



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: AP000000008540

[REDACTED]

Dear [REDACTED],

On October 12, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health's March 15, 2016 cancellation notice and March 22, 2016 eligibility determination notice.

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: AP000000008540



## Issue

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

Does NY State of Health (NYSOH) have the authority to address whether your coverage in your qualified health plan was properly terminated effective March 1, 2016 because of non-payment of premiums?

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

## Procedural History

On January 31, 2016, NYSOH received your initial application for health insurance.

On February 1, 2016, NYSOH issued a notice of eligibility determination that stated that you were to enroll in a qualified health plan (QHP) at full cost. The notice further advised you to select a health plan as soon as possible.

Also on February 1, 2016, NYSOH issued a notice of enrollment confirming your selection of a QHP as of January 31, 2016. The notice stated that your coverage under that QHP would begin effective March 1, 2016.

On March 15, 2016, NYSOH issued a cancellation notice stating that your QHP coverage had been cancelled effective March 1, 2016 due to non-payment of premiums.

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On March 21, 2016, NYSOH received a revised application for health insurance.

On March 22, 2016, NYSOH issued an eligibility redetermination notice based on the information contained in the March 21, 2016 application. The notice stated that you were eligible to enroll in a QHP at full cost effective May 1, 2016. The notice further stated that you did not qualify to select a health plan outside of the open enrollment period for 2016.

On March 31, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On October 12, 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 submitted your initial application for 2016 health insurance coverage on January 31, 2016.
- 2) You testified, and the record reflects, that you lost your health insurance effective March 1, 2016 as a result of non-payment of premium. You further testified that while you enrolled in a catastrophic plan effective March 1, 2016, you did not receive any billing statement from the insurance carrier, and you suspect that was the reason you were disenrolled from that plan.
- 3) The record reflects that you submitted a revised application for health insurance on March 21, 2016.
- 4) You testified that while you were again found eligible to enroll in a QHP, you were prevented from enrolling in a plan at that time since you had not qualified for a special enrollment period at that time.
- 5) You testified that you were more concerned about potentially being penalized on your 2016 taxes for not having insurance during 2016, as opposed to potentially enrolling in plan during the remaining coverage months in 2016.
- 6) You testified that you moved from the address listed in your account, "[REDACTED]" to "[REDACTED]"

██████ You further testified that you completed your move to your new residence as of October 1, 2016.

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

## **Applicable Law and Regulations**

### Valid Appeal Requests

An applicant has the right to appeal to the Appeals Unit of NYSOH: (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) the denial of a request for a special enrollment period (45 CFR § 155.505, 45 CFR § 155.420(d)).

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by the Marketplace (45 CFR § 155.520(b)(2); 18 NYCRR § 358-3.5(b)(1)).

### 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;

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- (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)).

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 under review is whether the NYSOH has the authority to determine whether you were properly terminated from your enrollment in your QHP effective March 1, 2016 because of non-payment of premiums.

On March 15, 2016, NYSOH issued a cancellation notice stating that your coverage in your QHP was cancelled effective March 1, 2016 because of non-payment of premiums.

You testified that while you enrolled in a catastrophic plan effective March 1, 2016, you did not receive any billing statements from the insurance carrier, and you suspect that was the reason you were disenrolled from that plan.

The NYSOH 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) the denial of a request for a special enrollment period.

Since the Appeals Unit is not given the authority to review cancellation 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 March 15, 2016 disenrollment notice is **DISMISSED** as a non-appealable issue.

The second issue is whether you were properly denied a special enrollment period as of March 22, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on January 31, 2016. Therefore, you did complete your 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.

Generally, the loss of health insurance coverage is considered a triggering event. Here, your enrollment was cancelled effective March 1, 2016 because you did not pay your premiums to your health plan on time. NYSOH considers the failure to pay premiums a voluntary action causing the termination of your coverage; therefore, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis. As discussed above, the Appeals Unit does not have the authority to decide whether or not your premiums were in fact made on time.

The credible evidence of record indicates that, prior to March 21, 2016, no other triggering events have occurred that would qualify you for a special enrollment period.

Therefore, the March 22, 2016 eligibility determination notice is **AFFIRMED** because NYSOH properly denied your request for a special enrollment period at that time.

During the hearing, however, you credibly testified that on October 1, 2016 you moved from [REDACTED] to [REDACTED], [REDACTED].” This move would have changed your county of residence from Kings County to Westchester County. Such a permanent move may be a triggering event to qualify for a special enrollment period.

Therefore, we find there is sufficient evidence for your case to be **RETURNED** to NYSOH to redetermine your eligibility for a special enrollment period based on your permanent move to Westchester County.

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 were 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**

Your appeal of the March 15, 2016 disenrollment notice is DISMISSED as a non-appealable issue.

The March 22, 2016 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your eligibility for a special enrollment period based on your permanent move to Westchester County.

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

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

You did not qualify for a special enrollment period as of March 21, 2016.

You will receive a new eligibility determination shortly confirming whether you qualified for a special enrollment period to enroll in a plan for the remainder of the 2016 plan year.

## **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**

Your appeal of the March 15, 2016 disenrollment notice is **DISMISSED** as a non-appealable issue.

The March 22, 2016 eligibility determination notice is **AFFIRMED**.

Your case is **RETURNED** to NYSOH to redetermine your eligibility for a special enrollment period based on your permanent move to Westchester County.

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You did not qualify for a special enrollment period as of March 21, 2016.

You will receive a new eligibility determination shortly confirming whether you qualified for a special enrollment period to enroll in a plan for the remainder of the 2016 plan year.

## **Legal Authority**

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

**A Copy of this Decision Has Been Provided To:**

