



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

Notice of Decision

Decision Date: October 20, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008262

[REDACTED]

Dear [REDACTED]

On September 28, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 30, 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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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 to select a new health plan outside of the 2016 open enrollment period?

Procedural History

On January 27, 2016, NYSOH received your updated application for health insurance.

On January 28, 2016, NYSOH issued a notice of eligibility determination that stated that you are eligible to purchase a qualified health plan (QHP) at full cost, effective March 1, 2016.

Also on January 28, 2016, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in a Fidelis bronze-level QHP, effective March 1, 2016.

On March 24, 2016, you spoke to NYSOH's Account Review Unit and appealed NYSOH's verbal denial of your request to select a new QHP outside of the 2016 open enrollment period.

On March 30, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to purchase a QHP at full cost. The notice also stated that

you did not qualify to select a health plan outside of the open enrollment period for 2016.

On September 28, 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 updated application for 2016 health insurance coverage on January 27, 2016. That day, you selected a Fidelis bronze level QHP, with an enrollment start date of March 1, 2016.
- 2) You testified that you completed your application and plan selection online.
- 3) You testified that you chose your Fidelis QHP after researching the available health plans online. You testified that you did not speak with anyone from NYSOH when choosing a health plan.
- 4) You testified that you have been taking birth control pills for 25 years because of a medical condition.
- 5) You testified that you discovered that your pills were not being covered by your health plan because Fidelis is a faith-based company.
- 6) You testified that you reached out to NYSOH, but were told that you could not change to a different plan.
- 7) You testified that you did not reach out to your health plan regarding the issue of your coverage.
- 8) The Appeals Summary portion on page two of NYSOH's Evidence Packet contains a note which states the following:

“On 8/26/2016 Left consumer a message regarding Tracking # [REDACTED]. Consumer was requesting SEP due to fidelis not provided family planning services. Please advise consumer per ALT962 Members can use their Health Benefits Exchange Subscriber Identification Card to get covered family planning services through the Unified IPA network of participating providers. Consumers who have questions about this benefit should be referred to Unified IPA at 1-800-342-2641.”

- 9) You testified at the hearing that you may have received this voice message, but you did not recall whether the message included a phone number.
- 10) You testified that you do not want to have to call and get another provider to get your prescription because you do not want to have to jump through extra hoops to get something that you believe is mandated to be covered by the federal government.
- 11) You testified that you would like to be eligible to change your coverage to a new health plan retroactively for the 2016 coverage year.

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)).

Legal Analysis

The issue under review is whether NYSOH properly denied you a special enrollment period as of March 30, 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 January 27, 2016. Therefore, you completed 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, when you chose your health plan, you were unaware that you would not be able to get birth control pills from your regular provider. However, you testified that you chose the health plan in which you are enrolled after researching it online, and that you did not rely on any information from NYSOH or an 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.

This decision does not address whether a lack of necessary medical services might be an exceptional circumstance that would qualify you for a special enrollment period. This is because there is not enough evidence in the record to indicate that you have been entirely barred from receiving family planning services. The record indicates that you were informed by NYSOH that you needed to call a separate number to receive family planning services from the Unified IPA Network of participating providers. You testified that you have not called that number, nor have you contacted your health plan. Therefore, while your testimony that you are unable to get your prescription from your usual providers may be true, the record does not support a finding at this time that you are completely unable to secure covered family planning services.

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 30, 2016 eligibility determination that you do not qualify to select a new health plan outside of the open enrollment period for 2016 is AFFIRMED.

Decision

The March 30, 2016 eligibility determination is AFFIRMED.

Effective Date of this Decision: October 20, 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:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
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P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The March 30, 2016 eligibility determination 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:

