



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

## Notice of Decision

Decision Date: November 08, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000008470

[REDACTED]

Dear [REDACTED],

On September 30, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's April 5, 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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STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
P.O. Box 11729  
Albany, NY 12211

## Decision

Decision Date: October 20, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000008470

[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 were not eligible to select a new health plan outside of the open enrollment period for 2016?

## Procedural History

On October 30, 2015, NYSOH issued notices to you and your spouse stating that you needed to select a new health plan for the month of December 2015 because Health Republic would no longer be able to offer health care coverage beginning December 1, 2015.

On November 3, 2015, NYSOH issued an enrollment confirmation notice, confirming your enrollment and your spouse's enrollment in a couples' bronze level qualified health plan (QHP) through Fidelis Care, effective December 1, 2015.

On November 16, 2015, NYSOH issued a renewal notice stating that it was time to renew your health coverage through NYSOH. The notice stated that if you wanted to keep your present health plan, and if the information in your application was still accurate, then you didn't need to do anything more. The notice further stated that you and your spouse were re-enrolled into your couple's bronze level Fidelis QHP, effective January 1, 2016.

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On November 25, 2015, NYSOH issued a notice of enrollment confirmation, confirming your enrollment and your spouse's enrollment in your couple's bronze level Fidelis QHP, effective January 1, 2016.

On December 22, 2015, you updated your NYSOH account.

On December 23, 2015, NYSOH issued a notice of enrollment confirmation confirming your enrollment in an individual bronze level Fidelis QHP, and your spouse's enrollment in an individual bronze level Fidelis QHP, effective January 1, 2016.

On March 30, 2016, you spoke to NYSOH's Account Review Unit and appealed NYSOH's verbal denial of your request to select a new health plan for yourself and your spouse outside of the 2016 open enrollment period.

On April 5, 2016, NYSOH issued a notice of eligibility determination stating that you and your spouse did not qualify to select a health plan outside of the open enrollment period for 2016.

On September 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 support the following findings of fact:

- 1) The record indicates that you selected a Fidelis couple's bronze level QHP on November 3, 2015 for coverage for the month of December 2015.
- 2) The record reflects that you were automatically re-enrolled into your couple's Fidelis QHP, with an enrollment start date of January 1, 2016.
- 3) The record reflects that you changed your enrollment from a couple's plan to two individual bronze level Fidelis QHPs on December 22, 2015, with an enrollment start date of January 1, 2016.
- 4) You testified that you selected Fidelis hastily when you found out that your Health Republic coverage was ending at the end of November 2015.
- 5) You testified that you selected Fidelis after reviewing some of the other plans because it was the least expensive option.
- 6) You testified that you did not check with all of your providers to ensure that they would accept your health plan, but that you assumed that all the

plans would provide equal access to all health care providers because they were selected by the state.

- 7) You testified that you did not speak with NYSOH when you were deciding on a health plan.
- 8) You testified that you and your spouse want to change health plans because your spouse has had some medical issues, and some of her providers do not accept her QHP coverage.
- 9) You testified that you are seeking to be able to select a new health plan for the remainder of 2016 for yourself and your spouse.

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 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 30, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you and your spouse were automatically re-enrolled into your full cost Fidelis QHP on November 16, 2015, with an enrollment start date of January 1, 2016. Therefore, you completed your application and enrollment during the 2016 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.

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.

You testified that you and your spouse selected Fidelis for your QHP coverage after reviewing some of the other plans available because it was the least expensive option. You testified that you were not aware that some of your spouse's health care providers would not accept the QHP in which she was enrolled. You testified that you did not speak with anyone at NYSOH when selecting your QHP, and that you presumed the plans would all provide equal access to health care providers.

Since the record does not indicate that NYSOH, by action or inaction, made an error or misrepresented information to you when you selected your health plan, and since the record is void of any other triggering events, a special enrollment period cannot be granted.

Therefore, NYSOH's April 5, 2016 eligibility determination that you and your spouse do not qualify to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

## **Decision**

The April 5, 2016 eligibility determination is AFFIRMED.

**Effective Date of this Decision:** October 20, 2016

## **How this Decision Affects Your Eligibility**

You and your spouse 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
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## **Summary**

The April 5, 2016 eligibility determination is AFFIRMED.

You and your spouse 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:**

