



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

Notice of Decision

Decision Date: October 27, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008426

[REDACTED]

Dear [REDACTED],

On October 14, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 23, 2016, and September 15, 2016 eligibility determination notices.

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.

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DEPARTMENT OF HEALTH
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Decision Date: October 27, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008426

[REDACTED]

Issues

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

Did NY State of Health (NYSOH) properly disenroll you from your qualified health plan for non-payment of premium effective January 31, 2016?

Did NYSOH properly determine that you did not qualify to select a different health plan outside of the open enrollment period for 2016?

Procedural History

On November 18, 2015, NYSOH received your updated application for health insurance. That day, you enrolled into a silver level qualified health plan.

On November 19, 2015, NYSOH received your request to disenroll yourself from the silver level qualified health plan. That day, you also enrolled into a gold level qualified health plan.

On November 22, 2015 NYSOH issued a cancellation notice based on your November 19, 2015 request to disenroll from your silver level health plan.

Also on November 22, 2015, an enrollment confirmation notice was issued confirming your enrollment on November 19, 2015, in a gold level qualified health plan with a premium responsibility of \$273.83 per month effective January 1, 2016.

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On November 24, 2015, NYSOH issued a notice of eligibility determination based on your November 18, 2015 application, stating you were eligible to receive advance premium tax credits up to \$226.00 per month as well as cost-sharing reductions effective January 1, 2016.

On November 25, 2015, an enrollment confirmation notice was issued confirming your enrollment on November 18, 2015, in a Silver level qualified health plan with a premium responsibility of \$182.04 per month effective January 1, 2016.

On February 22, 2016, NYSOH received your updated application for financial assistance.

On February 23, 2016, NYSOH issued an eligibility determination notice finding you eligible to receive advance premium tax credits up to \$226.00 per month as well as cost-sharing reductions effective April 1, 2016. The notice also explained you could still get coverage for 2016 if you qualified for a special enrollment period.

On February 23, 2016, an enrollment confirmation notice was issued confirming your enrollment in a Gold level qualified health plan with a premium responsibility of \$273.83 per month effective January 1, 2016.

On March 29, 2016, you spoke to NYSOH's Account Review Unit and appealed to have your coverage reinstated with your health plan because you had been disenrolled from your plan for non-payment.

On September 13, 2016, a cancellation notice was issued terminating your Gold level qualified health plan for non-payment of premium effective January 1, 2016.

On September 15, 2016, an eligibility determination notice was issued finding you eligible to receive up to \$226.00 of advance premium tax credits per month as well as cost-sharing reductions effective October 1, 2016. The notice further stated you did not qualify to select a health plan outside of the open enrollment period for 2016.

On October 14, 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 proceeding. During your hearing you testified you are now seeking a special enrollment period to enroll in coverage for 2016.

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 November 18, 2015.
- 2) You enrolled in a Silver level qualified health plan for January 1, 2016 on November 18, 2015.
- 3) You requested to be disenrolled from your Silver level health plan and reenrolled into a gold level qualified health plan on November 19, 2015.
- 4) You testified that you had an issue with enrollment in your health plan in November, 2015. On December 4, 2015, NYSOH representatives filed your complaint that you had requested coverage for December 2015 be terminated as you had coverage outside of NYSOH.
- 5) The record reflects on February 10, and February 22, 2016, you requested to be reinstated in your qualified health plan effective March 1, 2016. [REDACTED]
[REDACTED].
- 6) NYSOH issued a cancellation notice on September 13, 2016, for non-payment of premium effective January 1, 2016.
- 7) You testified that you paid your premium payments to your health plan for January, 2016. You testified you received a refund of your premium payment for January, 2016.
- 8) You testified that you have not moved since initially applying for health insurance.
- 9) Your initial application for financial assistance shows you attested to an annual household income of \$24,960.00.
- 10) You testified you are now receiving Social Security benefits. You testified you have not yet received an award statement from the Social Security Administration that you could provide. You testified that you are currently receiving \$1,273.00 per month before any tax is taken out.
- 11) You testified that your household size has not changed since initially applying for health insurance. You reside in a one-person household.
- 12) You testified you could not provide an award letter stating this. You still plan on filing your 2016 taxes as single, and will not be claiming any dependents on that return.
- 13) You reside in Queens, N.Y.

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)).

De Novo Review

The NYSOH 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

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)).

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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 first issue is whether NYSOH properly disenrolled you from your qualified health plan for non-payment of premium effective January 1, 2016.

NYSOH issued a notice of disenrollment dated September 13, 2016, which stated your insurance with your Gold level qualified health plan was terminated effective January 1, 2016, as a premium payment was not received by your health plan issuer. This issue relates to payment of premiums to qualified health plan issuers which is not an issue that the NY State of Health Appeals Unit is authorized to address.

Therefore your appeal on this issue is DISMISSED.

On March 29, 2016, you spoke with NY State of Health’s Account Review Unit and requested a special enrollment to select a new health plan, or a reinstatement in your old health plan. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period from this date. It does contain a complaint in which you requested to be reinstated in your health plan or to choose a new plan as you were being told you could not due to being outside of the open enrollment period.

A notice was issued before your appeal hearing on September 15, 2016, stating that you did not qualify to select a health plan outside of the open enrollment period for 2016.

The text of the March 29, 2016 complaint, the September 15, 2016 eligibility determination, and your testimony indicates you are appealing to be found eligible to enroll in coverage outside of the open enrollment period for 2016.

Therefore, the second 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 November 18, 2015, and subsequently enrolled in a gold level qualified health plan effective January 1, 2016. After your disenrollment for non-payment of premium (according to your health plan), you contacted NYSOH on February 10, and 22, 2016, to see if you could be enrolled in your same health plan. Therefore, you did not complete your updated 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 your previous insurance coverage ended on January 1, 2016, which is considered a triggering life event. However, a loss of health insurance coverage such as that referenced above does not include voluntary termination of coverage or other loss due failure to pay premiums on a timely basis.

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.

However, your disenrollment was not due to error, or a misrepresentation regarding your enrollment in a qualified health plan. 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 on this basis.

Therefore, NYSOH's September 15, 2016, notice stating you do not qualify to select a health plan outside of the open enrollment period for 2016 is proper and are AFFIRMED.

During your telephone hearing, you testified that your income has changed since initially applying for insurance in November, 2015. Your initial application for financial assistance shows you attested to an annual household income of \$24,960.00. You testified this was correct at the time but that in March 2016, you became eligible for Social Security payments. You will have to reapply to NYSOH

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to see what your new eligibility is based upon your change in income. Open enrollment for the 2017 benefit year will begin November 1, 2016.

Decision

The September 15, 2016, eligibility determination notices is AFFIRMED.

You may reapply for coverage during the open enrollment period for 2017 coverage on November 1, 2016.

Effective Date of this Decision: October 27, 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.

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If You Have Questions about this Decision (Customer Service Resources):

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- By fax: 1-855-900-5557

Summary

The September 15, 2016 eligibility determination notices is AFFIRMED.

You may reapply for coverage during the open enrollment period for 2017 coverage on November 1, 2016.

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:

