



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

Notice of Decision

Decision Date: September 9, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007851

[REDACTED]

Dear [REDACTED]

On August 24, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 10, 2016 preliminary eligibility redetermination.

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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Issue

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

Did NY State of Health (NYSOH) properly determine, on March 10, 2016, that you did not qualify for a special enrollment period to re-enroll in a qualified health plan outside of open enrollment?

Procedural History

On January 5 and 16, 2016, NYSOH issued eligibility redetermination notices that stated you were eligible to receive advance payments of the premium tax credit (APTC) and eligible for cost sharing reductions, effective February 1, 2016.

On January 16, 2016, NYSOH issued an enrollment notice confirming that you were enrolled in a gold-level qualified health plan (QHP), with a premium responsibility of \$296.77 after your monthly APTC was applied and a start date of February 1, 2016. The notice further stated that you must pay the monthly premium to start and keep your coverage.

On February 13, 2016, NYSOH issued a cancellation notice informing you that your insurance in the gold-level QHP you had selected was cancelled as of its inception, effective February 1, 2016, due to nonpayment of premium.

On March 10, 2016, based on your updated application, NYSOH made a preliminary eligibility redetermination and verbally informed you that you did not qualify for a special enrollment period.

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Also on March 10, 2016, you spoke with NYSOH's Account Review Unit and appealed that preliminary redetermination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On March 11, 2016, NYSOH issued a notice of eligibility determination that in part stated that you did not qualify to select a health plan outside of the open enrollment period for 2016.

On August 24, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and closed that same day after you uploaded a copy of your unemployment benefits payment history (see Document [REDACTED]).

Findings of Fact

A review of the record support the following findings of fact:

- 1) The record indicates that you updated your application for 2016 health insurance coverage on January 4 and 15, 2016.
- 2) According to your NYSOH account and your testimony, your QHP cancelled your coverage as of February 1, 2016, the date it was to start, because you did not pay the premium on time.
- 3) You testified that you mailed in the premium payment, your check was cashed by your QHP on February 23, 2016, and you confirmed that the premium amount left your account. You testified that you assumed this meant that everything was fine and you were insured.
- 4) According to your NYSOH account, you elected to receive email alerts. You testified that you do not always sign into your NYSOH account and believed that your cashed check meant you were insured.
- 5) You testified that when you contacted your QHP, they said you could only be reinstated if you made the monthly payments for February and March 2015 when, at the time, the QHP had your February 2016 premium payment.
- 6) You testified that your QHP only reimbursed you for the February 2016 premium after you protested and then only after three months of requesting reimbursement.

- 7) You testified that your circumstances changed in June 2016 in that you became unemployed and began collecting weekly benefits of \$425.00 in July 2016. You testified that you have not reported this change to NYSOH.
- 8) According to your unemployment insurance payment history that you uploaded to your NYSOH account on August 24, 2016, you received benefits as follows:

<u>Release Date</u>	<u>Amount</u>
07/12/2016	\$ 212.50
07/19/2016	425.00
07/26/2016	425.00
08/02/2016	\$ 425.00
08/09/2016	212.50
08/09/2016	425.00
08/16/2016	425.00
08/23/2016	425.00

July 2016 total unemployment benefits received is \$1,062.50; and August 2016 partial unemployment benefits received is \$1,912.50, not including the last benefits payment of \$425.00 received that month.

- 9) According to your NYSOH you plan on filing your 2016 federal taxes using a tax filing status of single with no dependents.
- 10) According to your NYSOH account, you reside in Queens County, New York.

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)).

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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)).

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

- (1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or
- (2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128”

(45 CFR § 155.420(e)).

Legal Analysis

The issue under review is whether NYSOH properly denied you a special enrollment period on March 10, 2016 as stated in the March 11, 2016 notice.

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 15, 2016. Therefore, you completed your application during the open enrollment period and were enrolled in a qualified health plan as of February 1, 2016. However, your QHP notified NYSOH that you had not timely submitted your premium payment for coverage to begin on February 1, 2015, which caused NYSOH to issue the cancellation notice on February 13, 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.

Here, your enrollment was terminated effective February 1, 2016, the date of its intended inception, because your QHP did not receive the premium payment on time. It is not enough that you mailed it and it was cashed on February 23, 2016. What is considered is whether the date the check was received by the QHP was timely in order for coverage to start. Here, the record reflects that your QHP notified NYSOH by February 13, 2016, the date NYSOH issued the cancellation notice, that your premium payment had not been timely received and, therefore, you were being cancelled for nonpayment of premium. In these circumstances, NYSOH considers your failure to make a timely premium payment to be a voluntary action causing the termination of your coverage. As such, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis.

Therefore, NYSOH properly denied your request for a special enrollment period and the March 11, 2016 eligibility redetermination notice stating so is **AFFIRMED**.

However, you testified at the hearing that you had a change in circumstances in that you lost your job in June 2016 and began collecting unemployment insurance benefits in July 2016, but did not update your NYSOH account or notify NYSOH of this change. According to the unemployment benefits payment history that you uploaded to your NYSOH account, you received \$1,062.00 in July 2016.

Therefore, your case is **RETURNED** to NYSOH to redetermine your eligibility for financial assistance in July 2016 using a one-person household with a monthly income of \$1,062.00 for an individual residing in Queens County, New York, and to notify you accordingly.

Decision

The March 11, 2016 eligibility redetermination notice is **AFFIRMED**.

Your case is **RETURNED** to NYSOH to redetermine your eligibility for financial assistance in July 2016 using a one-person household with a monthly income of \$1,062.00 for an individual residing in Queens County, New York, and to notify you accordingly.

Effective Date of this Decision: September 9, 2016

How this Decision Affects Your Eligibility

You do not qualify for a special enrollment period at this time.

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Your case is being sent back to NYSOH to redetermine your eligibility for financial assistance and to notify you of its redetermination. You might be required to submit proof of your year-to-date earned income for a determination to be made. NYSOH will notify you if this is required.

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 11, 2016 eligibility redetermination notice is **AFFIRMED**.

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You do not qualify for a special enrollment period at this time.

Your case is being sent back to NYSOH to redetermine your eligibility for financial assistance and to notify you of its redetermination. You might be required to submit proof of your year-to-date earned income for a determination to be made. NYSOH will notify you if this is required.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

