



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

## Notice of Decision

Decision Date: November 7, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000008268

[REDACTED]

Dear [REDACTED]

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

This page intentionally left blank.



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

## Decision

Decision Date: November 7, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AC0002690994

[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 and your spouse did not qualify for a special enrollment period?

## Procedural History

On October 29, 2015, NYSOH issued a renewal notice indicating that you and your spouse were reenrolled into your then current health plan for another year. This notice advised that you did not have to take any further action. The October 29, 2016 renewal notice also indicated that you and your spouse were still qualified to purchase a health plan at full cost through NYSOH effective January 1, 2016.

On November 23, 2015, NYSOH issued a notice indicating that your and your spouse's 2015 coverage would end effective December 31, 2015.

On November 25, 2015, NYSOH issued an enrollment confirmation notice which indicated that you and your spouse were enrolled in the same qualified health plan through NYSOH effective January 1, 2016.

On March 19, 2016, NYSOH issued a notice of eligibility determination indicating that you and your spouse were eligible to purchase a qualified health plan at full cost through NYSOH effective January 1, 2016. This same notice indicated that you and your spouse did not qualify to select a health plan outside of the open enrollment period for 2016.

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).

On March 24, 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 September 23, 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) The record indicates that your and your spouse's coverage for 2016 was automatically redetermined and you and your spouse were automatically reenrolled into your qualified health plan for 2016.
- 2) You testified that you continued to receive your statements from and continued to make payments to your qualified health plan for November 2015 and December 2015.
- 3) Your NYSOH account shows that your and your spouse's 2015 qualified health plan was terminated on October 31, 2015.
- 4) Your NYSOH account shows that your and your spouse's 2016 qualified health plan was cancelled on January 1, 2016.
- 5) You testified that your account with the qualified health plan shows a credit for the payments you sent in November 2015 and December 2015.
- 6) You testified you did not receive a bill from your qualified health plan for January 2016.
- 7) You credibly testified that you contacted your qualified health plan directly and were advised that your plan had been cancelled in October 2015.
- 8) You further testified that you were not advised of the reason for the cancellation nor have you ever received any written indication that your qualified health plan was cancelled.
- 9) You testified that you never received any paperwork from your qualified health plan showing when your coverage ended.

10) You testified that when you contacted the plan in March 2016 as well as NYSOH in March of 2016 you were advised that you were ineligible to enroll in a health plan as you were past the cut-off for enrollment in 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 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. (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 and your spouse a special enrollment period, effective March 19, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that NYSOH determined your eligibility

and automatically reenrolled you and your spouse into your qualified health plan effective January 1, 2016.

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.

In the October 29, 2015 renewal notice NYSOH represented that you and your spouse were reenrolled into your qualified health plan effective January 1, 2016 and there was no additional action you needed to take. Furthermore, in the November 25, 2015 enrollment notice, NYSOH represented that you and your spouse were reenrolled in your qualified health plan effective January 1, 2016.

However, as your qualified health plan had actually disenrolled you and your spouse as of October 31, 2015, NYSOH was unable to reenroll you into your qualified health plan for 2016. Therefore, the statements made by NYSOH in the October 29, 2015 renewal notice and November 25, 2015 enrollment notice that you had been reenrolled in your current qualified health plan for 2016 and that there was no additional action for you to take were misrepresentations.

Had NYSOH properly informed you that you were required to pick a plan for 2016, you would have been able to enroll during the open enrollment period.

Therefore, NYSOH's March 17, 2016 eligibility determination that 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.

The record indicates that NYSOH's failure to grant you a special enrollment period resulted in you being without insurance coverage for part of the 2016 coverage year.

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 17, 2016 eligibility determination 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:** November 7, 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.

## **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.

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).

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 17, 2016 eligibility determination 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.

You 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.

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).

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

