



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

Notice of Decision

Decision Date: November 25, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007890

[REDACTED]

Dear [REDACTED]

On November 17, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's denial of a Special Enrollment Period (SEP).

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]
Appeal Identification Number: AP000000007890



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 were not eligible to enroll in a qualified health plan (QHP) for 2016 outside of the 2016 open enrollment period?

Procedural History

On October 29, 2015, NYSOH issued a renewal notice stating that it was time to renew your NYSOH coverage. The notice stated that you were still qualified to buy a health plan at full cost through NYSOH, effective January 1, 2016. The notice also stated that you were re-enrolled into your current Fidelis bronze health plan, effective January 1, 2016.

On November 25, 2015, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in your Fidelis bronze QHP, effective January 1, 2016 with a monthly premium of \$298.09.

On February 9, 2016, you updated your NYSOH account to indicate that you had lost your health coverage.

On February 10, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to purchase a QHP at full cost, effective January 1, 2016. The notice further stated that you qualified to select a health plan outside of the open enrollment period for 2016, and that you had until April 30, 2016 to select a plan.

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On February 18, 2016, NYSOH issued a cancellation notice stating that your coverage in your Fidelis bronze health plan was cancelled effective January 1, 2016 because a premium payment was not received by your health plan.

On February 24, 2016, you updated your NYSOH account.

On February 25, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to purchase a QHP at full cost, effective April 1, 2016. The notice further stated that you did not qualify to select a health plan outside of the 2016 open enrollment period.

On March 14, 2016, you spoke to NYSOH's Account Review Unit and appealed the February 25, 2016 eligibility determination, insofar as it stated that you were not eligible to select a health plan outside of the 2016 open enrollment period.

On November 17, 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) Your NYSOH account indicates that you were re-enrolled into your Fidelis QHP with a start date of January 1, 2016.
- 2) You testified that you received the renewal notice informing you that you had been enrolled and, at that time, you planned to keep your Fidelis health plan for 2016.
- 3) You testified that you discovered in December 2015 that you had many bills from 2015 that your health plan did not cover.
- 4) You testified that you stopped paying for your Fidelis coverage in January 2016 and began looking for another health plan because Fidelis had not covered many of your bills.
- 5) You testified that you did not realize that open enrollment had closed, and that you went in to your NYSOH account to try to select a new plan.
- 6) Your NYSOH account reflects that a notice was issued on February 10, 2016 granting you a special enrollment period (SEP) until April 30, 2016.

- 7) You testified that you logged into your NYSOH account after you received the February 10, 2016 notice, but that you were unable to select a new plan.
- 8) You testified that you then contacted NYSOH and spoke to someone who confirmed the information in the February 10, 2016 notice, but told you that they did not know why you had been granted an SEP, and informed you that you could not enroll in a health plan.
- 9) Your NYSOH account reflects that NYSOH issued a notice denying you a SEP on February 25, 2016.
- 10) You testified that, at this point, you are looking for coverage for December 2016.
- 11) You also testified that you are concerned about incurring a tax penalty for 2016 because you have not had health insurance coverage.

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 SEP's to qualified individuals. During a SEP, 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 your request to enroll in coverage outside of the open enrollment period.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you were automatically re-enrolled into your Fidelis bronze plan in a renewal notice dated October 29, 2015, with coverage to begin effective January 1, 2016.

However, you testified that you became dissatisfied with your health plan after you found out that many of your medical bills had not been paid by Fidelis. You testified that you discovered this in December 2015, and so you stopped paying your Fidelis premium as of January 2016. You testified that you wanted to enroll in a new health plan through NYSOH, and did not realize that there was an enrollment period that closed.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a SEP in order to enroll in, or change to another health plan offered in NYSOH. In order to qualify for a SEP, a person must experience a triggering event.

The record is void of any qualifying life events that would qualify you for a SEP. However, for reasons that are unclear from the record, NYSOH granted you a SEP in its February 10, 2016 eligibility determination notice. This notice stated that you had until April 30, 2016 to select a health plan for enrollment.

You testified that you received this notice and that you then logged into your account in February 2016 to attempt to enroll in a plan. You testified that you were unable to select a plan, so you contacted NYSOH for assistance. You testified that the person you spoke with confirmed that you had been granted an SEP in the February 10, 2016 notice, but stated that you were not eligible for an SEP, and could not enroll in a health plan. You testified that this is why you requested an appeal, and the record reflects that you requested your appeal on March 14, 2016.

Therefore, since you were granted a SEP on February 10, 2016 that did not expire until April 30, 2016, NYSOH's refusal to enroll you in a health plan within that period was not correct, and the February 25, 2016 notice denying you a SEP is **RESCINDED**.

Your case is RETURNED to NYSOH so that you may enroll in a QHP for 2016, beginning as early as March 1, 2016. You have 60 days from the date of this decision to enroll in a plan.

You are responsible for any premiums that you incur should you choose to enroll in a health plan.

The record indicates that NYSOH's failure to honor the SEP you were granted 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 did not 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

You were eligible to enroll in coverage outside of the 2016 open enrollment period for a period of time from February 10, 2016 through April 30, 2016.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage, beginning as early as March 1, 2016 or a later month of your choosing, should you decide you wish to enroll in coverage.

Effective Date of this Decision: November 25, 2016

How this Decision Affects Your Eligibility

You qualify for a SEP, pursuant to an eligibility determination notice issued by NYSOH on February 10, 2016.

You have 60 days from the date of this decision to enroll into a plan, and may choose to have coverage begin as early as March 1, 2016.

You will be responsible for any premiums you incur, after the application of your APTC, should you choose to enroll in 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

You were eligible to enroll in coverage outside of the 2016 open enrollment period for a period of time from February 10, 2016 through April 30, 2016.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage, beginning as early as March 1, 2016 or a later month of your choosing, should you decide you wish to enroll in coverage.

You qualify for a SEP, pursuant to an eligibility determination notice issued by NYSOH on February 10, 2016.

You have 60 days from the date of this decision to enroll into a plan, and may choose to have coverage begin as early as March 1, 2016.

You will be responsible for any premiums you incur, after the application of your APTC, should you choose to enroll in a health plan.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

