



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

Notice of Decision

Decision Date: November 16, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008292

[REDACTED]

Dear [REDACTED],

On September 23, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 24, 2016 denial of 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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DEPARTMENT OF HEALTH
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Decision

Decision Date: November 16, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008292

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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 enroll in a plan outside of the open enrollment period as of March 24, 2016?

Procedural History

On March 24, 2016, NYSOH received your application for health insurance.

Also on March 24, 2016, NYSOH issued a preliminary eligibility determination that stated that you are conditionally eligible to purchase a qualified health plan at full cost through the NY State of Health. You also attempted to enroll in a qualified health plan that day but were denied.

Also on March 24, 2016, you spoke to NYSOH's Account Review Unit and appealed the preliminary eligibility determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On March 25, 2016, NYSOH issued a notice confirming your request for an appeal and the reason for the appeal as being "denial of special enrollment period (SEP)."

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.

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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 March 24, 2016
- 2) You testified that you lost your previous health insurance coverage but were not sure what date that happened because your health plan gave you two different termination dates.
- 3) You testified that your previous health plan was supposed to provide you with written documents to prove your termination date and notice date, but you never received anything.
- 4) You testified that your computer showed your termination date of your coverage but when you printed that screen out, it showed a different termination date than what was on the computer.
- 5) You testified you have no written evidence of your termination date or the error made by the health plan and that it was “not worth finding.”
- 6) You testified there have been no changes in your household since you applied on March 24, 2016.

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 Marketplace 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).

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)).

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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 24, 2016.

On March 24, 2016, you spoke with Marketplace's Account Review Unit and requested a special enrollment to select a new health plan. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period. It does contain a March 25, 2016 notice in which the Marketplace acknowledges receipt of an appeal request and identifies one of the issues on appeal as "Denial of Special Enrollment Period (SEP)."

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the March 25, 2016 notice, which acknowledges the appeal on the issue of special enrollment denial, permits an inference that the Marketplace did deny your special enrollment request.

Since the Appeals Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility

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determination had it been issued. Therefore, the issue under review is whether you were properly denied a special enrollment period.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on March 24, 2016. Therefore, you did not 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.

You testified that you had previous insurance coverage outside of NYSOH. Loss of minimum essential coverage is considered a triggering event for purposes of obtaining a special enrollment period to enroll in coverage through NYSOH. When a person loses coverage, they have 60 days to notify NYSOH and submit a completed application and enroll into a qualified health plan.

You testified that you lost your previous health insurance coverage but were not sure what date that happened because your health plan gave you two different termination dates. You testified you have no written evidence of your termination date or the error made by the health plan and that it was “not worth finding.”

Since you were unable to provide a termination date of your previous coverage, you cannot be granted a special enrollment period based on this event.

You testified your health plan was supposed to provide you with written documentation of your termination date, but never did. You further testified that your computer showed your termination date of your coverage but when you printed that screen out, it showed a different termination date than what was on the computer.

However, neither your health plan outside of the NYSOH nor your computer and printer are instrumentalities 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.

Moreover, you testified, and 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 24, 2016 denial of a special enrollment period to select a health plan outside the open enrollment period is **AFFIRMED**.

Decision

The March 24, 2016 denial of a special enrollment period is **AFFIRMED**.

Effective Date of this Decision: November 16, 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

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Albany, NY 12211

- By fax: 1-855-900-5557

Summary

The March 24, 2016 denial of a special enrollment period 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:

