



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: AP000000008705

[REDACTED]

Dear [REDACTED]

On October 18, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's April 13, 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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NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008705



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 household were not eligible to enroll in a qualified health plan (QHP) outside of the 2016 open enrollment period?

Procedural History

On December 2, 2015, NYSOH received your updated application for health insurance.

On December 6, 2015, NYSOH issued a notice of eligibility determination stating that you and your spouse were newly eligible to receive advance payments of the premium tax credit (APTC) of up to \$352.00 per month, effective January 1, 2016.

On December 15, 2015, your NYSOH account was updated several times.

On December 16, 2015, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to receive up to \$352.00 in APTC per month, effective January 1, 2016.

Also on December 16, 2015, NYSOH issued a notice of enrollment confirmation, confirming your and your spouse's enrollment in a Fidelis platinum level couple's QHP, with a \$760.68 monthly premium (after the application of your APTC), beginning January 1, 2016.

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On December 21, 2015, your NYSOH account was updated.

On December 22, 2015, NYSOH issued a notice of eligibility determination stating that you, your spouse, and your child were eligible to receive up to \$556.00 in APTC per month, effective February 1, 2016.

Also on December 22, 2015, NYSOH issued a notice of enrollment confirmation, confirming your family's enrollment in a Fidelis platinum level family QHP with a \$1,027.81 monthly premium (after the application of \$555.99 of your APTC), beginning January 1, 2016.

On January 29, 2016, your NYSOH account was updated.

On January 30, 2016, NYSOH issued a notice of eligibility determination stating that you, your spouse, and your child were eligible to receive up to \$561.00 per month in APTC, effective March 1, 2016.

Also on January 30, 2016, NYSOH issued a notice of enrollment confirmation, confirming your family's enrollment in a Fidelis platinum level QHP with a \$1,027.81 premium (after the application of \$555.99 of your APTC), beginning January 1, 2016.

On February 10, 2016, NYSOH issued a cancellation notice stating that your family's coverage in your QHP was cancelled effective January 1, 2016 because a premium payment had not been received.

On April 6, 2016, you spoke to NYSOH's Account Review Unit and appealed NYSOH's verbal denial of your request to enroll in a health plan outside of the 2016 open enrollment period.

On April 13, 2016, NYSOH issued a notice of eligibility determination stating that you, your spouse, and your child were not eligible to enroll in a QHP outside of the open enrollment period for 2016.

On October 18, 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 December 2, 2015, and updated it on December 15, 2015.
- 2) The record reflects that the December 2, 2015 and December 15, 2015 applications were for yourself and your spouse only.
- 3) You testified that you completed your application with the assistance of a Navigator.
- 4) You testified that you and your spouse were trying to decide whether to include your daughter on your application for health insurance, and decided not to include her initially.
- 5) You testified that the Navigator informed you that December 15, 2015 was the cutoff for enrolling your daughter in coverage for January 2016.
- 6) You testified that you eventually decided to add your daughter to your NYSOH application and did so on December 21, 2015. The record confirms that your daughter was added to your application on that date.
- 7) You testified that the Navigator informed you that your daughter would be added to your plan as of February 1, 2016.
- 8) You testified that you received an invoice from Fidelis in early December 2015 for your and your spouse's January 2016 coverage, and that the invoice was paid in December 2015.
- 9) You testified that you received a second invoice from Fidelis on December 26, 2015.
- 10) You testified that this second invoice was for a higher amount, and that it included your daughter. You testified that the invoice stated that it was for January 2016.
- 11) You testified that you ignored this invoice because you knew your daughter's coverage was not starting until February 1, 2016 since you had missed the December 15, 2015 deadline for January 2016 enrollment.
- 12) You testified that you did not know that there was any problem with your coverage until January 27, 2016, when you called Fidelis to ask about

getting insurance cards and were told that your coverage had been cancelled for non-payment.

- 13) You testified that you contacted NYSOH on January 29, 2016 to inform them that your family's coverage had been cancelled, and to re-enroll in coverage.
- 14) You testified that the NYSOH agent you spoke with on January 29, 2016 told you that you and your family were re-enrolled in coverage starting March 1, 2016, and that you were "all set."
- 15) You testified that you have not had coverage since that point.
- 16) After the hearing, the Hearing Officer requested the recording of your telephone call with NYSOH on January 29, 2016 and listened to it in its entirety. The following findings of fact are based on this recording:
 - a. You informed the NYSOH representative that your health plan told you that your family's insurance had been discontinued because your premium was not paid in full;
 - b. The NYSOH representative told you that the system was showing that you and your husband were "active," and that your daughter's coverage would begin on February 1, 2016;
 - c. You informed the NYSOH representative that you and your family needed to be reinstated into coverage, and that Fidelis had informed you that you and your spouse did not have coverage for January 2016;
 - d. You informed the representative that you understood that your family would not have coverage until March 1, 2016 because it was after the fifteenth of the month;
 - e. The NYSOH representative told you that your family's coverage would begin on March 1, 2016 and that your enrollment had been submitted.
- 17) You testified during the hearing that you want to enroll your family in coverage for the remainder of 2016.

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 certain triggering events occur, including:

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

(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 April 6, 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 2, 2015. 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

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health plan offered in NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

You testified that, when you updated your application on December 2, 2015, you had not yet decided whether you wanted to add your daughter to your application. You testified, and the record reflects, that you added your daughter to your application on December 21, 2015. You testified that you understood that your daughter's coverage would not begin until February 1, 2016, since you had not applied on her behalf until after December 15, 2015. The record reflects that NYSOH sent you an eligibility determination notice on December 22, 2015 stating that your household was eligible for tax credits, now including your daughter, effective February 1, 2016.

You testified that you paid the January 2016 premium for yourself and your spouse in early December 2015, but that you received a second invoice on December 26, 2015 for a higher January 2016 premium amount, and that this invoice included your daughter. You testified that you believed that this invoice was a mistake, based on the notice you received from NYSOH that stated that your daughter's eligibility would begin on February 1, 2016, and not January 1, 2016. However, when you contacted your health plan at the end of January because you had not received insurance cards, you were informed that your coverage was cancelled because you had not paid the second invoice.

You thereafter contacted NYSOH on January 29, 2016, which was still within the 2016 open enrollment period, to re-enroll in coverage. The recording of your phone conversation with a NYSOH agent on that day reflects that you informed the NYSOH representative several times throughout the course of the call that you had been cancelled by your health plan for nonpayment, and that you needed to re-enroll. Nevertheless, it appears that the NYSOH agent did not take necessary steps to ensure that your new enrollment would take effect March 1, 2016, and, instead, your January 1, 2016 enrollment was re-confirmed. Subsequently, a cancellation notice was issued.

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 credible evidence of record indicates that you contacted NYSOH to re-enroll your family in health insurance during the 2016 open enrollment period. It was the error of the NYSOH agent you spoke with on January 29, 2016 that caused your new enrollment not to take effect on March 1, 2016. As such, your non-enrollment into a health plan was inadvertent, and was the result of the error of an employee of NYSOH.

Therefore, NYSOH's April 13, 2016 determination that your household does not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that your household is eligible for a special enrollment period until 60 days from the date of this decision.

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

The April 13, 2016 eligibility determination is MODIFIED to reflect that you and your household 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 your household into a plan for 2016 health coverage.

Effective Date of this Decision: October 28, 2016

How this Decision Affects Your Eligibility

Your household qualifies 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.

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:
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- By fax: 1-855-900-5557

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Summary

The April 13, 2016 eligibility determination is MODIFIED to reflect that you and your household 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 your household into a plan for 2016 health coverage.

Your household qualifies 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.

A Copy of this Decision Has Been Provided To:

