



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

## Notice of Decision

Decision Date: October 12, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007912

[REDACTED]

Dear [REDACTED],

On September 1, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 15, 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

Decision Date: October 12, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007912

[REDACTED]

## 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 for a Special Enrollment Period (SEP) as of March 15, 2016?

## Procedural History

On March 14, 2016 NYSOH received your application for health insurance. That day, NYSOH prepared a preliminary eligibility determination stating that you were eligible to receive up to \$178.00 per month in advance payments of the premium tax credit, and eligible for cost-sharing reductions, effective April 1, 2016.

That same day, you spoke to NYSOH's Account Review Unit and appealed that preliminary eligibility determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On March 15, 2016, NYSOH issued a notice of eligibility determination that stated that you were eligible to receive advance payments of the premium tax credit of up to \$178.00 per month, and eligible for cost-sharing reductions, effective April 1, 2016. It further stated that you do not qualify to select a health plan outside of the open enrollment period for 2016.

On September 1, 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.

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## Findings of Fact

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

- 1) The record indicates that you submitted your initial application for 2016 health insurance coverage on March 14, 2016.
- 2) You testified that you last had health insurance in March 2015 through your employer.
- 3) You testified that you are currently not working, and are receiving disability payments from a disability insurance you obtained through your employer.
- 4) You testified that you first tried to sign up for health insurance by going to the [REDACTED] in your neighborhood, and speaking with someone there who assists people with insurance enrollment. You testified that this was probably in January 2016.
- 5) You testified that this person told you that you had to apply for Medicaid through the Medicaid office because you receive disability payments.
- 6) You testified that you went to a local Medicaid office in Chinatown and completed an application. You testified that you were told to bring back proof of your disability.
- 7) You testified that when you brought your disability paperwork back to the Medicaid office, you were informed that you had to apply for health insurance through NYSOH, and could not apply through the Medicaid office because you were not receiving "city" disability.
- 8) You testified that the local Medicaid office did not give you a written denial or process your application, but gave you a piece of paper with a phone number on it, and told you to call it so that you could get "Obamacare."
- 9) You testified that you went back to the clinic where you had tried to apply, and again tried to enroll in insurance. You testified that, by this time, it was already after open enrollment had ended.
- 10) You testified that you did not speak with anyone from NYSOH until you applied in March 2016.
- 11) You testified that you are looking to be eligible for a SEP so that you can enroll in health insurance for the remainder of the year.

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

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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 you a SEP as of March 15, 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 March 14, 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.

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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.

You testified that you first tried to apply for health insurance during open enrollment, but were erroneously turned away by someone at a health clinic who misunderstood the type of disability payments that you receive. While your testimony was credible, the health clinic you visited is not an instrumentality or agent of NYSOH. Since the record does not indicate that NYSOH, by action or inaction, made an error or misrepresented information, a SEP cannot be granted.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2016, no other triggering events have occurred that would qualify you for a special enrollment period.

Therefore, NYSOH's March 15, 2016 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

## **Decision**

The March 15, 2016 eligibility determination is **AFFIRMED**.

**Effective Date of this Decision:** October 12, 2016

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

You do not qualify for a SEP at this time.

## **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.

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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:  
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Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

The March 15, 2016 eligibility determination is AFFIRMED.

You do not qualify for a SEP at this time.

### **Legal Authority**

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



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

