



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

Notice of Decision

Decision Date: September 14, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008061

[REDACTED]

Dear [REDACTED],

On September 9, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 18, 2016 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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Decision

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NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008061

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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 your son was not eligible to change health plans outside of the open enrollment period as of March 18, 2016?

Procedural History

On December 7, 2015, NYSOH received your son's application for health insurance.

On December 8, 2015, NYSOH issued an eligibility determination that stated that your son is eligible for a qualified health plan at full price.

Also on December 8, 2015 NYSOH issued an enrollment confirmation notice stating that your son was enrolled in a child only platinum level qualified health plan and that his plan would start January 1, 2016.

On March 18, 2016, you contacted NYSOH and attempted to change your son's health plan.

On March 18, 2016, you also spoke to NYSOH's Account Review Unit and appealed the denial of a special enrollment period. On March 19, 2016, NYSOH issued a notice confirming your request for an appeal and the reason for the appeal as being "the inability to change plans outside the open enrollment period."

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On September 9, 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) The record indicates that you submitted your son's initial application for 2016 health insurance coverage on December 7, 2015. You testified and the record reflects that, at that time, you chose to continue your son's enrollment in the qualified health plan he had been enrolled in for 2014 and 2015.
- 2) You testified that you researched your son's health plan when you initially signed him up for coverage for 2014, but did not research your son's health plan when you signed him up for coverage for 2016.
- 3) You testified that when you updated your son's application and chose a plan for 2016, the computer asked you if you would like to pick the same plan as the year before, which you indicated yes.
- 4) You testified that the health plan that your son had been enrolled in for 2014 and 2015 had made changes to that plan for 2016 unbeknownst to you, in particular, your son now had co-pays.
- 5) You testified that you paid your premiums on time for 2016 and there has been no lapse in coverage.
- 6) You testified that when you realized you had to pay a co-pay to your son's doctor you went back to NYSOH and attempted to change your son's health plan around February or March, 2016.
- 7) The record reflects that you contacted the NYSOH on March 18, 2016 in order to change your son's health plan.
- 8) You testified that nothing in your household has changed since your December 7, 2015 application.

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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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
 - (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)).

Legal Analysis

The issue under review is whether NYSOH properly denied you a special enrollment period, effective March 18, 2016.

On March 18, 2016 you spoke with NYSOH's Account Review Unit and requested a special enrollment to select a new health plan for your son outside of the open enrollment period. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period. It does contain a March 19, 2016 notice in which NYSOH acknowledges receipt of an appeal request and identifies one of the issues on appeal as "The inability to change plans outside the open enrollment period."

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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. The text of the March 19, 2016 notice, which acknowledges the appeal on the issue of special enrollment denial, permits an inference that NYSOH did deny your special enrollment request.

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 you submitted your son's initial application for 2016 health insurance coverage on December 7, 2015. You testified and the record reflects that, at that time, you chose to continue your son's enrollment in the qualified health plan he had been enrolled in for 2014 and 2015.

The record further indicates that you tried to enroll your son in new coverage on March 18, 2016. You did not complete that request during the open enrollment period, therefore that request was denied.

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.

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 when you updated your son's application on December 8, 2016, the computer asked you if you wanted the same plan and you relied upon that information without researching the health plan. However, the computer 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 special enrollment period cannot be granted.

Moreover, 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 18, 2016, denial of a special enrollment period to select a health plan for your son outside of the open enrollment period for 2016 is **AFFIRMED**.

Decision

The March 18, 2016 denial of a special enrollment period is **AFFIRMED**.

Effective Date of this Decision: September 14, 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 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:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
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- By fax: 1-855-900-5557

Summary

The March 18, 2016 denial of a special enrollment period 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:

