



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

Notice of Decision

Decision Date: October 27, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008801

[REDACTED]

Dear [REDACTED],

On October 19, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 2, 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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DEPARTMENT OF HEALTH
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Decision

Decision Date: October 27, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008801

[REDACTED]

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 could not change your health plan outside of the open enrollment period for 2016?

Procedural History

On November 20, 2015, NYSOH received your application for health insurance.

On November 22, 2015, NYSOH issued a notice of eligibility determination that stated that you and your spouse were eligible to receive an advance premium tax credit of up to \$382.00 per month.

On December 12, 2015, an enrollment confirmation notice was issued confirming you and your spouse's enrollment in a Silver level qualified health plan starting January 1, 2016.

On February 1, 2016, NYSOH received your updated application for financial assistance.

On February 2, 2016, NYSOH issued a notice of eligibility determination that stated that you are eligible to receive an advance premium tax credit of up to \$382.00 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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On April 11, 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 19, 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) The record indicates that you submitted your initial application for 2016 health insurance coverage on November 20, 2015.
- 2) You testified you had enrolled you and your spouse in a Silver level qualified health plan effective January 1, 2016.
- 3) You testified you did not realize that your cardiologist did not accept the health plan you had selected until you had an office visit in January, 2016.
- 4) You testified you tried contacting NYSOH on the weekend of January 30 and 31, 2016, to see if you could change your health plan to one your cardiologist accepted. You were unable to reach anyone.
- 5) The record shows you contacted a NYSOH representative on February 1, 2016, to request a change in your health plan. This request was denied.
- 6) You testified you have not moved since initially applying for financial assistance.
- 7) You testified that NYSOH did not make any representations to you that turned out to be untrue. You were not aware that your doctor did not accept the new qualified health plan.
- 8) You testified your household size has not changed since initially applying for financial assistance.
- 9) You testified that your income has not changed significantly since applying for financial assistance.
- 10) You reside in Richmond County, NY.

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

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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

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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)).

Legal Analysis

The issue under review is whether NYSOH properly determined that you could not change your health plan outside of the open enrollment period for 2016.

NYSOH provided an open enrollment period from November 1, 2015, until January 31, 2016. The record indicates that you submitted an updated application on February 1, 2016. Therefore, you did not 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.

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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 you tried contacting NYSOH on the weekend of January 30 and 31, 2016, to see if you could change your health plan to one your cardiologist accepted. You were unable to reach anyone that weekend, and decided not to select a health plan on your own online. The record shows you contacted a NYSOH representative on February 1, 2016, to request a change in your health plan. This request was denied.

The record supports that you chose your health plan on December 11, 2015. Although you were not aware that your cardiologist did not accept that health plan, it is not the result of an error or misrepresentation of fact made by NYSOH or one of its instrumentalities.

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 on this basis.

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 February 2, 2016, eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

Decision

The February 2, 2016 eligibility determination is **AFFIRMED**.

Effective Date of this Decision: October 27, 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)

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).

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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P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The February 2, 2016, eligibility determination is AFFIRMED.

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

Legal Authority

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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:

