



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

Notice of Decision

Decision Date: October 26, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008571

[REDACTED]

Dear [REDACTED],

On October 3, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health's April 1, 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: AP000000008571



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 do not qualify to select a health plan outside of the open enrollment period for 2016?

Procedural History

On December 15, 2015 you updated your application for health insurance for the benefit year beginning on January 1, 2016.

On December 16, 2015, NYSOH issued an eligibility determination notice which found that you were eligible to receive an advance premium tax credit of \$0.00 per month, effective January 1, 2016.

Also on December 16, 2015, NYSOH issued an enrollment notice confirming your enrollment in an MVP Silver Qualified Health Plan, effective January 1, 2016.

On March 19, 2016, NYSOH issued a cancellation notice informing you that your enrollment in your MVP Silver Qualified Health Plan was cancelled effective January 1, 2016 as you had failed to pay your monthly premiums.

On April 1, 2016, NYSOH issued a notice of eligibility determination that stated that you are eligible to receive an advance premium tax credit of \$0.00 per month. It further stated that you do not qualify to select a health plan outside of the open enrollment period for 2016.

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Also on April 1, 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 3, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and left open for 14 days to allow you the opportunity to submit letters you received from your health plan. On October 17, 2016 the Appeals Unit received via fax a page printed from your NYSOH account indicating an enrollment in progress in an Excellus BlueCross BlueShield Plan, this document is marked as Appellant's Exhibit #1 and incorporated into the record. The record is now closed.

Findings of Fact

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

- 1) The record indicates that you submitted your initial application for 2016 health insurance coverage on December 15, 2015.
- 2) The record shows and you testified that you were able to successfully enroll in an MVP Silver Qualified Health Plan.
- 3) You testified that you did not pay any premiums for the MVP Silver Qualified Health Plan in 2016, and that your enrollment with MVP ended on January 1, 2016.
- 4) You testified that sometime in January or February 2016 you attempted to change your enrollment from MVP to Excellus BlueCross BlueShield.
- 5) You provided a single-page print out from your NYSOH account. Under the heading of "Manage Plan" is a section which indicates "Enrollment in Progress". This same print out shows selection of an Excellus BlueCross BlueShield Gold Qualified Health Plan.
- 6) You testified that when you contacted NYSOH, you were advised that getting to the web page above was not a confirmation of your change in plan, but that you would have needed to click one more time in order to effectively change your plan.
- 7) You testified that you never received a premium bill from Excellus BlueCross BlueShield.
- 8) You testified that you are in a three-person household and two of you are seeking coverage.

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- 9) You testified that there have been no changes in your immediate household such as a birth, death, marriage or permanent move. You also testified that your income has not changed since applying for insurance.

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)).

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)).

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 issue under review is whether NYSOH properly denied you a special enrollment period, effective May 1, 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 December 15, 2015. Therefore, you did complete your application during the open enrollment period.

The record indicates that you were enrolled into an MVP Silver Qualified Health Plan effective January 1, 2016. You testified that you did not make any payments to this plan for 2016.

On March 19, 2016, NYSOH issued a cancellation notice stating that your coverage with your MVP Silver Qualified Health Plan was cancelled effective January 1, 2016 because a premium payment was not received by your plan within the required time frame.

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 terminated effective January 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.

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 attempted to change plans from the MVP Silver Qualified Health Plan to an Excellus BlueCross BlueShield Gold Qualified Health Plan. The documentation you submitted indicates your enrollment was in progress. There is no indication that your enrollment in the Excellus BlueCross BlueShield Gold Qualified Health Plan was completed. 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.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2016, no other triggering events have occurred that would qualify you for a special enrollment period.

Therefore, NYSOH's April 1, 2016 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

This decision does not affect your eligibility to enroll during open enrollment for a plan for the benefit year beginning on January 1, 2017, which open enrollment period will begin on November 1, 2016, and will extend through January 31, 2017.

Decision

The April 1, 2016 eligibility determination is **AFFIRMED**.

Effective Date of this Decision: October 26, 2016

How this Decision Affects Your Eligibility

You do not qualify for a special enrollment period at this time.

This decision does not affect your eligibility to enroll during open enrollment for a plan for the benefit year beginning on January 1, 2017, which open enrollment

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period will begin on November 1, 2016, and will extend through January 31, 2017.

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 April 1, 2016 eligibility determination is **AFFIRMED**.

You do not qualify for a special enrollment period at this time.

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This decision does not affect your eligibility to enroll during open enrollment for a plan for the benefit year beginning on January 1, 2017, which open enrollment period will begin on November 1, 2016, and will extend through January 31, 2017.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

