



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

## Notice of Decision

Decision Date: September 19, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007782

[REDACTED]

Dear [REDACTED],

On August 26, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 9, 2016 eligibility redetermination notice.

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: September 19, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007782



## Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NY State of Health (NYSOH) properly determine you were not eligible for a special enrollment period to enroll in a health plan outside of the open enrollment period for 2016?

## Procedural History

On October 24, 2015, NYSOH issued a renewal notice that stated, based on federal and state data sources, a decision about whether or not you qualified for financial help in 2016 could not be made. The notice instructed you to update your NYSOH account by December 15, 2015 and, if you missed this deadline, the current financial assistance you were getting might end.

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

On December 31, 2015, NYSOH issued an eligibility redetermination notice that stated you were newly conditionally eligible to purchase a qualified health plan at full cost, effective January 1, 2016, because you did not respond to the renewal notice and did not complete your renewal within the required timeframe.

Also on December 31, 2015, NYSOH issued an enrollment notice confirming that you had been automatically re-enrolled in a Fidelis Care Bronze plan with a monthly premium of \$324.45 and an enrollment start date of January 1, 2016.

On January 13, 2016, NYSOH issued another eligibility redetermination notice that stated you were eligible to purchase a qualified health plan at full cost, effective February 1, 2016.

Also on January 13, 2016, NYSOH issued an enrollment notice confirming your enrollment in the same Fidelis Care Bronze plan, with a monthly premium of \$324.45 and an enrollment start date of January 1, 2016.

On February 18, 2016, NYSOH issued a cancellation notice that stated your insurance with Fidelis Care Bronze was cancelled effective January 1, 2016, because they had not received your premium payment, which you were required to make in order for coverage to begin.

On March 8, 2016, you updated your NYSOH account and your eligibility for financial assistance was redetermined. You were determined eligible to purchase a qualified health plan at full cost, effective April 1, 2016, and were verbally denied a special enrollment period.

On March 8, 2016, you spoke to NYSOH's Account Review Unit and appealed NYSOH's verbal denial of a special enrollment period.

On March 9, 2016, NYSOH issued an eligibility redetermination notice that in relevant part stated you did not qualify for a special enrollment period to select a health plan outside the open enrollment period.

On August 26, 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 were unable to get through by telephone to NYSOH in December 2015 and finally got through in January 2016.
- 2) According to your NYSOH account, you were automatically enrolled in a qualified health plan by NYSOH's system, effective January 1, 2016, at full cost. You testified that this was done without your knowledge.
- 3) You testified that your household size and income has not changed since your application for health insurance in 2015.
- 4) You testified you are seeking insurance for yourself.

- 5) According to your NYSOH account and your testimony, you contacted NYSOH on January 12, 2016 and, with the assistance of a NYSOH agent, submitted your initial application for 2016 health insurance coverage.
- 6) You testified that you confirmed with a NYSOH agent said it was no problem for your coverage to begin on February 1, 2016.
- 7) You testified that the NYSOH agent said you would receive an invoice in the mail from the health plan.
- 8) You testified that, after several telephone calls with NYSOH to try and find out when you would receive an invoice from your health plan so you could pay it for coverage to begin February 1, 2016 instead of January 1, 2016, you were told you could file a complaint.
- 9) According to an incident filed on February 9, 2016 (# [REDACTED] the resolutions states that "Incident – Health Plan Billing, Requesting to not pay for Jan 2016, Closed 02/12/2016 Denied" (see Appeal Summary, dated 8/2/2016).
- 10) You testified that you contacted the health plan to make payment for a February 1, 2016 start date of coverage and were told that NYSOH could not have confirmed that your coverage started as of February 1, 2016, because you had coverage as of January 1, 2016 and were being cancelled for nonpayment of premium as of that date.
- 11) According to your NYSOH account, NYSOH issued a cancellation notice on February 18, 2016 stating that your coverage was cancelled as of January 1, 2016 because you did not pay your premium for that month.
- 12) You testified that, in March 2016, the health plan agreed to take you back if you paid the two previous month's premiums and you agreed. The health plan said this could only happen if NYSOH would let you.
- 13) You testified that you contacted NYSOH on several occasions so that your coverage could be reinstated, but were told to call back or disconnected.
- 14) You are seeking to get a special enrollment period so that you can enroll in coverage at least for the remainder of 2016. You also are concerned about being exposed to an IRS penalty for not having health insurance coverage for most of 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)).

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)).

NYSOH must ensure that coverage is effective as of January 1, 2016, for qualified health plan selections received by on or before December 19, 2015 (45 CFR §155.410(f)(2)(i), Press Release: NY State of Health Extends Enrollment Deadline for January 1 Coverage, <http://info.nystateofhealth.ny.gov/news/press-release-ny-state-health-extends-enrollment-deadline-january-1-coverage>).

### 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 in instances when the 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 issue under review is whether or not NYSOH properly denied you a special enrollment period to select and enroll in a qualified health plan during 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on January 12, 2016. Therefore, you did complete your application during the open enrollment period. However, the plan that you had been enrolled in for a February 1, 2016 start date was terminated for non-payment, effective January 1, 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, and additionally non-Exchange entities providing enrollment assistance or conducting enrollment activities as evaluated and determined by the NYSOH.

You credibly testified that the NYSOH agent, who assisted you on January 12, 2016, confirmed that your enrollment in your bronze health plan would begin February 1, 2016, and that health plan would invoice you directly. This information was inaccurate and in error since you had been automatically enrolled in that same health plan as of January 1, 2016. You also credibly testified that your health plan agreed to reinstate you, provided you paid the monthly premiums for January 2016 and February 2016, and you agreed to these terms. However, according to the incident that NYSOH processed on February 9, 2016, only your initial request not to have to pay for January 2016 was denied and there is no record that NYSOH acted on your and your health plan's agreement to reinstate your health insurance coverage as of January 1, 2016, despite your testimony that you had made several requests for them to allow you to be re-instated. Had this arrangement been timely and properly processed, you would not have been without health insurance in 2016.

It is therefore determined that NYSOH provided inaccurate information on January 12, 2016 and did not act on your and your health plan's arrangement to reinstate your coverage effective January 1, 2016. In effect, your cancellation of coverage was not addressed by NYSOH and you were unable to have your coverage reinstated as of January 1, 2016. In addition, you were denied the ability to enroll in a new plan, or change your plan, in order to start coverage April 1, 2016, because you were outside of the open enrollment period.

Therefore, the March 9, 2016 eligibility redetermination notice is MODIFIED to state that you are eligible for a special enrollment period to enroll in a new qualified health plan outside of the open enrollment period and have 60 days

from the date of this decision to select and confirm your health plan selection for the remainder of 2016.

The record indicates that NYSOH's actions, inactions, and 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.

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 9, 2016 eligibility redetermination notice is MODIFIED to state that you are eligible for a special enrollment period to enroll in a new qualified health plan outside of the open enrollment period and have 60 days from the date of this decision to select and confirm your health plan selection for the remainder of 2016.

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

**Effective Date of this Decision:** September 19, 2016

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

You qualify for a special 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).



You have 60 days from the date of this decision to enroll into a health 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 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 9, 2016 eligibility redetermination notice is MODIFIED to state that you are eligible for a special enrollment period to enroll in a new qualified health plan outside of the open enrollment period and have 60 days from the date of this

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decision to select and confirm your health plan selection for the remainder of 2016.

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 health plan.

You must claim the above-noted 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 return. If HHS does not approve your exemption, you will need to file an amended return later.

## **Legal Authority**

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

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

