



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

Notice of Decision

Decision Date: October 4, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007853

[REDACTED]

Dear [REDACTED]

On September 8, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's determination to deny you, your spouse and two eldest children a special enrollment period.

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 at the top of this notice.

Legal Authority

We are sending you this notice in accordance with Code of Federal Regulation 45 CFR § 155.545(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).

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Decision

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NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007853



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, your spouse and two eldest children do not qualify to select a health plan outside of the open enrollment period?

Procedural History

On December 27, 2014, NYSOH issued an enrollment notice confirming that on December 26, 2014 you and your family were enrolled in the Medicaid Managed Care plan, Healthfirst. The notice stated that your family's coverage through Medicaid would begin January 1, 2015, and your enrollment with Healthfirst would begin February 1, 2015.

On October 22, 2015, NYSOH issued a notice that it was time to renew your family's health insurance. That notice stated that, based on information from federal and state sources, NYSOH could not make a decision about whether your family 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.

On December 21, 2015 NYSOH issued a notice stating that you had not responded to the renewal notice and that your family was therefore no longer eligible for financial assistance effective December 31, 2015.

On December 22, 2015 NYSOH issued a disenrollment notice stating that your family's Healthfirst coverage would end effective December 31, 2015.

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On March 8, 2016, your NYSOH account was updated.

On March 9, 2016, NYSOH issued an eligibility determination notice, in relevant part, that you, your spouse and two eldest children were conditionally eligible to receive up to \$645.00 of advance premium tax credits and cost-sharing reductions, effective as of April 1, 2016. The notice also stated that you, your spouse and two eldest children qualified to select a health plan outside of the open enrollment period for 2016.

On March 11, 2016, NYSOH issued a notice to confirm that on March 10, 2016, you requested a telephone hearing to review, “[t]he inability to enroll outside of open enrollment.”

On September 8, 2016 you had a telephone hearing with a Hearing Officer from the Marketplace’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, your spouse and children were eligible for Medicaid effective as of January 1, 2015.
- 2) According to your NYSOH account and testimony, you receive notices from NYSOH via regular mail.
- 3) You testified that you did not receive a renewal notice from NYSOH to ensure that your family’s coverage would not be interrupted.
- 4) According to your NYSOH account, [REDACTED] was listed as your mailing address from December 23, 2013, through March 8, 2016.
- 5) According to your NYSOH account, your mailing address was changed to [REDACTED] on March 8, 2016.
- 6) You testified that you have resided at [REDACTED] since January 2015.
- 7) You testified that you contacted Healthfirst to change your mailing address and thought that they would communicate that change to NYSOH.
- 8) No notices sent to you at the addresses listed on your NYSOH account have been returned as undeliverable.

- 9) You testified that you are seeking to enroll you, your spouse and two eldest children in a qualified health plan through NYSOH.
- 10) You testified that in January 2016 you found out at a doctor's appointment that your family's health insurance had ended.
- 11) You testified that you contacted NYSOH in January 2016 and February 2016 to enroll your family in a plan. However, NYSOH representatives would not process your application because the account was in your spouse's name.
- 12) You testified that your spouse was in Haiti from December 10, 2015 until February 25, 2016.
- 13) You testified that you were able to update your NYSOH account after submitting an "Authorized Representative Designation Form" to NYSOH.
- 14) On March 8, 2016, you contacted NYSOH and submitted an application for your family.
- 15) An "Authorized Representative Designation Form, dated March 19, 2016, signed by your spouse was faxed to NYSOH. The form designated you as an authorized representative "for all matters related to [your] account" and "act as your representative during an appeal" (██████████; upload 3/23/2016).
- 16) You testified that you attempted to enroll in a health plan through NYSOH, but was denied because the open enrollment period had ended.

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

Applicable Law and Regulations

De Novo Review

The NYSOH Appeals Unit must review each appeal de novo and "consider all relevant facts and evidence adduced during the appeals process" (45 CFR § 155.535(f)). "*De novo review* means a review of an appeal without deference to prior decisions in the case" (45 CFR § 155.500).

NYSOH is required to provide "timely written notice to an applicant of any eligibility determination" made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual Marketplace (45 CFR § 155.310(g)).

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Medicaid Renewal

In general, NYSOH must review Medicaid eligibility once every twelve months or “whenever it receives information about a change in a beneficiary’s circumstances that may affect eligibility” (42 CFR § 435.916(a)(1), (d)). NYSOH must make its “redetermination of eligibility without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more current information available to the agency, including but not limited to information accessed through any data bases accessed by the agency” (42 CFR § 435.916(a)(2)).

The NYSOH must provide an individual with the annual redetermination notice, including the projected eligibility for coverage and financial assistance, and must require the qualified individual to report any changes within 30 days (45 CFR § 155.335(c), (e)). Once the 30-day period has lapsed, NYSOH must issue a redetermination as provided by the notice, with consideration given to any updates provided by the individual (45 CFR § 155.335(h)).

Enrollment in a Qualified Health Plan

The 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-Generally

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)).

Special Enrollment Period-Loss of Minimum Essential Coverage:

NYSOH must allow a qualified individual or enrollee, or, their dependent, to enroll in or change from one QHP to another if they lose minimum essential coverage. A qualified individual or enrollee has 60 days from the date of the triggering event

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to select a QHP. The triggering event is the last day the qualified individual or dependent is enrolled in their previous plan (45 CFR § 155.420(c)(2); 45 CFR § 155.420(d)(1)(i)).

Legal Analysis

The issue under review is whether NYSOH properly denied you, your spouse and two eldest children a special enrollment period.

The record does not contain a notice of eligibility determination or redetermination denying you, your spouse and two eldest children a special enrollment period. It does, however, contain a notice confirming that on March 10, 2016 you requested a hearing to review, “[t]he inability to enroll outside of open enrollment.”

The lack of a notice of eligibility determination on the issue of QHP enrollment does not prevent the Appeals Unit from reaching the merits of the case. The text of March 11, 2016 notice, which acknowledges that you requested an appeal on “[t]he ability to enroll outside of open enrollment.” Since Appeal Unit review of NYSOH determinations is performed on a *de novo* basis, no deference would have been granted to the notice of eligibility determination had it been properly issued.

Your family was found eligible for Medicaid in 2015, effective January 1, 2015.

Generally, NYSOH must redetermine a qualified individual's eligibility for Medicaid once every twelve months without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more current information available to the agency. NYSOH's October 22, 2015 renewal notice stated that there was not enough information to determine whether your family was eligible for financial assistance for health insurance coverage in 2016, and that you needed to supply update your account by December 15, 2015 or your financial assistance might end.

Because there was no timely response to this notice, your family's coverage was terminated effective December 31, 2015.

You testified that you did not receive a notice from NYSOH informing you that your application needed to be updated.

According to the record, the October 22, 2015, renewal notice was sent to [REDACTED], which was the mailing address listed on your account from December 23, 2013, through March 8, 2016.

The record reflects that the relevant notices were issued to the mailing address that was listed on your NYSOH account, and there is no indication that any of the notices were returned to the NYSOH as undeliverable.

The NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. Furthermore, NYSOH must allow a qualified individual or, their dependent to enroll in a QHP if they lose minimum essential coverage. A qualified individual has 60 days from the date of the triggering event to select a QHP. The triggering event is the last day the qualified individual or dependent is enrolled in their previous plan.

Your family's Medicaid coverage was discontinued on December 31, 2015. Therefore, you and your family had until February 29, 2016, to enroll in a QHP through NYSOH.

The record reflects that you reapplied for health insurance coverage on March 8, 2016.

You testified that you contacted NYSOH during January 2016 and February 2016 to update your application and enroll your family in a plan. However, NYSOH representatives would not process your application because the account was in your spouse's name, and your spouse was in Haiti from December 10, 2015 until February 25, 2016.

You testified that you were able to submit an application on March 8, 2016, after submitting the "Authorized Representative Designation Form" to NYSOH. The form that designated you as an authorized representative was signed on March 19, 2016, and was not uploaded to your account until March 23, 2016.

The record supports that no triggering events have occurred that would qualify you, your spouse and your two eldest children for a special enrollment period.

Decision

The March 9, 2016, eligibility determination notice is MODIFIED, in relevant part, to state that you, your spouse and two eldest children do not qualify to select a health plan outside of the open enrollment period for 2016.

Effective Date of this Decision: October 4, 2016

How this Decision Affects Your Eligibility

You, your spouse and two eldest children do not qualify for a special enrollment period to enroll in a qualified health plan at this time.

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 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 after the date 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 date 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 determination notice is MODIFIED, in relevant part, to state that you, your spouse and two eldest children do not qualify to select a health plan outside of the open enrollment period for 2016.

You, your spouse and two eldest children do not qualify for a special enrollment period to enroll in a qualified health plan at this time.

Legal Authority

We are sending you this notice in accordance with Code of Federal Regulation 45 CFR § 155.545(a).

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A Copy of this Decision Has Been Provided To:

