



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

## Notice of Decision

Decision Date: October 6, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000008129



Dear [REDACTED],

On September 13, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health's determination to deny you 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: AP000000008129



## 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?

## Procedural History

On January 2, 2016, NYSOH received your application for health insurance.

On January 3, 2016, NYSOH issued a notice of eligibility determination that stated that you were eligible to enroll in a qualified health plan at full cost through NYSOH effective February 1, 2016.

On January 13, 2016 NYSOH issued an enrollment confirming that as of January 8, 2016, you enrolled in Empire HMO 2000 X Silver ST INN Pediatric Dental Dep 25 Empire Blue Cross Blue Shield (Empire Blue Cross Blue Shield) health plan with a plan enrollment start date of February 1, 2016.

On March 22, 2016 NYSOH issued a notice confirming that on March 21, 2016 you requested a telephone hearing to review, "Denial of Special Enrollment Period (SEP)."

On September 13, 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) You submitted an application for 2016 health insurance coverage on January 2, 2016.
- 2) You testified that you contacted your physician before enrolling in a health plan through NYSOH and was told that they accept Empire Blue Cross Blue Shield HMO plans.
- 3) You selected an Empire Blue Cross Blue Shield Silver plan through NYSOH's website with a plan enrollment start date of February 1, 2016.
- 4) You testified you selected the Empire Blue Cross Blue Shield Silver plan through NYSOH's website, and there was nothing that in the plan's description that indicated that this plan was materially different than any other health plan.
- 5) You testified that a doctor's appointment you were told that your physician does not accept the health insurance because it is a "pathway plan."
- 6) According to the "Appeal Summary," in the Evidence Packet that was created in anticipation of your hearing, you submitted a special enrollment request on February 17, 2016, and that request was denied on February 22, 2016 ( [REDACTED] [REDACTED] ).
- 7) On March 22, 2016 NYSOH issued a notice confirming that on March 21, 2016 you requested a telephone hearing to review, "Denial of Special Enrollment Period (SEP)."
- 8) According to your NYSOH account, your residential address was updated on August 10, 2016. Your address was changed from [REDACTED] to [REDACTED].

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

## Applicable Law and Regulations

### De Novo Review

The 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).

NYSOH is required to provide “timely written notice to an applicant of any eligibility determination” made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual Marketplace (45 CFR § 155.310(g)).

### 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)).

CMS has defined misconduct to include misinformation, misrepresentation, or inaction by individuals or entities providing formal enrollment assistance (like an insurance company, Navigator, certified application counselor, Call Center Representative, or agent or broker) resulting in (1) A failure to enroll the consumer in a plan; (2) Consumers being enrolled in the wrong plan against their wish; or (3) The consumer not receiving advance premium tax credits or cost-sharing reductions (Guidance for Issuers on Special Enrollment Periods for Complex Cases in after the Initial Open Enrollment Period, Affordable Exchange Guidance, Department of Health & Human Services, CMS, dated March 26, 2014, as retrieved on September 14, 2016 at: <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/complex-cases-SEP-3-26-2014.pdf>)

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)).

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## Legal Analysis

The issue under review is whether NYSOH properly denied you a special enrollment period.

The record does not contain a notice of eligibility determination or redetermination denying you a special enrollment period. It does, however, contain a notice confirming that on March 21, 2016 you requested a hearing to review, "Denial of Special Enrollment Period (SEP)."

The lack of a notice of eligibility determination on the issue of QHP enrollment does not prevent the Appeals Unit from reaching the merits of the case. The text of March 22, 2016 notice, which acknowledges that you requested an appeal on being denied a special enrollment period. Since the Appeals Unit's 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 properly 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 January 2, 2016 and enrolled into a plan during the open enrollment period.

The record reflects that you had requested a special enrollment period to change your health plan on February 17, 2016, and that request was denied on February 22, 2016. Therefore, you did not request to change your qualified health plan 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.

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 your physician stated that they accept Empire Blue Cross Blue Shield HMO health plans, and you relied upon that information. However, your physician is not an instrumentality or agent of NYSOH.

You testified that the plan's description on NYSOH's website did not indicate that the plan you chose was materially different than any other health plan. Lack of information in a health plan's description on NYSOH's website is not sufficient to

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find that there was misconduct by individuals or entities providing formal enrollment assistance.

Therefore, NYSOH properly denied your request for a special enrollment period.

However, prior to the hearing you updated the address information in your NYSOH account. The record reflects that your residential address was updated in your NYSOH account on August 10, 2016, which is considered a triggering life event. Your address was changed from [REDACTED] (New York County) to [REDACTED] (Kings County).

Therefore, you are now eligible for a special enrollment period until 60 days from the date of this decision. Your case is RETURNED to NYSOH to assist you in enrolling into a health plan.

## **Decision**

NYSOH determination to deny your February 17, 2016 request for a special enrollment is AFFIRMED.

You now qualify for a special enrollment period based on your change in residence. Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage.

**Effective Date of this Decision:** October 6, 2016

## **How this Decision Affects Your Eligibility**

You now qualify for a special enrollment period.

You have 60 days from the date of this decision to enroll into a plan.

## **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.

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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**

NYSOH determination to deny your February 17, 2016 request for a special enrollment is **AFFIRMED**.

You now qualify for a special enrollment period based on your change in residence. Your case is **RETURNED** to NYSOH to assist you in enrolling into a plan for 2016 health coverage.

You now qualify for a special enrollment period.

You have 60 days from the date of this decision to enroll into a plan.

### **Legal Authority**

We are issuing this determination in accordance with 45 CFR § 155.545.

**A Copy of this Decision Has Been Provided To:**



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