



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

Notice of Decision

Decision Date: August 1, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007770

[REDACTED]

Dear [REDACTED],

On July 25, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 9, 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).

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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 that you did not qualify to select a health plan outside of the open enrollment period?

Procedural History

On March 8, 2016, NYSOH received your completed application for health insurance and attempted to enroll into a qualified health plan.

That same day, NYSOH made a preliminary eligibility determination that you were eligible to purchase a qualified health plan at full cost but that you did not qualify to select a health plan outside of the open enrollment period for 2016.

Also on March 8, 2016, you spoke to NYSOH's Account Review Unit and appealed that preliminary eligibility determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On March 9, 2016, NYSOH issued an eligibility determination notice based on the March 8, 2016 preliminary determination that you did not qualify to select a health plan outside of the open enrollment period for 2016.

On July 25, 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 that you are seeking insurance for yourself.
- 2) You reside in a two person household.
- 3) You are not applying for financial assistance.
- 4) You reside in Westchester County.
- 5) You testified that you had insurance for 3 years through COBRA coverage after you lost employment.
- 6) You testified and the record reflects that the health plan through your COBRA coverage issued you a document titled "Certificate of Group Health Plan Coverage-Important" dated 9/15/2015. That certificate states coverage under your COBRA health plan would end November 30, 2015.
- 7) You testified that based on certain wording in that document, you thought you had 63 days from November 30, 2015, to obtain other health plan coverage.
- 8) You testified that you contacted NYSOH in December 2015 and were told that you needed to apply on line.
- 9) You testified that in December 2015 and January 2016 you used the NYSOH website to research different plans and providers as you had many different doctors and you wanted to make the best selection.
- 10) You testified that on February 1, 2016, you went online and attempted to establish an account so you could submit an application. However, you were not able to open an account because you were outside the open enrollment period. You then contacted multiple government agencies and representatives regarding your situation. You were advised to open an account at NYSOH and request a special enrollment period.
- 11) The record reflects that on March 8, 2016, you opened an account at NYSOH and submitted an application. At that time, NYSOH denied your request for a special enrollment period.
- 12) You testified that there have not been any changes in your immediate household and you have not changed residence to a different county.

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)).

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, 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

The issue under review is whether NYSOH properly denied you a special enrollment period on March 9, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. You testified that on February 1, 2016 you went online and attempted to establish an account so you could submit an application but you were not able to open an account because you were outside the open enrollment period. The record reflects that on March 8, 2016 you opened an official account with NYSOH and submitted an application. Therefore, you did not complete your application during the open enrollment period.

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).

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 your previous insurance coverage through COBRA ended on November 30, 2015 which is considered a triggering life event. The November 30, 2015 coverage end date is also confirmed by the "Certificate of Group Health Plan Coverage-Important" document you uploaded to your NYSOH account and is part of the record.

When a triggering life event occurs, the qualified individual has sixty (60) days from the date of that event to select a qualified health plan.

Sixty days from November 30, 2015 was January 29, 2016. Since January 29, 2016 was within the open enrollment period you still had until January 31, 2016 to submit an application, qualify to select a health plan and then select a health plan. You testified you tried to open an account with NYSOH on February 1, 2016. This was after the open enrollment period which ended on January 31, 2016 and after the 60 day window for enrollment after a triggering life event.

A special enrollment period can also 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 NYSOH.

You testified that you spoke with a representative of NYSOH in December 2015 and that person told you to submit an application online. You testified that you were on the NYSOH website many times in December 2015 and January 2016 researching the available plans and providers so you could make the best selection. Your testimony does not support a finding that an NYSOH representative misrepresented information in your December 2015 conversation.

You also testified that based on certain wording in a document from your COBRA provider, you thought you had 63 days from November 30, 2015, to obtain other health plan coverage. Because this document was not issued or created by NYSOH or an agent thereof, relying on the statement in the document does not meet the requirement for a triggering event 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 March 9, 2016 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

Decision

The March 9, 2016 eligibility determination is **AFFIRMED**.

Effective Date of this Decision: August 1, 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:

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Summary

The March 9, 2016 eligibility determination is AFFIRMED.

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:

