



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

Notice of Decision

Decision Date: September 22, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008247

[REDACTED]

Dear [REDACTED],

On September 19, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 23, 2016 eligibility redetermination.

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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DEPARTMENT OF HEALTH
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Decision Date: September 22, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008247

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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 on March 23, 2016 that you did not qualify for a special enrollment period to enroll in a qualified health plan outside the open enrollment period?

Procedural History

On January 15, 2016, NYSOH received your application for health insurance.

On January 16, 2016, NYSOH issued a notice of eligibility determination that stated that you were conditionally eligible to receive an advance premium tax credit of up to \$160.00 per month, effective February 1, 2016.

Also on January 16, 2016, NYSOH issued an enrollment notice confirming that you were enrolled in an Empire BlueCross Blue Shield (BCBS) Bronze Plan with dental, effective February 1, 2016.

On February 27, 2016, NYSOH issued a cancellation notice that stated your health insurance coverage was cancelled as of February 1, 2016 because you did not pay your first month premium for coverage to start.

On March 3, 2016, you contacted NYSOH and a complaint was filed ([REDACTED]), which was closed that same day because your request for reinstatement had to go directly through the health plan.

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On March 23, 2016, NYSOH preliminarily redetermined you eligible for financial assistance and found you conditionally eligible for up to \$160.00 per month in APTC, effective May 1, 2016, but ineligible to select a qualified health plan outside the open enrollment period.

Also on March 23, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you were not eligible to select and enroll in a health plan outside of the open enrollment period.

On March 24, 2016, NYSOH issued an eligibility redetermination notice that in part stated you did not qualify to select a health plan outside the open enrollment period.

On September 19, 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) The record indicates that you submitted your initial application for 2016 health insurance coverage on January 15, 2016.
- 2) You testified that, with the assistance of a broker, you set up an automatic deduction arrangement for your monthly premiums and provided the broker with your bank account information to process with BCBS.
- 3) You testified that you did not receive any information about automatic deduction or an invoice from BCBS for the first month's premium so you checked your bank account around February 21, 2016 and noticed no payment had been deducted.
- 4) You testified that you contacted BCBS and were informed that it is their policy that you must pay the first premium by mail and all monthly premiums thereafter will be deducted from your bank account.
- 5) You testified that the broker never informed you of BCBS' policy.
- 6) You testified that shortly thereafter you learned from BCBS that your coverage had been cancelled for nonpayment of premium and only NYSOH could allow reinstatement.
- 7) You testified that, on or about March 3, 2016, you contacted NYSOH and were told only BCBS could agree to reinstate your coverage.

- 8) You testified that you were willing to pay the premiums for both February 2016 and March 2016 to get reinstated and BCBS was willing to reinstate you, but there was conflicting information between BCBS and NYSOH as to who had authority to reinstate your coverage.
- 9) You testified that you contacted BCBS again and they asked you to contact NYSOH and a three-way telephone call took place. You testified that both BCBS and NYSOH wanted to help in reinstating your health coverage but for some unknown reason it was never completed.
- 10) You testified that, with the assistance of your broker, you reapplied on March 23, 2016, but were outside the open enrollment period and did not qualify to select a health plan through a special enrollment period.
- 11) You are requesting to be granted a special enrollment period so that you can select and enroll in a qualified health plan for the remainder of 2016 to get needed medical treatment.
- 12) You testified during the hearing that you are concerned about incurring a tax penalty as a result of being without coverage.

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 this triggering event occurs:

- (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

(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, as stated in the March 24, 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 January 15, 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

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determined by the NYSOH, or by a non-Exchange entity providing enrollment assistance or conducting enrollment activities, such as a broker.

Generally cancellation for nonpayment of premium is considered a voluntary event and does not qualify an individual for a special enrollment period.

However, in your case, the credible evidence of record indicates that, on January 15, 2016, you worked with a broker in completing your application and confirming your health plan selection for coverage to begin February 1, 2016. You also credibly testified that you elected to pay your monthly premiums by automatic deduction from your bank account and provided your bank account information to the broker to process with BCBS. Further, you credibly testified that the broker did not inform you that you must pay the first month's premium by check through the mail and that your automatic deduction arrangement could only start as of the a second monthly premium; and you did not receive this information or an invoice from BCBS regarding your first month's premium payment. You only learned of this BCBS policy when you called to see why your February 2016 premium had not been deducted from your bank account toward the end of that month and learned that your health coverage had been cancelled as of its start date on February 1, 2016.

The record also reflects that you made efforts with BCBS to get reinstated. You credibly testified that you were willing to pay the premiums for February 2016 and March 2016, and BCBS was willing to reinstate you, but said you had to get NYSOH's approval. You also credibly testified that NYSOH told you the complete opposite; that is, BCBS has to first agree to allow you to be reinstated and then has to process this request through NYSOH. There is nothing in the record to suggest that either BCBS or NYSOH did anything further in this regard.

Instead, you attempted to be redetermined eligible on March 23, 2016, and were found ineligible for a special enrollment period, as stated in the March 24, 2016 notice. Based on the foregoing, it is concluded that your health coverage was cancelled for non-payment through miscommunication/misinformation and/or inaction by your broker and by BCBS in not issuing a premium invoice for your first month's coverage. It is further concluded that this event was compounded by BCBS not sending a reinstatement notice to NYSOH to act on so that your health coverage could be re-instated as of February 1, 2016.

Therefore, NYSOH's March 24, 2016 eligibility redetermination notice that stated you do not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this decision.

In addition, the record indicates that the miscommunication/misinformation and/or inaction by your broker and BCBS resulted in NYSOH's failure to grant you a special enrollment period resulted in you being without insurance coverage for

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part of the 2016 coverage year. During the hearing, you testified that you are concerned about receiving a tax penalty as a result of being without coverage.

Sometimes after an appeal decision, an appellant can claim an exemption from the requirement to have health insurance. You might qualify for a health coverage exemption in 2016 if you didn't have health coverage while you were waiting for an appeal decision about coverage eligibility or savings and your appeal was eventually successful.

You must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, NYSOH does not accept hardship exemption applications.

You will find the information you need to claim the exemption due to an appeal decision at <https://www.healthcare.gov/exemptions-tool/#/results/2016/details/eligible-based-on-appeal>. You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word "pending" in column "c" and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

Decision

The March 24, 2016 eligibility redetermination notice is MODIFIED to reflect that you are 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 plan for 2016 health coverage.

Effective Date of this Decision: September 22, 2016

How this Decision Affects Your Eligibility

You qualify for a special enrollment period.

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

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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:

- 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 24, 2016 eligibility redetermination notice is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this decision.

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You qualify for a special enrollment period.

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

You might qualify for a health coverage exemption in 2016 if you didn't have health coverage while you were waiting for an appeal decision about coverage eligibility or savings and your appeal was eventually successful.

You must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, NYSOH does not accept hardship exemption applications.

You will find the information you need to claim the exemption due to an appeal decision at <https://www.healthcare.gov/exemptions-tool/#/results/2016/details/eligible-based-on-appeal>. You can also call 1-800-318-2596.

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Legal Authority

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

A Copy of this Decision Has Been Provided To:

