



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

Notice of Decision

Decision Date: October 18, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008486

[REDACTED]

Dear [REDACTED],

On September 29, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 30, 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
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Decision

Decision Date: October 18, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008486

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Issue

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

Did NYSOH properly deny you the ability to enroll in a qualified health plan outside of the open enrollment period for 2016?

Procedural History

On October 22, 2015, NYSOH issued a notice that it was time to renew your health insurance for the upcoming coverage year. That notice stated that, based on information from federal and state sources, NYSOH could not make a decision about whether you would qualify for financial help paying for your health coverage, and that you needed to update your account by December 15, 2015, or you might lose the financial assistance you were currently receiving.

No updates were made to your account by December 15, 2015.

On December 21, 2015, an eligibility determination notice was issued finding you newly eligible to purchase a qualified health plan at full cost effective January 1, 2016.

On December 22, 2015, an enrollment confirmation notice was issued confirming your enrollment in a Silver level qualified health plan with a premium responsibility of \$516.11 per month starting January 1, 2016.

On January 21, 2016, NYSOH received your updated application for financial assistance.

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On January 22, 2016, NYSOH issued an eligibility determination notice finding you newly conditionally eligible to receive advance premium tax credits of up to \$226.00 per month as well as cost-sharing reductions effective March 1, 2016. The determination was based on the condition that you confirm your income by providing documentation before April 20, 2016.

That same day an enrollment confirmation notice was issued confirming your enrollment in a Silver level qualified health plan with a premium responsibility of \$290.11 per month starting January 1, 2016. The notice stated your advance premium tax credit of \$226.00 would be applied.

On March 14, 2016, a cancellation notice was issued terminating your enrollment in a Silver level qualified health plan because a premium payment had not been received by your health plan. The notice stated your insurance was cancelled effective January 1, 2016.

On March 30, 2016, you spoke to NYSOH's Account Review Unit and appealed the fact that you were automatically renewed in a full cost qualified health plan, and terminated from that plan.

On September 29, 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. During your hearing you testified you are no longer seeking reinstatement for your prior qualified health plan, you are now seeking a special enrollment period to be allowed to enroll in a new health plan going forward.

Findings of Fact

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

- 1) You testified, and the record reflects, that you receive all of your notices from NYSOH by electronic mail.
- 2) You testified that you did not receive any electronic alerts regarding any renewal notice in your NYSOH account telling you that you needed to update your application in order to renew your eligibility.
- 3) You testified that you did not know that you needed to update your account for renewal of your health plan for January 2016.
- 4) You testified you did not make your January 2016, premium payment.

- 5) The record reflects that on January 21, 2016, NYSOH received your updated application for health insurance.
- 6) You testified that you are now seeking to be found eligible for a special enrollment period to enroll back into a qualified health plan.
- 7) You testified your address has not changed since initially applying for health insurance with NYSOH.
- 8) You testified that your household size has not changed since initially applying for health insurance.
- 9) You testified that your income has not changed significantly since your application for health insurance on January 21, 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 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).

Termination of a Qualified Health Plan; Exchange Initiated

The NYSOH may initiate termination of an enrollee’s coverage in a qualified health plan and must permit a qualified health plan issuer to terminate such coverage: (1) When the enrollee is no longer eligible for coverage in a qualified health plan through the NYSOH; or (2) The enrollee’s coverage is cancelled due to non-payment of premiums (45 CFR § 155.430(b)(2)(i) and (ii)).

Enrollment in a Qualified Health Plan and Automatic Enrollments

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)).

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Automatic enrollment. The Exchange may automatically enroll qualified individuals, at such time and in such manner as HHS may specify, and subject to the Exchange demonstrating to HHS that it has good cause to perform such automatic enrollments. (45 CFR §155.410 (g)).

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:

The qualified individual or his or her dependent involuntarily loses certain health insurance coverage: Health insurance considered to be minimum essential coverage; 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 Pregnancy-related coverage; or Medically needy coverage.

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)).

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

On March 30, 2016, you spoke with NY State of Health's Account Review Unit and requested a special enrollment period 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. 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.

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 a NYSOH 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 30, 2016, complaint, which acknowledges the appeal on the issue of special enrollment permit denial, permits an inference that NYSOH did deny your special enrollment request. Furthermore, you testified during your telephone hearing that this was the issue that you were appealing. You are now seeking to be found eligible to enroll in coverage outside of the open enrollment period for 2016.

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. Therefore, the issue under review is whether you were properly denied a special enrollment period.

On October 22, 2015, NYSOH issued an annual renewal notice in your case. That notice stated that based on information from federal and state sources, NYSOH could not make a decision about whether or not you qualify for financial help with paying for your health coverage. You were asked to update the information in your account by December 15, 2015, or the financial help you were receiving might end.

Because there was no timely response to this notice, your eligibility for financial assistance and your enrollment in a qualified health plan was terminated effective December 31, 2015. You were then automatically renewed in a silver level qualified health plan without financial assistance effective January 1, 2016.

Your enrollment in a Silver level qualified health plan was subsequently canceled due to non-payment of premium effective January 1, 2016, by NYSOH. Generally, the NYSOH Appeals Unit does not have the authority to review appeals which are based on the issue of non-payment of premium. This issue is also not a valid reason for the granting of a special enrollment period to enroll in

a qualified health plan outside of the open enrollment period, as it is not considered an involuntary loss of minimum essential coverage.

However, you provided a new application and enrollment in a Silver level qualified health plan to begin March 1, 2016, within the open enrollment period. You testified you did not pay the premium responsibility for your automatically enrolled qualified health plan for January, 2016.

That same day an enrollment confirmation notice was issued confirming your enrollment in a Silver level qualified health plan with a premium responsibility of \$290.11 per month starting January 1, 2016. The notice stated your advance premium tax credit of \$226.00 would be applied

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.

The record reflects your application on November 6, 2014, stated you did not want your eligibility automatically renewed. However, after you were automatically renewed in a full cost qualified health plan, you re-enrolled in a qualified health plan, which a tax credit would be applied to. The January 22, 2016 enrollment confirmation notice issued by NYSOH stated that your advance premium tax credit would be applied to your premium responsibility effective January 1, 2016. This representation in writing to you was untrue. You were then retro-actively disenrolled from your qualified health plan for not paying the full cost price of your health premium for the month of January, 2016.

Therefore, 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.

The record indicates that NYSOH's failure to grant you a special enrollment period resulted in you being without insurance coverage for part of the 2016 coverage year. During the hearing, you testified that you are concerned about receiving a tax penalty as a result of being without coverage.

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 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.

Decision

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 18, 2016

How this Decision Affects Your Eligibility

You qualify for a special enrollment period.

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.

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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

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.

You qualify for a special enrollment period.

You have 60 days from the date of this decision to enroll into a plan.

Legal Authority

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

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A Copy of this Decision Has Been Provided To:

