



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

Notice of Decision

Decision Date: August 15, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007579

[REDACTED]

Dear [REDACTED],

On July 7, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 19, 2016 eligibility determination.

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
P.O. Box 11729
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Decision

Decision Date: August 15, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007579

[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 were not eligible for special enrollment period as of February 19, 2016?

Procedural History

On November 17, 2015 NYSOH received your application for health insurance.

On November 18, 2015, NYSOH issued a notice stating that your application had been received, but that more information was needed to make a determination. The notice directed you to submit documentation of your income by December 3, 2015.

On December 2, 2015, your NYSOH account was updated.

That same day, a six-page document was uploaded to your account on your behalf, including an Unemployment Insurance Benefits Record of Benefit Payment History, a letter from the Social Security Administration regarding your Social Security Benefits, and four paystubs.

On December 3, 2015, NYSOH issued a notice stating that more information was needed to make a determination regarding your eligibility for insurance. The notice directed you to submit income documentation by December 18, 2015, without specifying what was lacking in the documentation you had already submitted, although a generic list of appropriate documentation was attached.

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On December 7, 2015, NYSOH issued another notice, stating that you needed to submit additional information regarding your income, without specifying what was lacking in the documentation you had already submitted.

On December 15, 2015, a seven-page document was uploaded to your NYSOH account on your behalf, consisting of four pay stub printouts from [REDACTED]

On December 7, 2015, NYSOH issued another notice, stating that you needed to submit additional information regarding your income, without specifying what was lacking in the documentation you had already submitted.

On December 30, 2015, NYSOH issued a notice stating that they previously notified you that additional information was required to determine your eligibility. The notice further stated that you had since submitted documentation, but that it was insufficient, again without specifying what was lacking in the documentation you had submitted. The notice directed you to submit documentation of your income.

On January 8, 2016, two documents were uploaded to your account. The first document was the second two pages of a four-page fax, consisting of a two-page document from [REDACTED] [REDACTED] entitled "Statement of Final Benefits." The second document was the first two pages of the fax, consisting of a copy of a December 22, 2015 notice from NYSOH regarding a request for additional income information and a letter from [REDACTED] regarding retirement benefits.

On January 15, 2016, NYSOH issued a notice stating that you needed to submit additional information regarding your income, without specifying what was lacking in the documentation you had already submitted.

On January 21, 2016, your NYSOH account was updated.

On January 22, 2016, NYSOH issued a notice stating that they had reviewed your application of January 21, 2016, and that more information was needed to make a determination regarding your eligibility. The notice directed you to submit income documentation by February 6, 2016.

That same day, a three-page document was faxed to NYSOH on your behalf consisting of a cover page and four paystubs.

On January 27, 2016, a two page document was faxed to NYSOH on your behalf consisting of a cover page and one paystub.

On February 3, 2016, the same four paystubs faxed on January 22, 2016 were uploaded to your NYSOH account on your behalf.

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 February 12, 2016, NYSOH issued a notice stating that they previously notified you that additional information was required to determine your eligibility. The notice further stated that you had since submitted documentation, but that it was insufficient. The notice directed you to submit documentation of your income.

On February 18, 2016, your NYSOH account was updated.

On February 19, 2016, NYSOH issued a notice of eligibility determination that stated that you are eligible to receive up to \$180.00 per month in advance payments of the premium tax credit (APTC), and eligible for cost-sharing reductions (CSR), effective April 1, 2016. It further stated that you did not qualify to select a health plan outside of the open enrollment period for 2016.

On March 2, 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 outside of the open enrollment period.

On July 7, 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) The record indicates that you submitted your initial application for 2016 health insurance coverage on November 17, 2015. You testified that you were assisted by an application counselor from Fidelis, who submitted the application on your behalf.
- 2) Your NYSOH account lists an Account Representative named "[REDACTED]" from Fidelis Care. The record indicates that an individual with the username "[REDACTED]" completed and signed an application in your account on November 17, 2015.
- 3) The record reflects that your expected annual household income was listed in your November 17, 2015 application as \$11,148.00, consisting of \$2,340.00 in earned income, \$636.00 in Unemployment Insurance Benefits (UIB), and \$8172.00 in Title II income.
- 4) You testified that you informed "[REDACTED]" that you were working part-time, that you had been receiving Unemployment Insurance Benefits, and that

you were receiving Social Security Retirement benefits as well as two pensions.

- 5) You testified that [REDACTED] did not tell you the amount of income he entered into the system when he completed your application for you, but that he did tell you that your retirement and pension income had to be included as income in your application.
- 6) The record reflects that, on November 18, 2015, NYSOH sent you a notice stating that they could not make a determination as to your eligibility based on the information in your November 17, 2015 application, and that you needed to submit income documentation by December 3, 2015. The notice included an attachment of acceptable types of documentation. It is noted that the attachment contains documentation requirements for the following types of income only:
 - a. Self-Employment Income
 - b. Wages and Salary
 - c. NYS Unemployment Benefits
 - d. Social Security Retirement Benefits
 - e. Social Security Disability Benefits.
- 7) The record reflects that, on December 2, 2015, "[REDACTED]" updated your account. Your income was again listed as \$11,148.00.
- 8) That same day, "[REDACTED]" uploaded the following documents to your NYSOH account:
 - a. four paystubs from your part-time job dated September 12, 2015, October 24, 2015, October 31, 2015, and November 14, 2015;
 - b. a record of your UIB showing that you last received benefits in July 2015; and
 - c. a letter from the Social Security Administration stating that your monthly benefit would be \$681.00, beginning June 2015.
- 9) The record reflects that NYSOH sent you a notice on December 3, 2015 stating that more information was needed to make an eligibility determination, and that you needed to submit income documentation by December 18, 2015. The notice did not specifically state why the income documentation submitted on December 2, 2015 was insufficient, and again included the same attachment regarding acceptable income documentation as the November 18, 2015 notice.
- 10) The record reflects that a seven-page document was uploaded to your account by "[REDACTED]" on December 15, 2015. This document included

four paystubs from your part-time job dated November 20, 2015, November 27, 2015, December 4, 2015, and December 11, 2015.

- 11) The record reflects that NYSOH sent you a notice on December 22, 2015 stating that you had submitted documentation, but that it was insufficient. The notice directed you to submit proof of your income. The notice did not state specifically why the documentation you submitted was insufficient. This notice included a slightly different attachment than the ones previously issued regarding acceptable types of income documentation in that it also included "Rental Income" as a category of income.
- 12) The record reflects that on January 8, 2016, NYSOH uploaded two documents to your NYSOH account that had been sent as one fax to NYSOH on your behalf. This documents consisted of the following:
 - a. A copy of the first page of the December 22, 2015 notice from NYSOH indicating that the document you had sent was insufficient;
 - b. A letter from [REDACTED] [REDACTED] [REDACTED] stating that you receive a gross monthly retirement payment of \$1000.00;
 - c. A two-page document from [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] entitled "Statement of Final Benefits" indicating a monthly retirement benefit of \$278.00.
- 13) The record reflects that your account was updated on January 21, 2016 by a representative from NYSOH.
- 14) You testified that you spoke with NYSOH by phone on that day to verify that they had received all of your income documentation. You testified that you informed the representative that your total income was the retirement, pension, Social Security, and part-time employment. You testified that you also told the representative that you were no longer receiving UIB.
- 15) You testified that the representative did not inform you of the amount of total income that they entered when they updated your application on January 21, 2016. The record reflects that the representative changed your expected annual income to \$10,512.00, consisting of earned income and Title II income.
- 16) The record reflects that NYSOH sent you a notice on January 22, 2016 indicating that an eligibility determination could not be made, and that you needed to submit documentation of your income by February 6, 2016. It is noted that the notice did not state why the documentation you submitted was insufficient, and included the same attachment regarding acceptable documentation as the November 18, 2015 and December 3, 2015 notices.

- 17) The record contains a three-page document that was uploaded by NYSOH on February 3, 2016, and appears to have been faxed to NYSOH on January 22, 2016, which consists of a cover page and four paystubs for the weeks ending December 19, 2015, January 2, 2016, January 9, 2016, and January 16, 2016.
- 18) The record contains a two-page document that was uploaded by NYSOH on February 5, 2016, and appears to have been faxed to NYSOH on January 27, 2016, which consists of a cover page and one paystub for the week ending December 26, 2015.
- 19) The record reflects that [REDACTED] uploaded a document to your account on February 3, 2016 consisting of paystubs for the weeks ending January 2, 2016, January 9, 2016, January 16, 2016, and January 23, 2016.
- 20) The record reflects that your application was updated on February 18, 2016 by a NYSOH representative and then by [REDACTED]. The record reflects that your income was changed by both the representative and by [REDACTED].
- 21) The February 18, 2016 application listed an expected annual household income of \$28,552.00, consisting of \$5,044.00 in earned income, \$8,172.00 in Title II income, and \$15,336.00 in Additional Income.
- 22) You testified that [REDACTED] told you that he did not change any of your income information in your application, so you were confused when a NYSOH representative told you that your income had been changed.
- 23) You testified that you spoke to some NYSOH representatives in December 2015 and January 2016 to try to figure out why your documentation was not accepted, and that you were told only that you had to submit your last four paystubs.
- 24) You testified that you never received any notices from NYSOH explaining why the documentation you were submitting was not sufficient.
- 25) You testified that you would like to have insurance coverage retroactive to January 1, 2016.

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 certain triggering events occur, including when a qualified individual's 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 NYSOH or its instrumentalities or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities (45 CFR § 155.420(d)(4)).

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)).

Enrollment in a Qualified Health Plan

The effective date of coverage by a qualified health plan is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment, NYSOH must generally ensure that coverage is effective the first day of the following month for selections received by NYSOH from the first to the fifteenth of any month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(i)). For selections received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(ii)).

Legal Analysis

The issue under review is whether NYSOH properly denied you a special enrollment period as of February 19, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you started an application on November 17, 2015, within the open enrollment period. However, NYSOH did not consider your application to be complete until February 18, 2016. Therefore, NYSOH treated your application as an application that was not completed during the open enrollment period.

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 your application was submitted with an attested income of \$11,148.00. The income amount was not changed to accurately reflect your expected annual income until February 18, 2016, which is why NYSOH considers your application to have been incomplete until that date.

However, you credibly testified that you informed your application counselor, [REDACTED] of all your income on the day when you first applied. Moreover, you testified that [REDACTED] never informed you of the income figure he was listing in your November 17, 2015 application. You further testified that when you were informed by NYSOH in February 2016 that [REDACTED] had changed your income information, [REDACTED] denied doing so, however, the record reflects that your income information was indeed changed on February 18, 2016.

As [REDACTED] is a non-NYSOH entity providing enrollment assistance, and his errors partially led to the delay in your application being completed, you are eligible for a special enrollment period based on the fact that his actions are at least part of the reason why you were unable to enroll in a health plan during open enrollment.

The record also reflects that you made many efforts to submit income documentation to NYSOH. While [REDACTED] may not have updated your income information to reflect your receipt of pension and retirement until February 18, 2016, the record reflects that NYSOH was in receipt of documentation of this income at least as early as January 8, 2016. (The documentation was faxed and contains no fax date, but January 8, 2016 is the date that it was uploaded by NYSOH to your account.)

By the time this information was uploaded, you had already submitted four consecutive, recent paystubs on December 15, 2015, as well as your Social Security Retirement award letter. Therefore, by January 8, 2016, NYSOH was in receipt of documentation of all your income information.

It is also noted that NYSOH never advised you specifically what was lacking in the income documentation you provided, or what additional information was being sought. Moreover, the generic attachment NYSOH appended to its notices listing the types of acceptable documentation does not even include a category for private pension/retirement benefits.

It is concluded that your application and enrollment having not been completed by January 31, 2016, the last day of open enrollment, was due partly to your application counselor's error and partly to NYSOH's failure to process your income information in a timely manner and failure to timely advise you what you needed to submit.

Therefore, NYSOH's February 19, 2016 eligibility determination that you did not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this decision.

You testified that you want coverage retroactive to January 1, 2016. The date on which an individual's enrollment in a qualified health plan begins depends on when the plan was selected. A plan selected between the first and the fifteenth of the month goes into effect on the first day of the following month. In this case, it appears from the record that your application was complete by January 8, 2016, the date when all income documentation had been received by NYSOH. Therefore, if you had been able to select a plan that day, your plan would have started on February 1, 2016.

Therefore, your case is RETURNED to NYSOH to facilitate your enrollment in a qualified health plan, with the application of your APTC and CSR, with a plan start date of February 1, 2016, or a later date, at your option.

PLEASE NOTE that you are responsible for all premiums going back to the month when your coverage begins.

The record indicates that NYSOH's failure to grant you a special enrollment period resulted in you being without insurance coverage for part of the 2016 coverage year.

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.

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

The February 19, 2016 eligibility determination is MODIFIED to reflect 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, with the application of your APTC and CSR, for 2016 health coverage, with a plan start date as early as February 1, 2016, at your option.

Effective Date of this Decision: August 15, 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.

You can choose for your plan to begin as early as February 1, 2016, at your option.

Your APTC and CSR will be applied to your monthly premiums as of the start date of your plan.

PLEASE NOTE: You are responsible for all premiums that result from your enrollment in coverage.

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 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

The February 19, 2016 eligibility determination is MODIFIED to reflect 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, with the application of your APTC and CSR, for 2016 health coverage, with a plan start date as early as February 1, 2016, at your option.

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You qualify for a special enrollment period.

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

You can choose for your plan to begin as early as February 1, 2016, at your option.

Your APTC and CSR will be applied to your monthly premiums as of the start date of your plan.

PLEASE NOTE: You are responsible for all premiums that result from your enrollment in coverage.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

