



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

## Notice of Decision

Decision Date: October 17, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000008710

[REDACTED]

Dear [REDACTED],

On October 12, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's April 6, 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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: October 17, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000008710



## 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 were not eligible to enroll in a health plan outside of the open enrollment period?

## Procedural History

On December 23, 2015, NYSOH issued an enrollment notice confirming that you were enrolled in a qualified health plan with a premium of \$116.97 per month, effective February 1, 2016. That notice also stated you must pay your monthly premium to start and keep your coverage.

On February 24, 2016, NYSOH issued a cancellation notice stating your insurance with your qualified health plan was cancelled effective February 1, 2016, because a premium payment had not been received by the health plan. That notice directed you to contact your plan directly if you believed you made your premium payment.

On April 6, 2016, NYSOH received your updated application for health insurance. That day, a preliminary eligibility determination was made finding you eligible to receive up to \$169.00 per month in advanced payments of the premium tax credit and cost sharing reductions, but not eligible to select a health plan outside the open enrollment period.

Also on April 6, 2016, you spoke to NYSOH's Account Review Unit and requested an appeal of that eligibility determination insofar as you were denied a

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special enrollment period, as stated in the April 7, 2016 acknowledgement letter regarding your request.

On April 7, 2016, NYSOH issued a notice of eligibility determination that was consistent with the April 6, 2016 preliminary eligibility determination. In relevant part, it stated that you do not qualify to select a health plan outside of the open enrollment period for 2016.

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 supports the following findings of fact:

- 1) On December 23, 2015, NYSOH issued an enrollment confirmation notice confirming you were enrolled in a health plan effective February 1, 2016. That notice further stated you must pay your monthly premium to start and keep your coverage.
- 2) On February 24, 2016, NYSOH issued a cancellation notice stating that your coverage in your qualified health plan was terminated effective February 1, 2016 because of non-payment of premiums.
- 3) On April 6, 2016, you attempted to re-enroll in a health insurance plan through NYSOH, but were denied a special enrollment period.
- 4) You testified NYSOH advised you to seek reinstatement through the health plan.
- 5) You testified that upon calling the health plan, they advised you that the issue of not receiving bills or invoices from them was a "common problem." You testified that you were directed to call NYSOH to rectify the situation because they were not able to reinstate you.
- 6) You testified you didn't pay your premiums because you did not receive any premium invoices and, had you received such invoices, you would have paid them because you are accustomed to paying a premium every month.
- 7) You testified that you are older and need health insurance. You are requesting to be granted a special enrollment period so you can enroll in qualified health plan.

- 8) According to your NYSOH account, there have been no changes in your household since the open enrollment period ended on January 31, 2016.
- 9) You confirmed that your household income and size have not changed.

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)).

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”

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(45 CFR § 155.420(e)).

## **Legal Analysis**

The issue under review is whether NYSOH properly denied you a special enrollment period, effective April 6, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. 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.

On December 23, 2015, NYSOH issued an enrollment confirmation notice confirming you were enrolled in a health plan effective February 1, 2016. That notice further stated you must pay your monthly premium to start and keep your coverage.

On February 24, 2016, NYSOH issued a cancellation notice stating that your health insurance was cancelled effective February 1, 2016, because a premium payment had not been received by your health plan. That notice directed you to contact your plan directly if you believed you had made your premium payment.

On April 6, 2016, as confirmed in an April 7, 2016 eligibility determination notice, you were denied a special enrollment period within which to select a qualified health plan for coverage to resume in 2016.

Ordinarily, the loss of health insurance coverage is considered a triggering event. Here, you testified you did not receive any bills or invoices from your health plan and when you advised your health plan of the issue, they responded it was a "common problem." However, your NYSOH account indicates that you did not contact NYSOH until April 6, 2016, two months after coverage was slated to start on February 1, 2016. You further testified that because you did not receive any invoices, you did not pay your premiums monthly premiums for February 2016. Yet, you testified that you were familiar with monthly payment cycles and paid premiums every month to your previous health plan in 2015.

In addition, the record reflects that the December 23, 2015 enrollment notice informed you that you needed to pay your premiums to start coverage and were subsequently notified on February 24, 2016 that you were cancelled due to nonpayment of premium. The record further reflects that you did not contact NYSOH until April 2016, over a month after the cancellation notice was issued. You offered no explanation as to the reason for your delay in doing so. Therefore, it is concluded that the lack of receiving bills or invoices from your

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health plan is outweighed by your failure to take action and make contact with your health plan to make payment at an earlier date.

NYSOH considers the failure to pay premiums a voluntary action, which resulted in your coverage being terminated. Therefore, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis.

Your NYSOH account 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, the April 7, 2016 eligibility determination notice is **AFFIRMED** because NYSOH properly denied your request for a special enrollment period.

## **Decision**

The April 7, 2016 eligibility determination insofar as it stated you were not eligible for a special enrollment period is **AFFIRMED**.

**Effective Date of this Decision:** October 17, 2016

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

You 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)).

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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 7, 2016 eligibility determination insofar as it stated you were not eligible for a special enrollment period is AFFIRMED.

You 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:**

