



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

Notice of Decision

Decision Date: December 9, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008390

[REDACTED]

Dear [REDACTED],

On November 30, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 24, 2016 notice of cancellation and a subsequent 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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NY State of Health Account ID: [REDACTED]
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Issues

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

Did NY State of Health (NYSOH) properly terminate the Qualified Health Plan (QHP) you and your spouse were enrolled in for non-payment of premium effective, February 1, 2016?

Did NYSOH properly determine that you and your spouse were not eligible to enroll in a QHP outside of the open enrollment period for 2016?

Procedural History

On December 31, 2015, NYSOH issued a notice of eligibility determination, based on your December 30, 2015 updated application, stating that you and your spouse were conditionally eligible to receive \$0 of monthly advance premium tax credits to help pay for the cost of health coverage, effective February 1, 2016.

Also on December 31, 2015, NYSOH issued a notice of enrollment confirmation stating that you and your spouse were enrolled in QHP, with an \$816.08 monthly premium, effective February 1, 2016.

On January 23, 2016, NYSOH issued a notice of eligibility determination, based on your January 22, 2016 updated application, stating that you and your spouse were eligible to receive \$0 of monthly advance premium tax credits to help pay for the cost of health coverage, effective March 1, 2016.

On February 24, 2016, NYSOH issued a notice of cancellation stating that the QHP you and your spouse enrolled in were cancelled effective February 1, 2016, because a premium payment has not been received.

On March 28, 2016, you spoke to NYSOH's Account Review Unit and appealed the cancellation of the QHP you and your spouse were enrolled in, effective February 1, 2016

On November 30, 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) You testified, and the record reflects, that you and your spouse enrolled in a QHP for the 2016 coverage year with a monthly premium of \$816.08, effective February 1, 2016.
- 2) You testified that the accounting software your spouse utilizes to prepare monthly creditor payments mistakenly input the incorrect amount into the check intended to pay for your February 2016 premium payment. You testified that because you and your children have the same insurance provider, the accounting software automatically input the previous amount used for that creditor, which was the amount for your children's monthly premium, \$120.00
- 3) You testified that you mistakenly sent your health plan a partial premium payment, in the amount of \$120.00, for the month of February 2016.
- 4) You testified that you learned your insurance coverage was terminated when you received the February 24, 2016 cancellation notice from NYSOH.
- 5) You testified that you contacted your health plan, after receiving the cancellation notice, and offered to overnight full payment for February 2016 as well as March 2016. You testified that your health plan refused to accept payment.
- 6) You testified that the \$120.00 payment you sent to your health plan for February 2016 was subsequently applied to your children's account.
- 7) You testified that you called NYSOH to re-enroll in a health plan for you and your spouse but was told by a NYSOH representative that you could not enroll in a plan outside of the open enrollment period.

- 8) You testified that you and your spouse have not re-enrolled in health plans for 2016.
- 9) You testified that there have been no changes to your household in 2016.
- 10) You testified that you are seeking reinstatement for you and your spouse in your QHP.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

Applicable Law and Regulations

Appealable Issues

An applicant has the right to appeal to NYSOH's Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) an eligibility determination for an exemption; (4) a failure by the Exchange to provide timely notice of an eligibility determination 45 CFR § 155.505; and (5) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

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.

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- (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)).

De Novo Review

NYSOH Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR §

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155.535(f)). “De novo review means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

Legal Analysis

The first issue is whether NYSOH properly terminated the QHP you and your spouse were enrolled in for non-payment of premium effective, February 1, 2016.

On December 31, 2015, NYSOH issued a notice of enrollment confirmation stating that you and your spouse were enrolled in QHP, with an \$816.08 monthly premium, effective February 1, 2016.

You testified that due to an accounting software glitch, you inadvertently only sent a partial premium payment to your health plan for the month of February. As a result, you and your spouse were disenrolled from your QHP as of February 1, 2016.

On February 24, 2016, NYSOH issued a notice of cancellation stating that the QHP you and your spouse enrolled in were cancelled effective February 1, 2016, because a premium payment has not been received.

The New York State of Health Appeals Unit only has the authority to review issues related to the following: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination and (5) a denial of a special enrollment period.

Since the Appeals Unit is not given the authority to review termination of enrollment due to non-payment of premiums, we cannot reach the merits as to whether or not you were properly terminated from your health plan for non-payment of premiums. Therefore, your appeal of the February 24, 2016 cancellation notice is DISMISSED as a non-appealable issue.

The second issue is whether NYSOH properly determined that you were not eligible to enroll in a QHP outside of the open enrollment period for 2016.

You testified that you called NYSOH to re-enroll in a health plan for you and your spouse but was told by a NYSOH representative that you could not enroll in a plan outside of the open enrollment period. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period.

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 NYSOH failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Your credible testimony that a representative from NYSOH told you that you and your spouse do not qualify for a SEP as well as evidence in the record that neither you nor your spouse have been re-enrolled in health plans for the 2016 coverage year, permits an inference that NYSOH did deny your special enrollment request.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you did submit an application for financial assistance during the open enrollment period for 2016 and you and your spouse were enrolled in health plans, effective February 1, 2016. Subsequently, the QHP you and your spouse were enrolled in were terminated for non-payment of premium, effective February 1, 2016.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll into a qualified health plan offered in NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

In the present case, there is no evidence in the record to establish grounds for a SEP. You testified that there have been no changes to your household in 2016. Additionally, there is no evidence in the record that you and your spouse's enrollment or non-enrollment in a QHP was unintentional, inadvertent, or erroneous and is the result of the error or misrepresentation by NYSOH. Finally, the loss of health insurance coverage in this case cannot be considered a triggering event for a SEP, because it was a result of non-payment of your premiums which NYSOH considers a voluntary action causing the termination of your coverage.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2016, you did not experience a triggering event that would qualify you for a special enrollment period as of the date of the hearing.

Therefore, NYSOH's denial of a special enrollment period to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

Decision

Your appeal on the issue of disenrollment for non-payment of premium as described in the February 24, 2016 cancellation notice is **DISMISSED**.

NYSOH's denial of a special enrollment period to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

Effective Date of this Decision: December 9, 2016

How this Decision Affects Your Eligibility

This decision does not change your eligibility.

You and your spouse are not eligible for an SEP.

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):

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Summary

Your appeal on the issue of disenrollment for non-payment of premium as described in the February 24, 2016 cancellation notice is **DISMISSED**.

NYSOH's denial of a special enrollment period to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

This decision does not change your eligibility.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

