



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

Notice of Decision

Decision Date: November 14, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007974

[REDACTED]

Dear [REDACTED]

On October 5, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 3, 2016 eligibility redetermination and cancellation notices.

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 at the top of this notice.

Legal Authority

We are sending you this notice in accordance with federal regulation 45 CFR § 155.545(b).

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 determined that you were not qualified to enroll in a qualified health plan on the basis of not being lawfully present, effective March 31, 2016?

Did NYSOH properly disenroll you from coverage, effective April 1, 2016?

Procedural History

On December 6, 2015, NYSOH issued an eligibility redetermination notice that stated, based on your non-financial application for health insurance coverage, you were conditionally eligible to purchase a qualified health plan (QHP) at full cost through NYSOH, effective January 1, 2016. The notice informed you that your eligibility was conditioned upon you providing documentation to confirm your immigration status before March 1, 2016.

Also on December 6, 2015, NYSOH issued an enrollment notice confirming that you had selected a platinum-level QHP with an enrollment start date of January 1, 2016.

On March 3, 2016, based on your updated application, NYSOH issued an eligibility redetermination notice that stated, effective March 31, 2016, you were not qualified to enroll through NYSOH because you were not a legal permanent resident.

Also on March 3, 2016, NYSOH issued a disenrollment notice that stated your coverage in your platinum-level qualified health plan would end March 31, 2016 because you were no longer eligible to enroll in health insurance through NYSOH.

On March 5, 2016, NYSOH issued another eligibility redetermination notice with the same findings as stated in the March 3, 2016 notice.

Also on March 5, 2016, NYSOH issued a cancellation notice that stated your 2016 coverage in your platinum-level QHP would end effective April 1, 2016.

On March 9, 2016, NYSOH issued another eligibility redetermination notice with the same findings as the March 3, 2016 and March 5, 2016 notices.

On March 16, 2016, you spoke with NYSOH's Account Review Unit and appealed being disenrolled from your QHP contending that you were lawfully present in the United States and New York State.

You also requested that your aid continue in your QHP during the appeal process, which NYSOH granted on March 24, 2016 until September 30, 2016.

On October 5, 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.

Immediately following the hearing, your aid to continue in your QHP was extended on October 5, 2016 until October 31, 2016 or, if applicable, until NYSOH could process the directions set forth in this Decision.

On October 9, 2016, NYSOH issued a notice informing you that your aid to continue was granted, effective October 1, 2016 until a decision is made on your appeal.

On October 20, 2016, NYSOH issued an eligibility redetermination notice that stated you were conditionally eligible to purchase a QHP at full cost, effective December 1, 2016.

Also on October 20, 2016, NYSOH issued an enrollment notice confirming that you were enrolled in a platinum-level QHP effective November 1, 2016.

On November 4, 2016, NYSOH issued disenrollment notice in advance of its eligibility redetermination notice that stated your 2016 QHP coverage would end effective November 30, 2016, because you were no longer eligible to enroll in health insurance through NYSOH.

On November 5, 2016, NYSOH issued an eligibility redetermination notice that stated, effective December 1, 2016, you will no longer be eligible for health insurance through NYSOH because it could not verify your immigration status.

Findings of Fact

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

- 1) On February 9, 2016, you uploaded a copy of an I-797A, Notice of Action, issued by the Department of Homeland Security, U.S. Citizenship and Immigration Services, that stated it is an approval notice for you as the named beneficiary for a class H1B Visa; valid from 09/01/2015 to 08/31/2018 (see Document [REDACTED]). The notice indicated that, “[t]he foreign worker(s) can work for the petitioner, but only as detailed in the petition and for the period authorized.” There is no record of this document being verified or invalidated by NYSOH.
- 2) You testified that you have always worked for and continue to work for the same petitioner/employer as listed on that I-797A notice at all times relevant.
- 3) On March 7, 2016, you uploaded a copy of the front and back of your NYS Enhance Driver License (see Document [REDACTED]). That license indicates it was issued to you on 01/22/2016 as a temporary visitor, which status expires 08/31/2018.
- 4) On September 20, 2016, you also submitted an I-94 record, issued by U.S. Customs and Border Protection, indicating your most recent date of entry was January 17, 2016; your class of admission is H1B; and you are admitted until 08/13/2018 (see Document [REDACTED]). NYSOH verified this document on September 30, 2016.
- 5) You testified that you have had health insurance through NYSOH in the past without your lawful presence being at issue.
- 6) You contend that you remain lawfully present in the United States and New York State and want to continue your health insurance coverage through NYSOH during your stay here.

Applicable Law and Regulations

Annual Eligibility Redetermination

NYSOH must redetermine the eligibility for health insurance and financial assistance to help pay for that health insurance of a qualified individual on an annual basis by either obtaining information from federal data sources or by allowing the individual to update changes in their income and family size (45 CFR § 155.335(a), (b), (e)).

NYSOH must notify the qualified individual of the projected eligibility (45 CFR § 155.335(c)).

For the benefit year beginning January 1, 2015, NYSOH must ensure coverage is effective on January 1, 2015 for QHP selections made on or before December 15, 2014 (45 CFR § 155.410(f)(1)). The New York State of Health extended the December 15, 2014 deadline to December 20, 2014, for coverage beginning January 1, 2015 (NY State Department of Health Press Release, December 12, 2014).

Citizenship / Immigration Status

To enroll in a qualified health plan through NYSOH, an applicant must be a citizen or national of the United States or a noncitizen who is lawfully present in the United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1)).

NYSOH must verify or obtain information in order to determine that an applicant is eligible for enrollment in a qualified health plan, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

Lawfully present is defined to mean (1) A qualified alien as defined in section 431 of the Personal Responsibility and Work Opportunity Act (PRWORA) (8 United States Code (USC) §1641): or (2) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission (45 CFR § 152.2).

An H-1B visa is employment-based permuting an individual to work in the United States under the Immigration and Nationality Act ((8 USC §1641(b); 8 USC § 1101(a)(15)(H)). It allows United States employers to temporarily employ foreign workers in specialty occupations. An H-4 visa is issued to immediate family members (spouse and children under 21 years of age) of H-1B visa holders. Individuals with these statuses qualify to enroll through NYSOH.

De Novo Review

HYSOH's 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).

Legal Analysis

The issue under review is whether NYSOH properly determined that your coverage was terminated effective March 31, 2016.

NYSOH is required to redetermine eligibility for health insurance every year. It was therefore appropriate for NYSOH to send out the December 6, 2015 eligibility redetermination notice and to request additional information.

The information requested was required to confirm your current immigration status. The notice stated that you needed to submit immigrant documentation before March 1, 2016, to confirm your immigration status and eligibility to enroll in a QHP through NYSOH.

The record reflects that, on February 9, 2016, you uploaded to your NYSOH account documentary proof of your immigration status via a copy of your I-797A, Notice of Action, issued by the Department of Homeland Security, U.S. Citizenship and Immigration Services, which stated it is an approval notice for you as the named beneficiary for a class H1B Visa; valid from 09/01/2015 to 08/31/2018 (see Document [REDACTED]). The notice indicated that, "[t]he foreign worker(s) can work for the petitioner, but only as detailed in the petition and for the period authorized." You testified that you continued to work for the same petitioner/employer at all times relevant to this matter. However, there is nothing in your account to indicate that NYSOH verified or invalidated this document.

An H1-B visa holder is considered to be lawfully present in the United States and, therefore, qualifies to enroll in health insurance through NYSOH. Since, on February 9, 2016, you provided sufficient documentation of your active status as an H1-B visa holder through 2018 to demonstrate your lawful presence, you should not have been disenrolled from your QHP on March 31, 2016 on the basis that you were not lawfully present.

Notwithstanding, you were granted aid to continue throughout the appeal process, so you have not been without health insurance thus far in 2016. However, your NYSOH account reflects that you are to be disenrolled again as of November 30, 2016, on the same or similar basis of not being lawfully present, which is incorrect.

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).

For these reasons, the following changes are made to the notices issued by NYSOH:

1) The December 6, 2015 eligibility redetermination notice is MODIFIED to remove the condition of your eligibility to purchase a qualified health plan at full cost, effective January 1, 2016

2) The December 6, 2015 enrollment notice is AFFIRMED.

3) The March 3, 5, and 9, 2016 eligibility redetermination and disenrollment notices are RESCINDED;

4) By this Decision, you are determined to be lawfully present as an H1-B visa holder in active status through 2018, and your aid to continue was properly granted to allow you to remain insured during the appeal process. Provided you paid your monthly premiums on time, you remained enrolled in your platinum-level QHP through November 30, 2016.

5) Under the Appeals Unit's de novo review authority, the November 4, 2016 disenrollment notice and November 5, 2016 eligibility redetermination notice are determined to be issued in error and are RESCINDED.

Decision

The December 6, 2015 eligibility redetermination notice is MODIFIED to remove the condition of your eligibility to purchase a qualified health plan at full cost, effective January 1, 2016

The December 6, 2015 enrollment notice is AFFIRMED.

The March 3, 5, and 9, 2016 eligibility redetermination and disenrollment notices are RESCINDED;

By this Decision, you are determined to be lawfully present as an H1-B visa holder in active status through 2018, and your aid to continue was properly granted to allow you to remain insured during the appeal process. Provided you paid your monthly premiums on time, you remained enrolled in your platinum-level QHP through November 30, 2016.

Under the Appeals Unit's de novo review authority, the November 4, 2016 disenrollment notice and November 5, 2016 eligibility redetermination notice are determined to be issued in error and are RESCINDED.

Effective Date of this Decision: November 14, 2016

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How this Decision Affects Your Eligibility

You remain eligible to purchase a QHP at full cost as of January 1, 2016, without condition, as are deemed to be lawfully present.

Your aid to continue throughout the appeals process was properly granted and, as a result, you properly had health insurance throughout the process.

Your eligibility for and enrollment in your platinum-level QHP remain in effect through to December 31, 2016, provided you pay your monthly premiums on time.

If applicable, you will need to re-apply for coverage for 2017 during the open enrollment period, which is from November 1, 2016 through January 31, 2017.

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 after the date 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 date 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

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).

- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The December 6, 2015 eligibility redetermination notice is MODIFIED to remove the condition of your eligibility to purchase a qualified health plan at full cost, effective January 1, 2016

The December 6, 2015 enrollment notice is AFFIRMED.

The March 3, 5, and 9, 2016 eligibility redetermination and disenrollment notices are RESCINDED;

By this Decision, you are determined to be lawfully present as an H1-B visa holder in active status through 2018, and your aid to continue was properly granted to allow you to remain insured during the appeal process. Provided you paid your monthly premiums on time, you remained enrolled in your platinum-level QHP through November 30, 2016.

Under the Appeals Unit's de novo review authority, the November 4, 2016 disenrollment notice and November 5, 2016 eligibility redetermination notice are determined to be issued in error and are RESCINDED.

You remain eligible to purchase a QHP at full cost as of January 1, 2016, without condition, as are deemed to be lawfully present.

Your aid to continue throughout the appeals process was properly granted and, as a result, you properly had health insurance throughout the process.

Your eligibility for and enrollment in your platinum-level QHP remain in effect through to December 31, 2016, provided you pay your monthly premiums on time.

If applicable, you will need to re-apply for coverage for 2017 during the open enrollment period, which is from November 1, 2016 through January 31, 2017.

Legal Authority

We are sending you this notice in accordance with federal regulation 45 CFR § 155.545(a).

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A Copy of this Decision Has Been Provided To:

