



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

Notice of Decision

Decision Date: September 8, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007546



Dear [REDACTED],

On July 27, 2016 you appeared, with your authorized representative, by telephone at a hearing on your appeal of NY State of Health's March 1, 2016 eligibility determination notice and the cancellation of your health insurance coverage through NY State of Health.

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

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).

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

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Issues

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

Was your enrollment in your qualified health plan, through NY State of Health, properly cancelled 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 November 22, 2015, New York State of Health (NYSOH) issued an eligibility determination notice stating that you are newly eligible to receive up to \$124.00 of advance premium tax credit, effective as of January 1, 2016.

Also on November 22, 2015, NYSOH issued an enrollment notice confirming that as of November 19, 2015 you were enrolled in Empire HMO 2250 X Silver NS INN Pediatric Dental Dep 25 (Empire Blue Cross Blue Shield) with a plan enrollment start date of January 1, 2016.

On February 4, 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 within the required timeframe.

On March 1, 2016, additional documentation was uploaded to your NYSOH account [REDACTED].

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On March 1, 2016, NYSOH issued an eligibility determination, in relevant part, that you do not qualify to select a health plan outside of the open enrollment period.

On March 2, 2016, NYSOH issued a notice confirming that on March 1, 2016, you requested a telephone hearing to review, "Denial of Special Enrollment Period (SEP)."

On July 27, 2016, you and your 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) You testified that you were enrolled in health insurance coverage outside of NYSOH in 2015.
- 2) According to your November 19, 2015, NYSOH application, you were enrolled in EMPIRE HEALTHCHOICE HMO INC-NY (EMPIRE HEALTHCHOICE) from January 1, 2015, through December 31, 2015.
- 3) Your authorized representative stated that EMPIRE HEALTHCHOICE HMO INC-NY was listed as your health insurance carrier on your 2015 Form 1095-B.
- 4) You testified that you were automatically enrolled in the EMPIRE HEALTHCHOICE health plan for 2016.
- 5) You testified that \$521.18 was automatically withdrawn from your bank account in January and February 2016, for your EMPIRE HEALTHCHOICE premiums.
- 6) According to your NYSOH account, you enrolled in an Empire Blue Cross Blue Shield plan, through NYSOH, on November 19, 2015. The plan enrollment start date was January 1, 2016 [REDACTED].
- 7) You testified that you do not believe you paid any health insurance premiums for your NYSOH Empire Blue Cross Blue Shield health plan in 2016.
- 8) On February 4, 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 at 1-855-748-1806 if you believe that you made your premium payment within the required timeframe [REDACTED].

- 9) You testified that you contacted NYSOH in February 2016 and was informed by a NYSOH representative that your NYSOH health plan was cancelled for non-payment of premiums.
- 10) You testified that you were advised by a NYSOH representative to cancel your EMPIRE HEALTHCHOICE plan in order re-enroll in a health plan through NYSOH.
- 11) On March 1, 2016, you uploaded a Certificate of Individual Health Insurance Coverage stating that your health insurance coverage began January 1, 2015 and ended March 1, 2016 [REDACTED].
- 12) On March 1, 2016, NYSOH issued an eligibility determination, in relevant part, that you do not qualify to select a health plan outside of the open enrollment period [REDACTED].
- 13) You testified that you re-enrolled in your EMPIRE HEALTHCHOICE plan on March 3, 2016, which was effective immediately.
- 14) Your authorized representative stated that you are seeking to have the tax credits, that you were determined eligible to receive through NYSOH, applied to your non-NYSOH health plan.

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)).

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)).

Eligibility for Advance Premium Tax Credit

The advance premium tax credit is available to a person who is eligible to enroll in a qualified health plan through NYSOH and (1) expects to have a household income between 138% and 400% of the 2015 federal poverty level; (2) expects to file a tax return and claim a personal exemption deduction for a person who meets the eligibility requirements to enroll in a qualified health plan; and (3) is not otherwise eligible for minimum essential coverage except through the individual

market (see 45 CFR § 155.305(f), 42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

Legal Analysis

The first issue under review is whether your qualified health plan was properly terminated because of non-payment of premiums.

On February 4, 2016, NYSOH issued a cancellation notice stating that your coverage in your QHP was terminated effective January 1, 2016, because a health insurance premium payment had not been received by Empire Blue Cross Blue Shield

You testified that you do not believe you paid any health insurance premiums for your NYSOH Empire Blue Cross Blue Shield health plan in 2016.

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 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, whether your NYSOH Empire Blue Cross Blue Shield health plan was properly terminated is DISMISSED.

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.

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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 November 19, 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 4, 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.

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 for a special enrollment period.

Therefore, the March 1, 2016 eligibility determination notice, insofar as stating that you do not qualify to select a health plan outside of the open enrollment period is **AFFIRMED**.

During the hearing, your authorized representative stated that you were seeking to have the advance premium tax credit that you were determined eligible to receive, applied to your non-NYSOH health plan. However, the advance premium tax credit is only available to an individual who is eligible to enroll in a qualified health plan through NYSOH.

Decision

Whether your NYSOH Empire Blue Cross Blue Shield health plan was properly terminated for non-payment of premiums is **DISMISSED**.

Therefore, the March 1, 2016 eligibility determination notice, insofar as stating that you do not qualify to select a health plan outside of the open enrollment period is **AFFIRMED**.

Effective Date of this Decision: September 8, 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

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Whether your NYSOH Empire Blue Cross Blue Shield health plan was properly terminated for non-payment of premiums is DISMISSED.

Therefore, the March 1, 2016 eligibility determination notice, insofar as stating that you do not qualify to select a health plan outside of the open 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]