible for a special enrollment period until 60 days from the date of this decision.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage.

You qualify for a special enrollment period.

You have 60 days from the date of this decision to enroll into a plan.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

