



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

Notice of Decision

Decision Date: September 19, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008091

[REDACTED]

Dear [REDACTED],

On September 14, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 21, 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]
Appeal Identification Number: AP000000008091

[REDACTED]

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 did not qualify for a special enrollment period to select a health plan outside the open enrollment period?

Procedural History

On October 24, 2015, NYSOH issued a renewal notice that stated, based on federal and state data sources, a decision about whether or not you qualified for financial assistance in 2016 could not be made. The notice instructed you to update your NYSOH account before December 15, 2015 and, if you missed this deadline, the financial assistance you were currently getting might end.

No updates were made to your NYSOH account by December 15, 2015.

On December 21, 2015, NYSOH issued a notice of eligibility redetermination that stated you were newly eligible to purchase a qualified health plan at full cost, effective January 1, 2016. This was because you did not respond to the renewal notice and update your NYSOH account within the required timeframe.

On December 22, 2015, NYSOH issued an enrollment notice confirming that you were enrolled in a full pay silver-level qualified health plan with a monthly

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premium responsibility of \$507.33 and an enrollment start date of January 1, 2016.

On February 12, 2016, you updated your NYSOH application.

On February 13, 2016, NYSOH issued a notice of eligibility redetermination that stated you were eligible to receive monthly advance premium tax credits (APTC), effective March 1, 2016, but do not qualify to select a health plan outside the open enrollment period.

Also on February 13, 2016, NYSOH issued an enrollment notice confirming that you were enrolled in a silver-level qualified health plan as of January 1, 2016, and your APTC would be applied as of March 1, 2016.

On February 15, 2016, NYSOH issued a cancellation notice that informed you your silver-level QHP coverage was cancelled effective January 1, 2016, because you did not pay your premium for that month within the required timeframe in order for your coverage to begin.

On March 21, 2016, your eligibility was again redetermined and you were found preliminarily eligible for APTC, effective May 1, 2016, and did qualify for a special enrollment period to enroll in a health plan outside of the open enrollment period for 2016.

Also on March 21, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On March 22, 2016, NYSOH issued a notice of eligibility redetermination that was consistent with the March 21, 2016 preliminary redetermination.

On September 14, 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 support the following findings of fact:

- 1) According to your NYSOH, you were automatically re-enrolled in a qualified health plan at full cost of \$507.33 per month, effective January 1, 2016.
- 2) You testified that you did not pay the premium for coverage to start as of January 1, 2016, because it was too expensive and you could not afford it.

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- 3) You testified that you paid the February 2016 premium of \$383.33, but within a few days received it back from the health plan.
- 4) According to your NYSOH account, your coverage with your health plan was cancelled, effective January 1, 2016, because you did not pay the premium for coverage to start.
- 5) You testified that you have been paying for medical expenses out-of-pocket all year because you have to been able to enroll in a health plan through NYSOH.
- 6) You are seeking to be granted a special enrollment period so that you can select and enroll in a qualified health plan for the remainder of 2016.

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

Applicable Law and Regulations

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)).

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)).

Affordability Exemption

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing health insurance coverage. Such an exemption may be granted if that person can show that he or she experienced a financial hardship or has domestic circumstances that (1) caused an unexpected increase in essential expenses that prevented that person from obtaining health coverage under a QHP; (2) would have caused the person to experience serious deprivation of food, shelter, clothing, or other necessities, as a result of the expense of purchasing health coverage under a QHP; or (3) prevented that person from obtaining coverage under a QHP (45 CFR § 155.605(a), (g)).

NYSOH has deferred to the U.S. Department of Health and Human Services (HHS) on the matter of hardship exemptions (see 45 CFR § 155.505(c)).

Legal Analysis

The issue under review is whether NYSOH properly denied you a special enrollment period as of March 21, 2016, as stated in the March 22, 2016 eligibility redetermination notice.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on February 12, 2016. Therefore, you did not complete your application during the 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.

Failure to pay premiums on a timely basis is considered to be a voluntary termination of coverage and does not qualify as a triggering event to qualify for a special enrollment period. The record reflects that your qualified health plan terminated your coverage because you did not timely pay the January 2016 premium and NYSOH issued a disenrollment notice on February 15, 2016 to this effect. This is so even though you testified you could not afford to pay the premium amount of \$507.33. Therefore, it is concluded that you voluntarily terminated your coverage by not timely paying the January 2016 premium and NYSOH properly determined that you do not qualify for a special enrollment period to enroll in a qualified health plan outside of open enrollment.

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 22, 2016 eligibility redetermination notice that stated you do not qualify for a special enrollment period to enroll in a qualified health plan outside of the open enrollment period for 2016 is AFFIRMED.

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance during 2016, you can check the Federal Marketplace website (www.healthcare.gov) for direction.

Decision

The March 22, 2016 eligibility redetermination notice is AFFIRMED.

Effective Date of this Decision: September 19, 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.

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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
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The March 22, 2016 eligibility redetermination notice is AFFIRMED.

You do not qualify for a special enrollment period at this time.

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance during 2016, you can check the Federal Marketplace website (www.healthcare.gov) for direction.

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:

