



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: AP000000007930

[REDACTED]

Dear [REDACTED]

On August 30, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health's March 16, 2016 eligibility determination notice.

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: AP000000007930



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 the open enrollment period?

Procedural History

On January 16, 2016, you applied for health insurance through NYSOH.

On January 17, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were conditionally eligible to receive up to \$411.00 of advance premium tax credit per month and cost-sharing reductions, effective as of March 1, 2016. NYSOH directed you to submit income documentation and your spouse to provide immigration status and income documentation before April 15, 2016 to confirm your eligibility.

On March 15, 2016, you spoke to NYSOH's Account Review Unit and requested an appeal insofar as you and your spouse's eligibility for a special enrollment period.

On March 16, 2016, NYSOH issued an eligibility determination notice, in relevant part, that you and your spouse 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. Testimony was taken during the hearing and the record

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was left open to allow the Hearing Officer to request the recording of your January 16, 2016 conversation with NYSOH's customer service.

The recording of your January 16, 2016, conversation with NYSOH customer service was received by NYSOH Appeals Unit. That recording has been incorporated into the record as "Exhibit A." The record is now complete and closed.

Findings of Fact

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

- 1) You testified that you are seeking to enroll you and your spouse in coverage through NYSOH.
- 2) You contacted NYSOH customer service on January 16, 2016 to apply for financial assistance for you and your spouse.
- 3) At the conclusion of your January 16, 2016 telephone conversation with NYSOH's customer service, you were told that an eligibility determination could be made at that time because of technical difficulties (Exhibit A).
- 4) You testified that the NYSOH representative stated that they would call you back to confirm your eligibility.
- 5) The NYSOH representative stated that you needed to call back the following Monday to complete and confirm your eligibility. You acknowledged that you would contact NYSOH's customer service the following Monday (Exhibit A).
- 6) On January 17, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were conditionally eligible to receive up to \$411.00 of advance premium tax credit per month and cost-sharing reductions, effective as of March 1, 2016 ([REDACTED]).
- 7) According to your NYSOH Account, you contacted NYSOH on March 15, 2016 to enroll in a health plan.
- 8) You testified that you are seeking to enroll in a health plan through NYSOH as soon as possible.

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

Applicable Law and Regulations

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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

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-Exceptional Circumstances

A special enrollment period is permitted when 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)(9)).

CMS has defined that error messages, which occurs when a consumer is not able to complete enrollment due to an error message, is a situation that would entitle an individual to a special enrollment period (Guidance for Issuers on Special Enrollment Periods for Complex Cases in after the Initial Open Enrollment Period, Affordable Exchange Guidance, Department of Health & Human Services, CMS, dated March 26, 2014, as retrieved on September 1, 2016 at: <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/complex-cases-SEP-3-26-2014.pdf>

Legal Analysis

The issue under review is whether the NY State of Health (NYSOH) properly denied you and your spouse a special enrollment period.

The NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016.

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Once the annual open enrollment period ends, an applicant must qualify for a special enrollment period in order to enroll in health insurance coverage offered by NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

The record reflects that you contacted NYSOH on January 16, 2016, to apply for financial assistance for you and your spouse. You were unable to get an eligibility determination for financial assistance because of technical issues with NYSOH's equipment. The representative directed you to contact NYSOH the following Monday, which was January 18, 2016. Furthermore, the record supports that you acknowledged that you would contact NYSOH on January 18, 2016, to complete and confirm your eligibility.

In certain circumstances, when an applicant is not able to complete enrollment due to an error message on or around the plan selection deadlines, the applicant is entitled to a special enrollment period.

You were aware that you needed to contact NYSOH to complete your application and enroll in a health plan as of January 16, 2016. This provided you with approximately two weeks to contact NYSOH to complete your application and enroll in health plan. However, you did not contact NYSOH until March 15, 2016.

Therefore, the record supports that no triggering events have occurred that would qualify you and your spouse for a special enrollment period.

Therefore, NYSOH's March 16, 2016, eligibility determination notice stating, in relevant part, that you and your spouse do not qualify for a special enrollment period is AFFIRMED.

Decision

The March 16, 2016, eligibility determination notice stating, in relevant part, that you and your spouse do not qualify for a special enrollment period is AFFIRMED.

Effective Date of this Decision: October 4, 2016

How this Decision Affects Your Eligibility

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

If You Disagree with this Decision (Appeal Rights)

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).

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
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- By fax: 1-855-900-5557

Summary

The March 16, 2016, eligibility determination notice stating, in relevant part, that you and your spouse do not qualify for a special enrollment period is **AFFIRMED**.

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

Legal Authority

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

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A Copy of this Decision Has Been Provided To:

