



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

Notice of Decision

Decision Date: October 12, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007743

[REDACTED]

Dear [REDACTED],

On September 16, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 17, 2016 eligibility determination.

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).

This page intentionally left blank.



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

Decision

Decision Date: October 12, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007743

[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 were not eligible for a Special Enrollment Period (SEP)?

Procedural History

On October 25, 2015, NY State of Health (NYSOH) issued a notice that it was time to renew your health insurance for the upcoming coverage year. That notice stated that based on information from federal and state sources, NYSOH could not make a decision about whether you would qualify for financial help paying for your health coverage, and that you needed to update your account by December 15, 2015 or you might lose the financial assistance you were currently receiving.

No updates were made to your account by December 15, 2015.

On December 22, 2015, NYSOH issued a notice of eligibility determination stating that you were newly eligible to purchase a qualified health plan (QHP) at full cost, effective January 1, 2016.

On December 24, 2015, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in a silver-level QHP at full cost, effective January 1, 2016.

On February 1, 2016, you updated your NYSOH account.

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).

On February 2, 2016, NYSOH issued a notice of eligibility determination that stated that you were newly eligible to receive advance payments of the premium tax credit (APTC) of up to \$218.00 per month, and newly eligible to receive cost-sharing reductions, effective March 1, 2016.

Also on February 2, 2016, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in your silver-level QHP as of January 1, 2016, with APTC applied to your monthly premium as of March 1, 2016.

On February 5, 2016, NYSOH issued a cancellation notice, stating that your coverage in your silver-level QHP had been cancelled effective January 1, 2016 because a premium payment had not been received.

On March 7, 2016, you spoke to NYSOH's Account Review Unit and appealed NYSOH's verbal denial of a SEP to allow you to enroll in a health plan outside of open enrollment.

On March 17, 2016, NYSOH issued a notice of eligibility determination, stating that you were eligible to receive up to \$218.00 per month in APTC and eligible to receive CSR, effective May 1, 2016. Then notice also stated that you did not qualify to select a health plan outside of the open enrollment period for 2016.

On September 16, 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 testified, and the record reflects, that you receive electronic mail alerts regarding notices that are issued in your NYSOH account.
- 2) The record reflects that, when you completed your February 20, 2015 application for financial assistance, you selected the option "Do not renew my eligibility automatically."
- 3) You testified that you were not sure if you received any electronic alerts regarding any renewal notice in your NYSOH account telling you that you needed to update your application in order to renew your eligibility.
- 4) You testified that you were unable to open documents in your NYSOH account on a few different occasions.

- 5) You testified that you were not aware that there was an issue with your coverage until you received an invoice from your health plan for the full amount of your monthly premium for January 2016.
- 6) You testified that you were unable to pay the amount that was billed in your premium invoice, and that you planned to contact NYSOH regarding the issue.
- 7) You testified, and the record confirms, that you contacted NYSOH on February 1, 2016 to update your application for financial assistance.
- 8) You testified that the NYSOH representative that you spoke to on February 1, 2016 informed you that you received a bill for the full January 2016 premium because you had not completed your renewal, but that he could renew your coverage for you.
- 9) You testified that the NYSOH representative you spoke with on February 1, 2016 told you that you were eligible to receive tax credits, and that you should receive a new invoice from your health plan with the tax credit applied.
- 10) You testified that you never received an invoice after this, and then you found out that you were disenrolled from your coverage.
- 11) You testified that you are looking to be able to enroll in coverage starting August 1, 2016.
- 12) You testified during the hearing that you are concerned about incurring a tax penalty as a result of being without coverage.

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

Applicable Law and Regulations

Annual Eligibility Redetermination

Generally, NYSOH must conduct annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, such as tax credits and cost-sharing reductions, Medicaid, or Child Health Plus. In such cases, NYSOH is required to request that the qualified individual provide updated income and family size information for use in an eligibility redetermination for the upcoming year (see 45 CFR § 155.335(a) and (b)).

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).

NYSOH must send an annual renewal notice that contains the information by which NYSOH will use to redetermine a qualified individual's projected eligibility for that year (45 CFR § 155.335(c)(3)). If a qualified individual does not respond to the notice after a 30-day period, NYSOH must redetermine that individual's eligibility using the projected eligibility provided in the annual renewal notice (45 CFR § 155.335(g), (h)). NYSOH must ensure this redetermination is effective on the first day of the coverage year or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)). The rules specified in 45 CFR § 155.330(f) are not pertinent here.

Electronic Notices

If the individual elects electronic communications, NYSOH must send an email or other electronic communication alerting the individual that a notice has been posted to his or her account and send a notice by regular mail within three business days if the electronic communication cannot be delivered (45 CFR § 155.230(d); 42 CFR § 435.918(b)(4), (5)).

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 a number of specific triggering events occurs, including the following:

- (1) 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.

(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 issue under review is whether NYSOH properly denied you a special enrollment period, as of March 7, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that on December 24, 2015, you were reenrolled into a qualified health plan for 2016 coverage.

You testified and the record reflects that you elected to receive alerts regarding notices from NYSOH electronically. You credibly testified that you did not recall whether you received an electronic alert regarding the renewal notice, which directed you to update the information in your NYSOH account. You testified that you also never saw the enrollment confirmation notice indicating that you had been reenrolled into your qualified health plan as of January 1, 2016. You further testified that you have had problems opening the notices in your NYSOH inbox. Additionally, there is no evidence in your account documenting that any email alert was sent to you regarding either notice.

The record indicates that on February 5, 2016, you were retroactively terminated from your QHP for failure to pay premiums. You testified that you had received an invoice from your QHP, but that it was for the whole premium. You testified that you did not understand why this was, and that you could not afford to pay that amount.

You testified that you contacted NYSOH about the issue, and were told that you hadn't renewed, so you were being charged the full premium. Lastly, you testified, and the record reflects, that, when you completed your application for financial assistance in February of 2015, you selected the option that states "Do not renew my eligibility automatically."

The record reflects that you attempted to re-enroll in a health plan on March 7, 2016. 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.

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.

The credible evidence of record indicates that you never received the renewal notice indicating that it was time to renew your eligibility. Had you received the notice, you could have renewed your application for financial assistance, and could have therefore avoided being automatically re-enrolled into your health plan at full cost as of January 1, 2016. Moreover, the record reflects that NYSOH should not have automatically re-enrolled you into your health plan at full cost, as you did not select this option when you completed your 2015 financial assistance application.

Since you did not receive proper notice of your automatic enrollment into a health plan as of January 1, 2016, NYSOH should have processed your selection on February 1, 2016 as a new enrollment. In addition, NYSOH should have granted you a SEP when you tried to re-enroll. This is because NYSOH's failure to properly notify you of the need to renew your coverage, and of the fact that you were re-enrolled into your QHP at full cost, is what caused you to have to seek to enroll in coverage outside of the 2016 open enrollment period.

Therefore, NYSOH's March 17, 2016 eligibility determination notice stating that you do not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you are eligible for a SEP for 60 days from the date of this decision.

The record indicates that NYSOH's failure to grant you a special enrollment period resulted in you being without insurance coverage for part of the 2016 coverage year. During the hearing, you testified that you are 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.

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.

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).

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

Decision

The March 17, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a SEP until 60 days from the date of this decision.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage.

Effective Date of this Decision: October 12, 2016

How this Decision Affects Your Eligibility

You qualify for a special enrollment period.

You have 60 days from the date of this decision to enroll into a plan.

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 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).

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 17, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a SEP until 60 days from the date of this decision.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage.

You qualify for a special enrollment period.

You have 60 days from the date of this decision to enroll into a plan.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

