



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

Notice of Decision

Decision Date: September 29, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008163

[REDACTED]

Dear [REDACTED],

On September 22, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 23, 2016 eligibility redetermination notice.

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: AP000000008163

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Issue

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

Did NY State of Health (NYSOH) properly determine on March 23, 2016, that you did not qualify for a special enrollment period to select a health plan outside the open enrollment period?

Procedural History

On December 8, 2015 and again on December 16, 2015, NYSOH issued notices of eligibility determination that stated that you are eligible to receive an advance premium tax credit and eligible for cost sharing reductions, effective January 1, 2016.

Also on December 8, 2015 and December 16, 2015, NYSOH issued enrollment notices confirming that you had selected a bronze-level qualified health plan with coverage and APTC to start January 1, 2016. Your monthly premium was \$270.45 after your monthly APTC was applied and had to be paid in order for coverage to start on January 1, 2016.

On February 9, 2016, NYSOH issued a cancellation notice that stated your insurance with your bronze-level qualified health plan was cancelled effective January 1, 2016, because you did not pay your premium responsibility within the required timeframe in order for your coverage to begin.

On March 8, 2016 and again on March 23, 2016, NYSOH issued notices of eligibility redetermination that stated you were eligible to receive APTC and cost sharing reductions, but that you did not qualify to select a health plan outside of the open enrollment period for 2016.

On March 22, 2016, you spoke to NYSOH's Account Review Unit and appealed those eligibility redeterminations insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On September 22, 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 initial application for 2016 health insurance coverage in December 2015 and according to the enrollment confirmation notices dated December 8, 2015 and December 16, 2015, selected a bronze-level qualified health plan.
- 2) You testified that you selected a silver-level qualified health plan and disputed being enrolled in the bronze-level plan when you received the insurance packet from the health plan.
- 3) You testified that you wanted your coverage to be changed to the silver-level qualified health plan with the same carrier, but your request was misunderstood and not processed properly.
- 4) You testified that you did not pay the premium for your bronze-level qualified health plan to start as of January 1, 2016, because you wanted coverage in a silver-level qualified health plan.
- 5) According to your NYSOH account, your bronze-level health plan coverage was cancelled January 1, 2016 due to nonpayment of the first premium.
- 6) You testified that you need health coverage because you have a medical condition requiring surgery and you have no health insurance at present.
- 7) According to your NYSOH account, there was no contact or activity in your account to demonstrate communications between you and NYSOH from December 23, 2015 through March 7, 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)).

Legal Analysis

The issue under review is whether NYSOH properly denied you a special enrollment period as of March 23, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on December 16, 2016. Therefore, you did 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.

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 your request to change from a bronze-level plan, which you found out you were enrolled in after receiving the welcoming insurance packet from the health plan to a silver-level qualified health plan you originally selected, was misunderstood and not processed properly. The record reflects that two enrollment notices were issued confirming your selection of a bronze-level qualified health plan on December 8, 2015 and December 16, 2015, and there is no record in your NYSOH account that contact with NYSOH was made after December 23, 2015 until March 7, 2016, when you contacted NYSOH and updated your application. Therefore, the record does not support your testimony that your request to change plans was misunderstood. Nor is there any evidence to suggest that your enrollment was unintentional or as a result of error or inaction by NYSOH or its instrumentalities. 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 on this basis.

In addition, you credibly testified that you did not pay the premium for coverage in the bronze-level qualified health plan to start January 1, 2016 and, therefore, your coverage was cancelled due to nonpayment. Cancellation due to nonpayment of premium is considered a voluntary act and not a qualifying life event that triggers a special enrollment period.

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 23, 2016 eligibility redetermination notice that you do not qualify to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

Decision

The March 23, 2016 eligibility redetermination notice is AFFIRMED.

Effective Date of this Decision: September 29, 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.

If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

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Summary

The March 23, 2016 eligibility redetermination notice 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:

