



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: AP000000008808

[REDACTED]

Dear [REDACTED],

On October 19, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's May 18, 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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DEPARTMENT OF HEALTH
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Decision

Decision Date: October 27, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008808

[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 and your spouse did not qualify for a special enrollment period to enroll in coverage outside of the open enrollment period for 2016, effective May 1, 2016?

Procedural History

On December 11, 2013 an NYSOH account [REDACTED] was created under your spouse's name which included you, your spouse, and your two children. Applications for health insurance coverage in 2014 and 2015 were submitted under this account.

On November 18, 2015 and November 23, 2015, NYSOH received your household's application for health insurance coverage for 2016 in [REDACTED].

On November 24, 2015 NYSOH issued an eligibility determination notice in [REDACTED] stating that you and your spouse were newly conditionally eligible to receive advance premium tax credits and cost-sharing reductions. The notice also advised that you and your spouse needed to select a health plan and that you would receive a written confirmation notice from NYSOH once you have selected a health plan.

On February 1, 11, and 18, 2016, NYSOH received your household's application for health insurance in [REDACTED].

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Eligibility determination notices were issued on February 2, 12, and 19, 2016 finding you and your spouse conditionally eligible to receive advance premium tax credit of up to \$506.00 per month effective March 1, 2016. These notices further stated you qualified to select a health plan outside of the open enrollment period for 2016. You were asked to review your health plan options and confirm your selection no later than April 1, 11, and 18, 2016 in [REDACTED]

On April 7, 2016 an NYSOH account [REDACTED] was created under your name which included you, your spouse, and your two children.

On April 7, 2016, through April 14, 2016, NYSOH received your household's updated applications for financial assistance in [REDACTED]. You also attempted to enroll in a health plan.

On April 8, 2016, NYSOH issued a notice of eligibility determination in [REDACTED] that stated that you and your spouse are eligible to receive an advance premium tax credit of up to \$101.00 per month as well as cost-sharing reductions, effective May 1, 2016. It further stated that you could still get coverage for 2016 if you qualified for a special enrollment period.

On April 11, 2016, you spoke to NYSOH's Account Review Unit and appealed the inability to enroll yourself and your spouse into coverage outside of the open enrollment period.

On May 18, 2016 NYSOH issued a notice of eligibility determination in [REDACTED] stating in part that your household does not qualify to select a qualified 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. During your hearing you testified you are only seeking to appeal you and your spouse's denial of a special enrollment period, and not your children's enrollment. 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) You testified you are seeking insurance for you and your spouse only.
- 2) You testified that you used the aid of a Broker to file your application and enroll your household in coverage for 2016.

- 3) The record supports an individual with the screen name of [REDACTED] submitted an application for your household on November 18, 2015 and November 23, 2015 under [REDACTED].
- 4) You testified that your Broker made an error when selecting a health plan and did not select the “confirm” button twice upon selecting the plans in November 2015.
- 5) A new account was created for your household under your name and your old account was deactivated on April 11, 2016 [REDACTED].
- 6) On April 11, 2016 an incident was filed stating “Consumer was previously on his own account with his wife and showing duplicate coverage as his ineligible program reason.” [REDACTED].
- 7) On May 19, 2016, an incident was filed in which NYSOH representatives denied your request for a special enrollment period as on June 13, 2016, your account was reviewed and no evidence of a qualifying event was determined [REDACTED].

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:

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- (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)).

Legal Analysis

The issue under review is whether NYSOH properly denied you and your spouse 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 November 24, 2015. No enrollments were submitted at that time. 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.

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 NYSOH.

The credible evidence of record indicates that in November 2015, when applying for coverage for 2016, you used the aid of a Broker to file your application and enroll your household in coverage for 2016. The record supports an individual with the screen name of [REDACTED] submitted an application for your household on November 23, 2015 which was your Broker's screen name.

During your telephone hearing you explained that your Broker made an error when selecting a health plan for your household, and did not select the "confirm" button twice for the health plans you and your spouse had selected.

Since you and your spouse's non-enrollment in a qualified health plan was unintentional and the result of an error made by a broker for NYSOH, you should have qualified for a Special Enrollment Period.

Therefore, NYSOH's May 18, 2016 eligibility determination notice that you do not qualify to select a health plan outside of the open enrollment period for 2016 is

MODIFIED to reflect that you and your spouse are 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 May 18, 2016 eligibility determination notice is MODIFIED to reflect that you and your spouse 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 into a plan for 2016 health coverage.

Effective Date of this Decision: October 27, 2016

How this Decision Affects Your Eligibility

You qualify for a special enrollment period.

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).

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

Summary

The May 18, 2016 eligibility determination notice is MODIFIED to reflect that you and your spouse are eligible for a special enrollment period until 60 days from the date of this decision.

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Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage.

You qualify 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:

