



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

Notice of Decision

Decision Date: October 28, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008427

[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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Decision

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NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008427



Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NY State of Health (NYSOH) properly determine on March 30, 2016 that you did not qualify for a special enrollment period to enroll in a qualified health plan outside the open enrollment period?

Procedural History

On November 16, 2015, NYSOH received your application for health insurance.

On November 22, 2015, NYSOH issued a notice of eligibility determination that stated that you were eligible to receive an advance premium tax credit of up to \$263.00 per month and cost-sharing reductions, effective January 1, 2016.

On November 25, 2015, NYSOH issued an enrollment notice confirming that as of November 16, 2015, you were enrolled in the Fidelis Care Silver ST INN Pediatric Dental Dep25 (Fidelis Care Silver) with a plan enrollment start date of January 1, 2016.

On January 20, 2016, NYSOH issued an enrollment notice confirming that as of January 19, 2016, you were enrolled in Fidelis Care Silver with a plan enrollment start date of January 1, 2016.

On February 9, 2016, NYSOH issued a cancellation notice that stated your health insurance coverage with Fidelis Care Silver was cancelled as of January 1, 2016 because you did not pay your first month premium for coverage to start.

On March 3, 2016, and March 8, 2016, you updated your NYSOH account.

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On March 4, 2016, and March 9, 2016, NYSOH issued eligibility determination notices stating that you were eligible to receive up to \$263.00 of advance premium tax credit and cost-sharing reductions, effective April 1, 2016. The notice also stated that you did not qualify to select a qualified health plan outside the open enrollment period.

On March 29, 2016, you updated your NYSOH account.

Also on March 29, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you were not eligible to select and enroll in a health plan outside of the open enrollment period.

On March 30, 2016, NYSOH issued eligibility determination notices stating that you were eligible to receive up to \$264.00 of advance premium tax credit and cost-sharing reductions, effective April 1, 2016. The notice also stated that you did not qualify to select a qualified health plan outside the open enrollment period.

On September 27, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Testimony was taken during the hearing, and the record was left open until September 27, 2016, to allow you to submit additional documentation to NYSOH Appeals Unit.

On September 27, 2016, you faxed seven-pages of documents to NYSOH Appeals Unit. Those documents have been marked as "Appellant Exhibit A" and have been incorporated into the record. The record is now complete and closed.

Findings of Fact

A review of the record support the following findings of fact:

- 1) Your NYSOH account indicates that you submitted your initial application for 2016 on November 16, 2015.
- 2) Your NYSOH account indicates that you enrolled in Fidelis Care Silver ST INN Pediatric Dental Dep25 (Fidelis Care Silver) with a coverage start date of January 1, 2016. This enrollment was given a transaction identification of ([REDACTED])
- 3) On November 19, 2015, Fidelis Care sent you a premium notification for NYSOH ID ([REDACTED]) for \$111.89 with a due date of December 31, 2015. The notification stated that "[b]efore we can enroll you into the plan effective 01/01/2016, we must receive your plan premium payment in full by the due date assigned" (Appellant Exhibit A p. 4).

- 4) On January 7, 2016, Fidelis Care sent you a premium notification for NYSOH ID ([REDACTED]) for \$111.89 with a due date of January 20, 2016. The notification stated that “[b]efore we can enroll you into the plan effective 01/01/2016, we must receive your plan premium payment in full by the due date assigned” (Appellant Exhibit A p. 5).
- 5) You testified that you contacted NYSOH, stated that you would not be able to pay the January 2016 health insurance premium to Fidelis Care, and the NYSOH representative re-enrolled you in a Fidelis Care health plan.
- 6) Your NYSOH account indicates that you were re-enrolled in a Fidelis Care Silver plan on January 19, 2016. This enrollment was given a transaction identification of ([REDACTED])
- 7) On January 24, 2016, Fidelis Care sent you a premium notification for NYSOH ID ([REDACTED]) for \$111.89 with a due date of February 5, 2016. The notification stated that “[b]efore we can enroll you into the plan effective 01/01/2016, we must receive your plan premium payment in full by the due date assigned” (Appellant Exhibit A, p. 5).
- 8) On February 1, 2016, you sent a money order, in the amount of \$223.78, to Fidelis Care (Appellant Exhibit A, p. 7).
- 9) You testified that you sent the money order to Fidelis Care to pay for your February and March 2016 health insurance premiums.
- 10) On February 19, 2016, Fidelis Care sent you a letter stating you were required to pay your initial plan premium, but payment had not been received. Your enrollment in the Fidelis Care Silver plan was cancelled as of January 1, 2016 (Appellant Exhibit A p. 3).
- 11) According to the “Appeal Summary,” in the Evidence Packet that was created in anticipation of your hearing, you filed a complaint with NYSOH on February 24, 2016 (Complaint # [REDACTED]). The complaint states that you “called [F]idelis to check on status of her account and [F]idelis is stating that [they] don’t have a new transaction number for her account...received the payments but don’t have a new tracking number...consumer[']s start date is 3/01/2016.”
- 12) On April 7, 2016, Fidelis Care issued you a check, in the amount of \$223.78, to refund you the premium payment that you sent to them on February 1, 2016 (Appellant Exhibit A p. 7).

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)).

NYSOH may require payment of the first month's premium to effectuate an enrollment and establish a standard policy for setting premium payment deadlines (45 CFR §155.400(e)).

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 (45 CFR § 155.420(a)(1)).

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)(4)).

CMS has defined enrollment error to include situations that consumers enroll through NYSOH, but the insurance company didn't get their information due to technical issues (Guidance for Issuers on Special Enrollment Periods for Complex Cases in after the Initial Open Enrollment Period, Affordable Exchange Guidance, Department of Health & Human Services, CMS, dated March 26, 2014, as retrieved on October 4, 2016 at: <https://www.cms.gov/CCIIO/Resources/Regulations-andGuidance/Downloads/complex-cases-SEP-3-26-2014.pdf>).

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, as stated in the March 29, 2016 eligibility determination notice.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application, and you enrolled in a qualified health plan (QHP) on November 16, 2015. You were given the transaction identification (ID) of [REDACTED] for your enrollment on November 16, 2015.

On November 19, 2015 and January 7, 2016, Fidelis Care issued you premium notifications for transaction ID [REDACTED] in the amount of \$111.89. The notifications stated that before your enrollment could be effective, Fidelis Care must receive your monthly health insurance premiums.

It is NYSOH's policy that the first month's premium must be received to effectuate an enrollment in a QHP. The record supports that you never submitted a premium payment for transaction ID [REDACTED]

The credible evidence of the record indicates you contacted NYSOH on January 19, 2016, and stated that you would not be able to pay the January 2016 health insurance premium to Fidelis Care. The NYSOH representative re-enrolled you in a Fidelis Care QHP, and you were given the transaction ID of [REDACTED]. On January 24, 2016, Fidelis Care sent you a premium notification for transaction ID [REDACTED] and on February 1, 2016, you sent payment to Fidelis Care for your monthly health insurance premium.

Furthermore, on February 24, 2016, you contacted NYSOH and logged a complaint because Fidelis Care had not received a new transaction number for your account, and they were unable to effectuate your coverage.

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, or by a non-Exchange entity providing enrollment assistance or conducting enrollment activities, such as a broker.

An enrollment error includes situations when consumers enroll through NYSOH, but the insurance company didn't get their information due to technical issues.

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Based on the foregoing, the insurance company was unable to effectuate your coverage because they did not receive the necessary information from NYSOH. Therefore, NYSOH's March 30, 2016 eligibility determination notice that stated 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.

In addition, the record indicates that the enrollment error 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 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 30, 2016 eligibility determination notice 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: October 28, 2016

How this Decision Affects Your Eligibility

You qualify for a special enrollment period.

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).

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.

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 30, 2016 eligibility determination notice is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this decision.

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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.

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.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

