



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

Notice of Decision

Decision Date: October 5, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007942

[REDACTED]

Dear [REDACTED],

On September 6, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 12, 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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NY State of Health Account ID: [REDACTED]
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Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did NY State of Health (NYSOH) properly disenroll you from your qualified health plan for non-payment of premium effective February 1, 2016?

Did NYSOH properly determine that you did not qualify to select a different health plan outside of the open enrollment period for 2016 effective April 1, 2016?

Procedural History

On January 7, 2015, NYSOH issued an enrollment confirmation notice stating that you were covered by Medicaid as of December 1, 2014 and your enrollment with your Medicaid Managed Care plan began January 1, 2015.

On September 18, 2015, NYSOH issued a notice that it was time to renew your health insurance for the upcoming coverage year. That notice stated that, based on information from federal and state sources, NYSOH could not make a decision about whether your household members would qualify for financial help paying for their health coverage, and that you needed to update your account by November 15, 2015 or your household members might lose the financial assistance they were currently receiving.

On December 29, 2015, NYSOH received your updated application for health insurance.

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On December 30, 2015, NYSOH issued a notice of eligibility determination based on the December 29, 2015 application that stated you were eligible to receive an advance premium tax credit of up to \$77.00 per month. This eligibility was effective as of February 1, 2016.

On January 1, 2016, NYSOH issued an enrollment confirmation notice confirming your enrollment in a gold-level qualified health plan effective February 1, 2016.

On February 13, 2016, NYSOH issued a cancellation notice stating your coverage with your gold-level qualified health plan was cancelled as of its inception, effective February 1, 2016. This was because a premium payment was not received by your health plan within the required timeframe for coverage to begin.

On March 8, 2016, you spoke to NYSOH's Account Review Unit and appealed that cancellation notice ([REDACTED]).

On March 12, 2016, NYSOH issued a notice of eligibility determination that in part stated that you did not qualify to select a health plan outside of the open enrollment period for 2016.

On March 14, 2016, you spoke to NYSOH Account Review Unit and verbally withdrew the appeal in regards to the cancellation of your gold-level qualified health plan.

Also on March 14, 2016, NYSOH issued a notice of dismissal confirming your request to withdraw your appeal in regards to the cancellation of your gold-level qualified health plan.

On March 15, 2016, you spoke to NYSOH's Account Review Unit and appealed the March 12, 2016 eligibility determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period. You requested that the appeal run concurrently with your previous appeal requesting reinstatement in the gold-level plan after being cancelled for payment not received.

On September 6, 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 supports the following findings of fact:

- 1) According to your NYSOH account, you submitted your updated applications for 2016 health insurance coverage on December 8, 2015 and December 29, 2015.
- 2) According to your NYSOH account and your testimony, on December 31, 2015, you enrolled in a gold-level qualified health plan with a premium of \$356.70 per month with a plan enrollment start date of February 1, 2016.
- 3) You testified that this was a different qualified health plan than what you had been previously enrolled in through your Medicaid Managed Care plan.
- 4) You testified that you have a serious longstanding medical condition and have been with the same medical providers for a number of years. You learned shortly after the new plan started that your medical care providers do not participate in your gold-level qualified health plan. You testified that the participating specialists that were in the gold-level plan that your condition required were not located in your borough of New York City.
- 5) You testified that the representative at the gold-level qualified health plan said you could cancel coverage with them and get a new plan and, when you contacted NYSOH that same day, the NYSOH representative corrected that information and told you could not.
- 6) According to your NYSOH account, NYSOH issued a cancellation notice on February 13, 2016 for your gold-level qualified health plan because the initial premium payment had not been received within the required timeframe in order for coverage to begin.
- 7) You testified that your household has not changed since initially applying for health insurance.
- 8) You testified that you have not moved since initially applying for health insurance.
- 9) You testified that your household income has not changed significantly since initially applying for health insurance.
- 10) You testified that since your qualified health plan was cancelled, you have not had health insurance coverage. You testified that you have gone without the necessary medicine and monitoring by doctor that your condition requires.

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

Applicable Law and Regulations

Appealable Issues

An applicant has the right to appeal to NYSOH's Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) an eligibility determination for an exemption; (4) a failure by the Exchange to provide timely notice of an eligibility determination 45 CFR § 155.505; and (5) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

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 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

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(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)).

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

(1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or

(2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128”

(45 CFR § 155.420(e)).

Legal Analysis

The first issue presented for review is whether NYSOH properly cancelled your qualified health plan for non-payment of premium effective February 1, 2016 because a premium payment had not been received within the required timeframe in order for coverage to begin.

The record reflects that, on March 8, 2016, you verbally withdrew the initial appeal ([REDACTED]) that was based on the cancellation of your qualified health plan for non-payment of premium. On March 14, 2016, NYSOH issued a notice of dismissal regarding this hearing request. However on March 15, 2016, when you contacted the NYSOH Account Review Unit, there is also a reference in the record that you wanted to have the cancellation of coverage issue decided concurrently with the denial of your special enrollment period appeal request.

Here, the issuance of a notice of dismissal on your hearing request on the issue of cancellation for non-payment of premium 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. The record reflects that the text of the notes prepared by the NYSOH representative from your March 15, 2016 conversation with the NYSOH Accounts Review Unit, references your request to have the cancellation of coverage issue be heard concurrently with your appeal of the denial of a special enrollment period. This reference permits an inference that your appeal of the cancellation of coverage issue is still pending and needs to be addressed.

NYSOH issued a cancellation notice dated February 13, 2016, which stated your insurance with your gold-level qualified health plan was cancelled effective February 1, 2016, as a premium payment was not received by your health plan issuer within the required timeframe in order for coverage to begin. This issue relates to payment of premiums to qualified health plan issuers, which is not an issue that the NYSOH Appeals Unit is authorized to address.

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Therefore, your appeal on this issue is DISMISSED.

The second issue under review is whether NYSOH properly denied you a special enrollment period, effective April 1, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a completed applications on December 8, 2015 and December 29, 2015. You subsequently enrolled on December 31, 2015 in a gold-level qualified health plan effective February 1, 2016.

Here, the record reflects that your gold-level qualified health plan was cancelled at the request of the plan because the initial premium payment had not been received within the required timeframe to begin coverage. NYSOH issued the cancellation notice on February 13, 2016 with an effective date of February 1, 2016. After your cancellation for non-payment of premium, effective February 1, 2016, you contacted NYSOH on to request a special enrollment period so you could change plans. This occurred outside the annual 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.

Here, your enrollment was terminated effective February 1, 2016, the date of its intended inception, because your qualified health plan did not receive the initial premium payment within the required timeframe to begin coverage. The record reflects that your qualified health plan notified NYSOH by February 13, 2016, the date NYSOH issued the cancellation notice, that your premium payment had not been timely received and, therefore, you were being cancelled for nonpayment of premium. In these circumstances, NYSOH considers your failure to make a timely premium payment to be a voluntary action causing the termination of your coverage. As such, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis.

Notwithstanding, 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 a representative of your gold-level qualified health plan told you that you could cancel your coverage with them and enroll in a new plan. However, you testified that you contacted NYSOH that same day and was told by a NYSOH representative that that information was incorrect.

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The record indicates that NYSOH cancelled your qualified health plan for non-payment of premium. Therefore, it is concluded that the record does not support a finding that your disenrollment was caused by an unintentional, inadvertent, or erroneous act as a result of error, misrepresentation, or inaction of the health plan as an instrumentality of NYSOH.

The credible evidence of record further 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 12, 2016 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

Decision

Your appeal on the issue of disenrollment for non-payment of premium as described in the February 13, 2016 cancellation notice is **DISMISSED**.

The March 12, 2016 eligibility determination is **AFFIRMED**.

Effective Date of this Decision: October 5, 2016

How this Decision Affects Your Eligibility

You do not qualify for a special enrollment period 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

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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

Your appeal on the issue of disenrollment for non-payment of premium as described in the February 13, 2016 cancellation notice is **DISMISSED**.

The March 12, 2016, eligibility determination is **AFFIRMED**.

You do not qualify for a special enrollment period 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:

