



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

Notice of Decision

Decision Date: August 19, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007650

[REDACTED]

Dear [REDACTED]

On August 12, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's denial of your request to switch health plans outside of the open 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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Decision

Decision Date: August 19, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007650

[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 did not qualify to switch health plans outside of the open enrollment period for the 2016 plan year?

Procedural History

On October 29, 2015, NYSOH issued a notice of renewal and eligibility determination stating that you remained eligible to enroll in a qualified health plan (QHP) at full cost, effective January 1, 2016. The notice further stated that you had been reenrolled in your QHP for the 2016 plan year.

On November 25, 2015, NYSOH issued a notice of enrollment confirming your enrollment in your QHP as of November 17, 2015, with such coverage to take effect January 1, 2016.

On March 3, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you were not eligible to switch your QHP outside of the open enrollment period.

On August 12, 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 had been reenrolled in your QHP, with coverage effective January 1, 2016.
- 2) You testified that you contacted your primary care provider (PCP) during the month of February 2016 for a referral to a local dermatologist. You further testified that at that time you learned that your insurance carrier, UnitedHealthcare (UHC), had dropped your PCP as doctor participating in their plan.
- 3) You testified that you contacted up to 15 other PCPs that were listed as accepting UHC; however, in each case you learned that they had also been dropped by UHC as participating in their plan.
- 4) You testified that as a result of not being able to find comparable and acceptable PCP that you had been seeing previously, UHC was now of limited value to you. You were seeking to qualify for a special enrollment period to switch health plan for the remainder of the 2016 plan year.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

Applicable Law and Regulations

De Novo Review

The NYSOH 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).

NYSOH Eligibility Determinations

When an individual applies for insurance through NYSOH, NYSOH must determine that person’s eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 FR § 435.1200(b)(3)(iii)).

NYSOH is required to provide “timely written notice to an applicant of any eligibility determination” made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the individual market of NYSOH (45 CFR § 155.310(g)).

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An applicant or enrollee has the right to appeal an eligibility determination or redetermination or a failure by NYSOH to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

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,

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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)).

Legal Analysis

NYSOH redetermined your eligibility as of October 26, 2015 and issued an eligibility determination notice on October 29, 2016 finding you eligible to enroll in a QHP at full cost, effective January 1, 2016. You were reenrolled in the same plan you had during the 2015 plan year, and that plan too effect January 1, 2016. You credibly testified that you requested to switch health plans through NYSOH on or about March 3, 2016; however, no written notice of eligibility determination was issued with respect to that request.

Although NYSOH did not issue a timely notice of eligibility determination, this does not prevent the Appeals Unit from reaching the merits of your case on your March 3, 2016 appeal request. Under 45 CFR § 155.505(b), you are as entitled to appeal a NYSOH failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Also, since the

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Appeals Unit reviews NYSOH determinations on a de novo basis, no deference would have been granted to that written determination had it been issued before you filed your appeal.

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

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you were reenrolled in your QHP on November 17, 2015, with coverage beginning January 1, 2016. Therefore, your application was considered complete 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.

You testified that as a result of UHC dropping your PCP as a participating in their plan, without notice, and not being able to find a comparable and acceptable alternative PCP, you were seeking to qualify for a special enrollment period to switch QHPs for the remainder of 2016 plan year. However, lack of participating PCPs is not a triggering event to qualify for a special enrollment period.

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 finding that you did not qualify for a special enrollment period to switch plans outside of the open enrollment period is correct, and **AFFIRMED**.

Decision

NYSOH's finding that you did not qualify for a special enrollment period to switch plans outside of the open enrollment period is correct, and **AFFIRMED**.

However, your case is being referred to NYSOH's Plan Management unit, to assist you in reviewing your options to find a provider who accepts your plan.

Effective Date of this Decision: August 19, 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 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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Summary

NYSOH's finding that you did not qualify for a special enrollment period to switch plans outside of the open enrollment period is correct, and AFFIRMED.

However, your case is being referred to NYSOH's Plan Management unit, to assist you in reviewing your options to find a provider who accepts your plan.

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:

