



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

Notice of Decision

Decision Date: July 26, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007835

[REDACTED]

Dear [REDACTED]

On June 30, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 10, 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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Decision Date: July 26, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007835

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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 and your spouse did not qualify to select a health plan outside of open enrollment, as of your March 19, 2016 application?

Procedural History

Your NYSOH account was created on December 17, 2015, but no application was submitted at that time.

On February 18, 2016, NYSOH received your completed application for health insurance.

On February 19, 2016, NYSOH issued an eligibility determination notice stating that you, your spouse, and your two children were eligible to purchase a qualified health plan at full cost, effective April 1, 2016. The notice also stated that you and your family qualified to select a health plan outside of open enrollment, and that you had until February 29, 2016 to select a plan.

On March 9, 2016, you updated your application for health insurance.

On March 10, 2016, NYSOH issued a notice of eligibility determination that stated that you and your spouse were eligible to purchase qualified health plan at full cost, and that your children were eligible to enroll in a full price Child Health Plus plan or a Child-Only qualified health plan, effective April 1, 2016. It further

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stated that you and your spouse did not qualify to select a health plan outside of the open enrollment period for 2016.

On March 10, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you and your spouse were not eligible to enroll in a health plan outside of the open enrollment period.

On June 30, 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) The record indicates that you submitted your completed application for 2016 health insurance coverage on February 18, 2016, and that your household was found eligible for a special enrollment period with an enrollment deadline of February 29, 2016.
- 2) You testified that, when you completed your application, you were still exploring your options regarding insurance, as you were waiting to see if your spouse secured employment, and also deciding whether to take COBRA coverage from his former employer.
- 3) You testified that you called NYSOH in February because you wanted to find out how long you had to enroll after losing coverage through your husband's employer.
- 4) You testified that you were told that you had 90 days to apply from the date when you last had coverage, so you believed that you had until the end of March 2016 to enroll in coverage.
- 5) The Hearing Officer listened to the recording of your February 2, 2016 phone call with NYSOH. The following findings of fact are derived from that telephone call:
 - a. The representative asked for your identifying information, but gave no indication during the call that she pulled up or looked at your NYSOH account.
 - b. You informed the NYSOH representative that you had created a NYSOH account, and that you had received a letter informing you that you had until February 29, 2016 to enroll in a plan.
 - c. You told the NYSOH representative that your previous insurance coverage ended on December 31, 2015, and asked the NYSOH

- representative whether you had to enroll in coverage within a certain amount of time from when you last had coverage.
- d. The NYSOH representative responded that you only have 90 days to go without coverage for the whole year without incurring a penalty.
 - e. The representative also confirmed that you needed to sign up by March 15 in order to have coverage on April 1.
- 6) You testified that you and your spouse have had coverage through his new employer since June 1, 2016, but that you are still interested in enrolling in coverage for April and May 2016 because you are concerned about incurring a penalty.

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 under certain circumstances, including when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent involuntarily loses certain health insurance coverage, including health insurance considered to be minimum essential coverage;
- (2) 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 your March 9, 2016 application.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you first submitted a complete application on February 18, 2016. Therefore, you did not complete your application during the open enrollment period.

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.

The record reflects that your February 18, 2016 application indicated that you and your family lost essential health coverage as of December 31, 2015. Since loss of insurance coverage is considered a triggering life event, your household was granted a special enrollment period until February 29, 2016 so that you could enroll in coverage outside of open enrollment.

You had not enrolled in coverage as of February 29, 2016.

You updated your application on March 9, 2016, and changed your application to one for financial assistance. Your children were found eligible to enroll in Child Health Plus at full cost or a Child-Only qualified health plan at full cost. You and your spouse were found eligible to enroll in a qualified health plan at full cost, but not eligible for a special enrollment period.

However, the record reflects, and your testimony confirms, that you spoke with a representative from NYSOH on February 2, 2016, within your special enrollment period. This representative appears not to have reviewed your account information during your call. Moreover, when you asked her how long you had to enroll in coverage after losing coverage on December 31, 2015, she gave a non-responsive and misleading answer by telling you that you had 90 days to go without coverage for the whole year without having a penalty. The representative

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also stated that you needed to enroll by March 15, 2016 to have coverage in effect by April 1, 2016. She did not mention the need for another special enrollment period.

It was reasonable for you to have understood her answers to mean that you had 90 days to enroll in coverage from December 31, 2015, or at least until March 15, 2016, given the question that you had asked her.

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 relied on misinformation given to you by the NYSOH representative during your February 2, 2016 phone call in drawing your conclusion that you had until the end of March 2016 to enroll in coverage.

Therefore, you are entitled to a special enrollment period based on this misinformation.

NYSOH's March 10, 2016 eligibility determination that you and your spouse did not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you and your spouse are eligible for a special enrollment period until 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.

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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 10, 2016 eligibility determination is MODIFIED 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 in enrolling into a plan for April and May 2016 health coverage for yourself and your spouse.

Effective Date of this Decision: July 26, 2016

How this Decision Affects Your Eligibility

You qualified for a special enrollment period as of your March 9, 2016 application.

You have 60 days from the date of this decision to enroll into a plan for the months of April and May 2016.

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)).

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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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P.O. Box 11729
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- By fax: 1-855-900-5557

Summary

The March 10, 2016 eligibility determination is MODIFIED 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 in enrolling into a plan for April and May 2016 health coverage for yourself and your spouse.

You qualified for a special enrollment period as of your March 9, 2016 application.

You have 60 days from the date of this decision to enroll into a plan for the months of April and May 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

