



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

## Notice of Decision

Decision Date: August 5, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007541

[REDACTED]

Dear [REDACTED],

On July 8, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 11, 2016 cancellation notice and NYSOH's determination to deny you 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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## Issues

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

Did NY State of Health properly cancel your enrollment in your qualified health plan effective January 1, 2016, because of non-payment of premiums?

Did NY State of Health properly determine that you did not qualify for a special enrollment period?

## Procedural History

On December 8, 2015, New York State of Health (NYSOH) issued an eligibility determination notice stating that you were eligible to purchase a qualified health plan at full cost through NYSOH, effective as of January 1, 2016.

Also on December 8, 2015, NYSOH issued an enrollment notice confirming that as of December 7, 2015 you were enrolled in Empire HMO 0 X Platinum ST INN Pediatric Dental Dep 25 (Empire Blue Cross Blue Shield) with a plan enrollment start date of January 1, 2016.

On February 11, 2016, NYSOH issued a cancellation notice stating that your insurance with Empire Blue Cross Blue Shield was cancelled effective January 1, 2016, because a premium payment had not been received by Empire Blue Cross Blue Shield. The notice directed you to contact your plan directly if you believe that you made your premium payment.

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On February 11, 2016, and March 2, 2016, NYSOH issued an eligibility notices stating, in relevant part, that you may qualify to select a health plan outside of the open enrollment period. The notices directed you to sign into your NY State of Health account and answer questions about the Special Enrollment Period to see if you qualify.

On March 2, 2016, NYSOH issued a notice confirming that on March 1, 2016, you requested a telephone hearing to review, “disenrollment due to non payment.”

On July 8, 2016, you, your spouse and authorized representative 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 proceeding.

## **Findings of Fact**

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

- 1) According to your NYSOH account, you enrolled in Empire HMO 0 X Platinum ST INN Pediatric Dental Dep 25 (Empire Blue Cross Blue Shield) on December 7, 2015 with a plan enrollment start date of January 1, 2016 ( [REDACTED] )
- 2) Your spouse testified that you never received a health insurance premium invoice from Empire Blue Cross Blue Shield.
- 3) You testified that you attempted to “sign in” to Empire Blue Cross Blue Shield’s website to pay your health insurance premiums in February 2016.
- 4) You testified that you contacted Empire Blue Cross Blue Shield on February 10, 2016. You were notified that your health plan had been cancelled for non-payment of health insurance premiums and coverage could not be reinstated without NYSOH’s approval.
- 5) You testified that you contacted NYSOH on February 10, 2016, and was told that coverage could not be reinstated without Empire Blue Cross Blue Shield’s approval.
- 6) On February 11, 2016, NYSOH issued a cancellation notice stating that your insurance with Empire Blue Cross Blue Shield was cancelled effective January 1, 2016, because a premium payment had not been received by Empire Blue Cross Blue Shield ( [REDACTED] )
- 7) Your spouse testified that you never received a termination notice from Empire Blue Cross Blue Shield.

- 8) You testified that you are seeking a special enrollment period to enroll in health insurance coverage through NYSOH.
- 9) Your authorized representative stated that you are seeking a special enrollment period based on the fact that Empire Blue Cross Blue Shield has failed to uphold its contract obligations with NYSOH by not providing you a health insurance invoice and termination notice within the necessary timeframe. Furthermore, it is necessary for you to have health insurance coverage because of your chronic medical condition.
- 10) Your spouse testified that you have not paid any health insurance premiums to Empire Blue Cross Blue Shield in 2016.

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

The 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)).

### De Novo Review

The Marketplace 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).

## Special Enrollment Periods

After each open enrollment period ends, the 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)).

### Special Enrollment Period – Voluntary Termination

A special enrollment period is granted when including a qualified individual or his or her dependent loses certain health insurance coverage.

However, a loss of 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 QHP effective because of non-payment of premiums.

On February 11, 2016, NYSOH issued a cancellation notice stating that your coverage in your QHP is terminated effective January 1, 2016 because a health insurance premium payment had not been received by Empire Blue Cross Blue Shield

Your spouse testified that you never received a health insurance invoice or termination notice from Empire Blue Cross Blue Shield.

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) a determination of eligibility for an enrollment period (4) an eligibility determination

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for an exemption, (5) a failure by the Exchange to provide timely notice of an eligibility determination and (6) a denial of a request to vacate dismissal made by the New York State of Health Appeals Unit.

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 11, 2016, cancellation notice is DISMISSED as a non-appealable issue.

However, Empire Blue Cross Blue Shield may be able to help you with your request for coverage. If you have not already been assisted with your current coverage issue, please contact Empire at 1-855-748-1806.

In addition, since your issue concerns a health insurer and/or payment, reimbursement, coverage, benefits, rates and premiums, you can contact NY Department of Financial Services at their Consumer Hotline at (800) 342-3736 (Monday through Friday, 8:30 AM to 4:30 PM); or locally to (212) 480-6400; or you can file a complaint at <http://www.dfs.ny.gov/consumer/fileacomplaint.htm>

The second issue under review is whether NYSOH properly denied you a special enrollment period.

The record does not contain a notice of eligibility determination or redetermination regarding the issue of denying you a special enrollment period (SEP). The lack of a notice of eligibility determination on the issue of SEP does not prevent the Appeals Unit from reaching the merits of the case. Under 45 CFR § 155.505(b), you are entitled to appeal a determination of eligibility for an enrollment period. During the hearing you testified that the reason for your appeal was to be granted a special enrollment period to re-enroll in coverage through NYSOH. Since the Appeals Unit review of NYSOH's determinations are performed on a *de novo* basis, no deference would have been granted to the notice of eligibility determination had it been issued.

The NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record reflects that you enrolled in an Empire Blue Cross Blue Shield health plan on December 7, 2015, with a plan enrollment start date of January 1, 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 through NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

The reflect reflects that on February 11, 2016, NYSOH issued a cancellation notice stating that your insurance with Empire Blue Cross Blue Shield was

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cancelled effective January 1, 2016, because a premium payment had not been received by Empire Blue Cross Blue Shield.

Generally, the loss of health insurance coverage is considered a triggering event. Here, your enrollment was terminated effective January 1, 2016, because the health plan did not receive the health insurance premiums in a timely manner. NYSOH 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.

The credible evidence of record indicates that no other triggering events has occurred that would qualify you and your spouse for a special enrollment period.

Therefore, the denial of a special enrollment period is AFFIRMED.

## **Decision**

Your appeal of the February 11, 2016 cancellation notice is DISMISSED.

NYSOH determination to deny you a special enrollment period is AFFIRMED.

**Effective Date of this Decision:** August 5, 2016

## **How this Decision Affects Your Eligibility**

You do not qualify for a special enrollment period to enroll in a qualified health plan at this time.

## **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:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

Your appeal of the February 11, 2016 cancellation notice is **DISMISSED**.

NYSOH determination to deny you a special enrollment period is **AFFIRMED**.

You do not qualify for a special enrollment period to enroll in a qualified health plan at this time.

### **Legal Authority**

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

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

[REDACTED]

[REDACTED]

[REDACTED]