



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

## Notice of Decision

Decision Date: October 4, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007740

[REDACTED]

Dear [REDACTED]

On September 1, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health's determination to deny you a special 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

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NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007740



## 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, your spouse and child did not qualify for a special enrollment period?

## Procedural History

On December 3, 2015, you applied for health insurance through NYSOH.

On December 4, 2015, NYSOH issued an eligibility determination notice stating that you and your child were eligible and your spouse conditionally eligible to purchase a qualified health plan at full cost through NYSOH, effective as of January 1, 2016. The notice directed you to submit documentation regarding your spouse's immigration status to NYSOH by March 2, 2016, to confirm their eligibility.

Also on December 4, 2015, NYSOH issued an enrollment notice confirming that as of December 3, 2015, you, your spouse and child were enrolled in Fidelis Care Bronze ST INN Pediatric Dental Dep25 with a plan enrollment start date of January 1, 2016.

On March 8, 2016, NYSOH issued a notice confirming that on March 7, 2016, you requested a telephone hearing to review the "Denial of Special Enrollment Period (SEP)."

On September 1, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and the record was left open until September 2, 2016, to allow you fax additional

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documentation showing that Fidelis Care is not paying claims by providers within their network.

On September 3, 2016, you faxed five-pages of documents to NYSOH Appeals Unit. Those documents have been collectively marked as "Appellant Exhibit A" and incorporated into the record. 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 change the qualified health plan that you, your spouse and child are currently enrolled in.
- 2) On December 3, 2015, you, your spouse and child were enrolled in the Fidelis Care Bronze ST INN Pediatric Dental Dep25 (Fidelis Care) health plan with a plan enrollment start date of January 1, 2016.
- 3) According to the "Appeal Summary" in the Evidence Packet, which was created in anticipation of the hearing, a complaint was filed on March 4, 2016, regarding "Health Plan Access" [REDACTED]
- 4) You testified that you contacted NYSOH to change health plans, but was verbally denied because the open enrollment period was over.
- 5) You testified to three reasons why you wanted to change qualified health plans:
  - (a) Fidelis Care's network, within NYSOH, was not sufficient;
  - (b) Providers within the network were not giving you and your family adequate care because of the type of plan you were enrolled in;
  - (c) Fidelis Care is not paying the claims that are being submitted by the providers.
- 6) On September 3, 2016, you submitted five-pages of documents to NYSOH Appeals Unit. You submitted:
  - (a) A letter, dated July 13, 2016, from [REDACTED] stating that your outstanding balance of \$350.00 was submitted to Fidelis Care. However, based on the Provider Remittance Advice, you are expected to pay the \$350.00 no later than Friday, July 22, 2016.
  - (b) A letter you sent to [REDACTED], dated July 20, 2016, in response to the July 13, 2016, letter.

(c) A letter, dated August 29, 2016, from the law firm [REDACTED] stating that they represent [REDACTED] in collection matters (Appellant Exhibit A p. 2-5).

- 7) You testified that you contacted Fidelis Care to express your concerns regarding the issues you are having with their health plan and was told that you should have been more careful when selecting a health.

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

## **Applicable Law and Regulations**

### De Novo Review

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).

### 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

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- (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)).

## **Legal Analysis**

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

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Although NYSOH did not issue an eligibility determination with respect to whether you were eligible for a special enrollment period, this does not prevent the NYSOH Appeals Unit from reaching the merits of your case on your 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 NYSOH Appeals Unit reviews of 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 NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record reflects that you applied and enrolled your family in health insurance coverage on December 3, 2015.

Once the annual open enrollment period ends, an enrollee must qualify for a special enrollment period in order to change their health insurance coverage offered by NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

The record reflects that you are seeking to change the health plan that you are enrolled in because of issues you are experiencing with their coverage. You testified that you are experiencing issues with the lack of providers within the health plan's network, with the adequacy of care of the providers within their network and the fact that the health plan is not paying the claims of the providers within their network.

The reasons specified above are not triggering events that would qualify an enrollee to change their qualified health plan. Therefore, NYSOH's determination to deny your special enrollment period request is AFFIRMED.

However, your case is being REFERRED to NYSOH's Plan Management Unit to investigate whether your qualified health plan, Fidelis Care, is fulfilling its obligations to pay for medical claims by providers within their network.

## **Decision**

NYSOH's determination to deny you a special enrollment period is AFFIRMED.

Your case is being REFERRED to NYSOH's Plan Management Unit to investigate whether your qualified health plan, Fidelis Care, is fulfilling its obligations to pay for medical claims by providers within their network.

**Effective Date of this Decision:** October 4, 2016

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

You and your family do not qualify for a special enrollment period to change qualified health plans 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**

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You and your family do not qualify for a special enrollment period to change qualified health plans at this time.

Your case is being REFERRED to NYSOH's Plan Management Unit to investigate whether your qualified health plan, Fidelis Care, is fulfilling its obligations to pay for medical claims by providers within their network.

### **Legal Authority**

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

**A Copy of this Decision Has Been Provided To:**

