



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

Notice of Decision

Decision Date: October 14, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007939

[REDACTED]

Dear [REDACTED],

On August 31, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's verbal denial of 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 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 that you were not eligible for a Special Enrollment Period (SEP) as of March 15, 2016?

Procedural History

On December 17, 2015, NYSOH received your application for health insurance.

On December 18, 2015, NYSOH issued a notice of eligibility determination that stated that you are eligible to receive up to \$180.00 per month in advance payments of the premium tax credit, as well as cost-sharing reductions, effective January 1, 2016.

Also on December 18, 2015, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in a bronze-level qualified health plan, with a monthly premium of \$120.28 per month after the application of your tax credits, beginning January 1, 2016.

On March 15, 2016, you spoke to NYSOH's Account Review Unit and appealed the fact that you were verbally denied a SEP to allow you to switch to a different qualified health plan.

On August 31, 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 support the following findings of fact:

- 1) The record indicates that you submitted your initial application for 2016 health insurance coverage on December 17, 2015 and selected a qualified health plan for enrollment on that same day.
- 2) You testified that you were not sure what health plan to choose, so you asked the NYSOH representative who assisted you when you called to apply for health insurance for assistance in selecting a plan.
- 3) You testified that you based your plan selection on information given to you by the NYSOH representative. You testified that the representative told you that you would pay approximately \$120.00 per month in premiums, and that you would be responsible for fifty percent of the cost of your doctors' visits.
- 4) You testified that the NYSOH representative you spoke with did not tell you that there was a \$3,500.00 deductible for your plan.
- 5) You testified that you would not have chosen the plan if you knew about the deductible.
- 6) The record reflects that you were sent an enrollment confirmation notice on December 18, 2015. That notice stated that there was a \$3,500.00 deductible per person for the health plan that you had selected.
- 7) You testified that you might have received the December 18, 2015 enrollment confirmation, but that you did not look at the paperwork very closely.
- 8) You testified that you realized you had a high deductible after talking to other people, and reviewing your paperwork.
- 9) You testified that you would like to change to a different health plan, and that you would like to have the change applied retroactively, with an effective date of January 1, 2016.
- 10) You testified that there have been no changes in your immediate household since you filed your application for health insurance in December 2015.
- 11) You testified that you are still residing in Cayuga County.

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

Applicable Law and Regulations

De Novo Review

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).

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

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- (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 you a SEP as of March 15, 2016.

On March 15, 2016 you spoke with NYSOH's Account Review Unit and requested a SEP to select a new health plan outside of the open enrollment

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period. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period. It does contain a note in [REDACTED] stating that you were denied a SEP.

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination.

Since the Appeals 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 issued.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on December 17, 2015, and selected a health plan that same day. Therefore, you did complete your application and select a health plan during the open enrollment period. However, you testified that you contacted NYSOH in March 2016 because you wanted to change to a different qualified health plan with a lower deductible.

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.

A SEP 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 a representative from NYSOH helped you when you were trying to select a plan, and that she neglected to inform you that the plan you selected for enrollment had a \$3,500.00 per person deductible. Ordinarily, a misrepresentation or error by a NYSOH employee might give rise to the granting of a SEP.

However, the record indicates that you were sent an enrollment confirmation notice on December 18, 2015 which stated that your health plan had a \$3,500.00 deductible. Therefore, despite any erroneous information you may have received over the phone, you were informed in writing of the deductible almost immediately after you selected a health plan. You testified that you may have received this notice, but that you did not read it carefully. Nevertheless, the record contains evidence in the form of this notice which indicates that you were made aware of the deductible in writing, and that you were made aware over a

month before the close of the open enrollment period. Therefore, you would have had opportunity to select a new health plan during open enrollment if you had reviewed the information in the enrollment confirmation notice sent by NYSOH.

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 SEP.

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

Decision

NYSOH's determination that you do not qualify for a SEP is **AFFIRMED**.

Effective Date of this Decision: October 14, 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.

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.

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If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

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Summary

NYSOH's determination that you do not qualify for a SEP 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:

