



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

## Notice of Decision

Decision Date: July 22, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007634

[REDACTED]

Dear [REDACTED]

On July 8, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 4, 2016 eligibility redetermination 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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## Decision

Decision Date: July 22, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007634



## 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 eligible to purchase a qualified health plan at full cost effective January 1, 2016, but did qualify for a special enrollment period outside of the open enrollment period to do so?

## Procedural History

On October 29, 2015, NYSOH issued a renewal notice that stated, if the information on your application is still accurate, you've been re-enrolled in your current health plan for another year and do not have to do anything more. The insurance details state that you have been re-enrolled in Fidelis Care Silver plan with a start date of January 1, 2016.

On November 25, 2015, NYSOH issued an enrollment notice confirming your silver-level qualified health plan enrollment with a start date of January 1, 2016.

On February 18, 2016, NYSOH issued a cancellation notice that stated your insurance with your silver-level qualified health plan was cancelled effective January 1, 2016 because you had not paid the monthly premium within the required timeframe.

On March 3, 2016, NYSOH preliminarily determined that you were not eligible to enroll in a health plan outside of the 2016 open enrollment period.

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Also on March 3, 2016, you spoke to NYSOH's Account Review Unit and appealed that preliminary determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On March 4, 2016, NYSOH issued an eligibility redetermination notice that stated you were eligible to purchase a qualified health plan at full cost, effective January 1, 2016. That notice further stated that you do not qualify for a special enrollment period to select a health plan outside of the open enrollment period because you had not met any of the requirements.

On July 8, 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 your non-financial application for 2016 health insurance coverage was renewed by NYSOH on October 29, 2015 and the renewal notice of that date confirmed your health plan re-enrollment in the same plan you had in 2015, with an effective start date of January 1, 2016.
- 2) The record indicates that you were cancelled for nonpayment of premium as of January 1, 2016, the date your coverage was to begin.
- 3) You testified that you attempted by telephone to make payment one or two weeks before the end of January 2016 using your credit card, but the representative who answered said she could not assist you and you should call back later.
- 4) You testified that you next called in February 2016 to see if your coverage could be reinstated and learned 2 weeks later that Fidelis Care had denied your reinstatement request and sent your file to NYSOH for processing.
- 5) You testified that NYSOH confirmed that only Fidelis Care could reinstate your coverage and were upset that after two years of buying insurance from them that your reinstatement request was denied.
- 6) You testified that you could not obtained health insurance coverage outside of NYSOH after your coverage was cancelled because the process between Fidelis Care and NYSOH was not finalized until you appealed on March 3, 2016, which is over 60 days from January 1, 2016.

- 7) You testified that you did not experience any of the qualifying events, except that you had lost coverage when it was cancelled as of January 1, 2016.
- 8) You testified that you would like to be granted a special enrollment period so you can re-enroll in coverage through NYSOH because it is more affordable.

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)).

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)).

## **Legal Analysis**

Initially, the February 18, 2016 cancellation notice issued by NYSOH was based upon the health insurance plan’s notification that it had terminated your coverage, effective January 1, 2016, due to nonpayment of premium.

The decision to terminate coverage due to nonpayment of premium and/or to reinstate coverage that has been terminated due to nonpayment of premium lies solely with the health insurance plan in accordance with their internal processes. You credibly testified that the health plan ultimately declined to reinstate your coverage based on its rules.

The NYSOH Appeals Unit does not have the authority to reinstate coverage that has been terminated for nonpayment of premium and when, as here, the health plan has declined reinstatement. Therefore, the health insurance plan’s decision not to reinstate your coverage cannot and will not be addressed any further.

The issue under review turns to whether NYSOH properly denied you a special enrollment period to re-enroll in a qualified health plan as stated in the March 4, 2016 eligibility redetermination notice.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that your renewal was completed as of the issuance of the November 25, 2016 enrollment notice. Therefore, your application was completed by NYSOH during the open enrollment period. Your enrollment in a qualified health plan was confirmed with a start date of January 1, 2016, however, that coverage was cancelled as of January 1, 2016 because of nonpayment of premium within the required timeframe.

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.

You testified that you lost health insurance coverage through NYSOH, which qualifies as a triggering event only if that loss was involuntary. However, the record reflects that your loss of coverage was due to nonpayment of premium,

which is considered voluntary, even in circumstances where there was a previous attempt made to pay the premium.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2016, no other triggering events have occurred that would qualify you for a special enrollment period.

Therefore, NYSOH's March 4, 2016 eligibility redetermination notice that states you do not qualify for a special enrollment period to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

## **Decision**

The March 4, 2016 eligibility redetermination notice is AFFIRMED.

**Effective Date of this Decision:** July 22, 2016

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

You do not qualify for a special enrollment period 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

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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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P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

The March 4, 2016 eligibility redetermination notice is AFFIRMED.

You do not qualify for a special enrollment period 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:**

