



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

Notice of Decision

Decision Date: August 17, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007638



Dear [REDACTED]

On July 13, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health's March 3, 2016 eligibility determination 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
P.O. Box 11729
Albany, NY 12211

Decision

Decision Date: August 17, 2016

NY State of Health Account ID: AC0004429396
Appeal Identification Number: AP000000007638



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 and your spouse do not qualify to select a health plan outside of the open enrollment period?

Procedural History

On January 20, 2016, you applied for health insurance through NYSOH.

On January 21, 2016, NYSOH issued an eligibility determination notice, in relevant part, that you and your spouse were eligible to receive up to \$436.00 per month in advance premium tax credits and cost-sharing reductions, effective as of March 1, 2016.

On March 3, 2016, NYSOH issued an eligibility determination notice, in relevant part, that you and your spouse were eligible to receive up to \$436.00 of advance premium tax credits per months and cost-sharing reductions, effective March 1, 2016. The notice also stated that you and your spouse do not qualify to select a health plan outside of the open enrollment period.

Also on March 3, 2016, you contacted NYSOH Account Review Unit and requested an appeal insofar as you and your spouse's eligibility for a special enrollment period.

On July 14, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and left

open until July 18, 2016, to allow you submit additional documentation to NYSOH Appeals Unit.

No additional documentation was submitted within the allotted time. The record is now complete and closed.

Findings of Fact

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

- 1) You testified that you are seeking to enroll you and your spouse in coverage through NYSOH.
- 2) You initially applied for health insurance coverage through NYSOH, for you and your family, on January 20, 2016.
- 3) You testified you were contacted by a representative from the company [REDACTED] while completing your application through NYSOH.
- 4) You testified that the representative from [REDACTED] assisted you in enrolling your family in a "United Gold Plan" on January 20, 2016, which was effective February 1, 2016.
- 5) You testified that you received the contact telephone number for the health insurance company from the [REDACTED] representative.
- 6) You testified that you contacted the health insurance company in February and March 2016 to inquire about receiving health insurance cards for your spouse and children. The representatives who answered your inquiries were employees of [REDACTED]
- 7) You testified that based on the "lies" that you were told by the [REDACTED] representative and [REDACTED] and [REDACTED] inability to answer questions regarding the policy your family was enrolled in, you cancelled the health insurance plan in March 2016.
- 8) According to your NYSOH account, you and your spouse have not been enrolled in a health insurance plan through NYSOH.
- 9) On March 4, 2016, NYSOH issued a notice confirming that on March 3, 2016, you requested a telephone hearing to review, "Denial of Special Enrollment Period (SEP)" for you and your spouse [REDACTED]

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

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)).

Misrepresentation:

A special enrollment period is permitted when 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)(9)).

CMS has defined misconduct to include misinformation, misrepresentation, or inaction by individuals or entities providing formal enrollment assistance (like an insurance company, Navigator, certified application counselor, Call Center Representative, or agent or broker) resulting in (1) A failure to enroll the consumer in a plan; (2) Consumers being enrolled in the wrong plan against their wish; or (3) The consumer not receiving advance premium tax credits or cost-sharing reductions (Guidance for Issuers on Special Enrollment Periods for Complex Cases in after the Initial Open Enrollment Period, Affordable Exchange Guidance, Department of Health & Human Services, CMS, dated March 26, 2014, as retrieved on July 18, 2016

at: <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/complex-cases-SEP-3-26-2014.pdf>

Special Enrollment Period – Voluntary Termination

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).

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 issue under review is whether the NY State of Health (NYSOH) properly denied you and your spouse a special enrollment period.

The NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record reflects that you applied for health insurance coverage on January 20, 2016.

Once the annual open enrollment period ends, an applicant must qualify for a special enrollment period in order to enroll in health insurance coverage offered by 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.

You testified you were contacted by a representative from the company [REDACTED] while completing your application through NYSOH and was enrolled in a "United Gold Plan." Subsequently, you contacted [REDACTED] to inquire about receiving health insurance cards for your spouse and children. Based on IHS's misrepresentations and inability to answer questions regarding your family's coverage, you cancelled the coverage in March 2016.

In order to be eligible for a special enrollment period based on error, misrepresentation, or inaction, the activities must have been done by an officer, employee, agent or instrumentality of NYSOH. The record supports that you and your spouse were never enrolled in health insurance coverage through NYSOH. Based on the available record, [REDACTED] and [REDACTED] have no affiliation with NYSOH.

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You testified that you terminated your health insurance through [REDACTED] in March 2016. Generally, the loss of health insurance coverage is considered a triggering event. However, voluntarily terminated your coverage does not entitle you to a special enrollment period in which to enroll in coverage.

The record supports that no triggering events have occurred that would qualify you and your spouse for a special enrollment period.

Decision

The March 3, 2016, eligibility determination insofar as stating that you and your spouse are not eligible for a special enrollment period is AFFIRMED.

Effective Date of this Decision: August 17, 2016

How this Decision Affects Your Eligibility

You and your spouse 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

The March 3, 2016, eligibility determination insofar as stating that you and your spouse are not eligible for a special enrollment period is **AFFIRMED**.

You and your spouse 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:

