



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

Notice of Decision

Decision Date: September 9, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007671

[REDACTED]

Dear [REDACTED],

On August 19, 2016, [REDACTED] appeared by telephone at a hearing on your appeal of NY State of Health's December 17, 2015 notices of enrollment and disenrollment.

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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NY State of Health Account ID: [REDACTED]
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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 enrolled in a silver-level qualified health plan as of December 1, 2015 and disenrolled thereafter as of December 31, 2015?

Procedural History

On October 30, 2015, NY State of Health (NYSOH) issued notices to inform you and your spouse that Health Republic on New York, Inc. (Health Republic) was no longer able to offer coverage through NYSOH beginning December 1, 2015. The notice informed you of what you needed to do to select a different plan to have coverage for December 2015.

On November 22, 2015, NYSOH issued a disenrollment notice that stated your and your spouse's coverage in an MVP silver-level qualified health plan (QHP) would end December 31, 2015.

Thereafter and out of chronological order, on November 25, 2015, NYSOH issued an enrollment notice confirming that you and your spouse had selected silver-level QHP with MVP, beginning December 1, 2015, and had a monthly premium responsibility of \$674.86 after your monthly advance premium tax credit (APTC) was applied. The notice further stated that you must pay the monthly premium to start and keep your coverage.

On December 10, 2015, based on your December 9, 2015 updated application, NYSOH issued an eligibility redetermination notice that stated you and your spouse were eligible to share in up to \$539.00 per month in APTC, effective January 1, 2016.

Also on December 10, 2015, NYSOH issued an enrollment notice confirming your enrollment in a silver-level QHP with WellCare, beginning January 1, 2016. The notice also confirmed your monthly premium responsibility of \$421.24 after your APTC was applied that month.

On December 17, 2015, NYSOH issued an enrollment notice confirming your silver-level QHP enrollment with WellCare, beginning December 1, 2015, and a premium responsibility of \$598.56 after your monthly APTC was applied that month.

Also on December 17, 2015, NYSOH issued a disenrollment notice that stated your coverage in the WellCare silver-level QHP would end December 31, 2015.

On February 9, 2016, NYSOH denied an incident ([REDACTED]) that was filed regarding WellCare December 2015 premium and closed it as the issue related to premium billing.

On March 3, 2016, you spoke with a representative with NYSOH's Account Review Unit and filed an appeal insofar as your complaint ([REDACTED]) had not been resolved in your favor.

On May 16, 2016, NYSOH issued an eligibility redetermination notice that in relevant part stated you and your spouse did not qualify for a special enrollment period outside the open enrollment period.

On August 19, 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) You and your spouse are appealing the WellCare health insurance coverage and invoice for December 2015.
- 2) Your spouse testified that you both had selected an MVP silver-level QHP in place of your Health Republic coverage for the month of December 2015.

- 3) According to your NYSOH account, on November 17, 2015, you contacted NYSOH to change your silver-level QHP selection for December 2015 from MVP to WellCare, but that it could not be processed due to a technical error.
- 4) According to the Appeal Summary, dated August 1, 2016, "...a defect was filed by NYSOH to complete the plan selection override. The plan change was approved and the appellant was sent a notice dated 12/17/2015 to inform her of the enrollment update from MVP to WellCare effective 12/1/2015" (see Appeal Summary, Entry [REDACTED] dated 03/03/2016).
- 5) Your spouse testified that you elected not to pay for coverage to start with MVP as of December 1, 2015 and, believing you both did not have health insurance that month, paid medical expenses out-of-pocket.
- 6) According to your spouse's testimony and your NYSOH account, your spouse accessed your NYSOH account online on December 9, 2015, and updated your application for financial assistance in 2016.
- 7) According to your spouse's testimony and your NYSOH account, your spouse selected a WellCare silver-level QHP for coverage to begin January 1, 2016.
- 8) According to your NYSOH account, the December 17, 2015 notices of enrollment with WellCare, effective December 1, 2015, and disenrollment from WellCare, effective December 31, 2015, were generated by NYSOH's system.
- 9) Your spouse testified that you did not receive or did not review these notices and were not otherwise informed by NYSOH that an override had occurred for coverage in December 2015 with WellCare.
- 10) Your spouse further testified that you did not receive any welcoming packet, insurance cards, or invoice from WellCare relative to December 2015.
- 11) Your spouse testified that you both believed you had no coverage in December 2015 and these notices were issued well after you had selected a plan for 2016 and after one-half the month was already over.
- 12) Your spouse testified that no payment of the December 2015 premium was made for either the MVP or WellCare plans to start.
- 13) Your spouse testified that insurance cards and a premium invoice for January 2016 coverage with WellCare were received and the January

2016 premium of \$421.24 was timely paid with confirmation of payment (No. [REDACTED]). A copy of the invoice with handwritten notes as proof of payment was uploaded to your NYSOH account.

- 14) According to your spouse's testimony and an invoice he uploaded to your NYSOH account, on or about January 19, 2016, WellCare billed you for a past due amount of \$598.56 for December 2015 and your February 2016 premium of \$421.24.
- 15) According to the handwritten confirmation number on that invoice, payment in the amount of \$421.24 for February 2016 premium was made.
- 16) Your spouse testified that, when communicating with WellCare, a representative named [REDACTED] told him that the January 2016 payment had been applied to December 2015, the February 2016 payment had been applied to January 2016, and coverage was being terminated because timely payment of the February 2016 full premium was in arrears.
- 17) According to your NYSOH account as recently as May 16, 2016, NYSOH shows that you and your spouse have been enrolled in a WellCare silver-level QHP and remain enrolled since January 1, 2016 (see Document [REDACTED]).
- 18) Your spouse confirmed that he is seeking a special enrollment period so that you can both re-enroll in a QHP for the remainder of 2016.
- 19) Your spouse further confirmed that you both want a determination as to whether or not NYSOH and/or insurance company error resulted in you both being without coverage since January 31, 2016, because you are both concerned about being exposed to a tax penalty by the IRS for not having health insurance coverage in 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)).

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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 this following triggering event occurs:

- (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

(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

The first issue under review is whether NYSOH's February 9, 2016 denial of your complaint (██████████) resulted in you and your spouse being without health insurance coverage in 2016 and, thereafter, being denied a special enrollment period within which to enroll in a qualified health plan outside the open enrollment period.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on December 10, 2015. Therefore, you completed your application during the open enrollment period. However, based on your spouse's testimony, you were both disenrolled from WellCare as of February 1, 2016, even though notice to this effect was not shared with NYSOH so that proper and timely notice of cancellation due to nonpayment could be issued.

Notwithstanding, 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.

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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; or a non-Exchange entity providing enrollment assistance or conducting enrollment activities.

The credible evidence of record indicates that you and your spouse did not intend to be enrolled in WellCare for the month of December 2015. The evidence demonstrates that you did not receive any welcome packet, insurance cards, or timely invoice from WellCare, and did not make payment of the premium for coverage in the WellCare qualified health plan for it to start in December 2015.

Further, the evidence demonstrates that you did not receive an invoice for the December 2015 coverage until January 19, 2016, which you disputed, and were not notified of the override conducted by NYSOH to change your plans from MVP to WellCare for December 2015. Also, the enrollment and disenrollment notices, dated December 17, 2015, were issued after one-half of December 2015 had passed and you had been paying your medical expenses out-of-pocket.

In addition, NYSOH denied your complaint regarding December 2015 coverage on the basis that it was a premium billing issue, when the underlying issue was health insurance coverage in December 2015 with WellCare. Lastly, NYSOH still shows you and your spouse as being enrolled in a WellCare silver-level qualified health plan as of August 19, 2016 and the date of this decision and that no disenrollment or cancellation notice has been issued by NYSOH, which indicates WellCare has not sent to NYSOH proper notice of cancellation of your coverage due to nonpayment of premium. NYSOH will investigate this issue further and as it relates to advance payments of the premium tax credits being applied for December 2015 and from February 1, 2016 forward.

Based on the credible evidence of record, it is concluded that there was error and/or inaction as follows:

- 1) Error by NYSOH in enrolling you and your spouse in a silver-level qualified health plan for December 2015 after one-half the month had passed;
- 2) Error by NYSOH in closing the incident (complaint) as a premium billing issue;
- 3) Inaction by WellCare regarding enrollment in not timely issuing indicia of health insurance coverage and a billing invoice for the month December 2015;

- 4) Error by WellCare in later finding you responsible for the premium payment for December 2015, especially since coverage cannot start until a premium payments made; and,
- 5) Inaction by WellCare in not notifying NYSOH that your coverage had been terminated due to nonpayment of premium.

Therefore, NYSOH's December 17, 2015 notices of enrollment and disenrollment regarding your December 2015 coverage with WellCare were issued in error and are RESCINDED. You and your spouse were not and are not responsible for the premium payment that month.

Lastly, on May 16, 2016, NYSOH issued an eligibility redetermination notice that in part stated you and your spouse do not qualify to select a health plan outside of the open enrollment period for 2016. Based on the foregoing analysis, that finding was made in error and is MODIFIED by this decision to reflect that you are eligible for a special enrollment period until 60 days from the date of this decision.

The record indicates that NYSOH and WellCare's errors and WellCare's inactions resulted in you and your spouse being disenrolled from your qualified health plan, effective February 1, 2016, and unable to enroll outside the open enrollment period. These events were compounded by NYSOH determining on May 15, 2016, and by notice issued May 16, 2016, that you and your spouse did not qualify for a special enrollment period resulting in you and your spouse being without insurance coverage for a large part of the 2016 coverage year. During the hearing, your spouse testified that you are both concerned about receiving a tax penalty as a result of being without coverage.

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 (emphasis added).

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

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return. If HHS does not approve your exemption, you will need to file an amended return later.

Decision

The December 17, 2015 notices of enrollment and disenrollment regarding your December 2015 coverage with WellCare are RESCINDED.

The May 16, 2016 eligibility redetermination notice is MODIFIED by this decision to reflect that you and your spouse 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 and your spouse in enrolling into a plan for 2016 health coverage.

Effective Date of this Decision: September 9, 2016

How this Decision Affects Your Eligibility

You and your spouse did not have health insurance coverage with WellCare in December 2015 and are not responsible for the premium payment for that month.

By this decision, you and your spouse qualify for a special enrollment period.

You and your spouse have 60 days from the date of this decision to enroll into a plan. NYSOH will assist you and your spouse in confirming your enrollment.

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

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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 December 17, 2015 notices of enrollment and disenrollment regarding your December 2015 coverage with WellCare are **RESCINDED**.

The May 16, 2016 eligibility redetermination notice is **MODIFIED** by this decision to reflect that you and your spouse 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 and your spouse in enrolling into a plan for 2016 health coverage.

You and your spouse did not have health insurance coverage with WellCare in December 2015 and are not responsible for the premium payment for that month.

By this decision, you and your spouse qualify for a special enrollment period.

You and your spouse have 60 days from the date of this decision to enroll into a plan. NYSOH will assist you and your spouse in confirming your enrollment.

You must claim an exemption from the requirement to have health insurance through the United States Department of Health and Human Services (HHS). Currently, NYSOH does not accept hardship exemption applications.

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Legal Authority

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

A Copy of this Decision Has Been Provided To:

