



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

## Notice of Decision

Decision Date: December 2, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000008814

[REDACTED]

Dear [REDACTED],

On October 19, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's April 12, 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).

This page intentionally left blank.



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

## Decision

Decision Date: December 2, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000008814



## Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did NY State of Health (NYSOH) properly disenroll you from your qualified health plan for non-payment of premium effective March 1, 2016?

Did NYSOH properly determine that you did not qualify to select a health plan outside of the open enrollment period for 2016 as of April 12, 2016?

## Procedural History

On February 25, 2016, NYSOH received your application for health insurance.

On February 26, 2016, NYSOH issued a notice of eligibility determination that stated you were eligible to receive an advance premium tax credit of up to \$46.00 per month and qualified to select a health plan outside of the open enrollment period for 2016. The notice stated you needed to make and confirm your health plan selection no later than March 1, 2016.

Also on February 26, 2016, NYSOH issued an enrollment notice confirming your enrollment in a bronze-level qualified health plan effective March 1, 2016.

On March 19, 2016, NYSOH issued a cancellation notice stating your coverage with your bronze-level qualified health plan was cancelled as of its inception, effective March 1, 2016. The reason stated was because a premium payment was not received by your plan within the required timeframe. The notice also

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).

stated that if you believe you made your premium payment within the required timeframe that you should contact your plan directly.

On April 11, 2016, you spoke to NYSOH's Account Review Unit and requested an appeal as to your eligibility to select a health plan outside of the open enrollment period for 2016.

On April 12, 2016, NYSOH issued a notice of eligibility determination notice stating that you were eligible to receive advance payments of the premium tax credit (APTC), but did not qualify to select a health plan outside of the open enrollment period for 2016. That same notice stated you had requested help with paying medical bills for three month period prior to your application and that a separate notice regarding your request would be sent.

Also on April 12, 2016, NYSOH issued an eligibility determination notice that denied your request for help with paying medical bills for the period of January 1, 2016 through March 31, 2016. This was because the program you are eligible for cannot pay for any care you received in the past.

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) According to your NYSOH account and your testimony, on February 25, 2016, you enrolled in a bronze-level qualified health plan with a premium of \$278.45 per month and a plan enrollment start date of March 1, 2016.
- 2) You testified that the invoice for the initial monthly premium payment arrived late in the mail. You testified that the invoice stated it was due no later than March 13, 2016, which was a Sunday.
- 3) You testified that you paid the initial premium on Monday, March 14, 2016.
- 4) You testified that you called your bronze-level plan and were initially told by a representative that the March 14, 2016 payment was "fine."
- 5) You further testified that, when you later contacted the bronze-level plan, you were told by a representative that the payment was late and you were ineligible for health insurance with the plan.

- 6) You testified that you kept paying the monthly premium but the plan refunded all your payments back to you.
- 7) You testified during the hearing that you feel you are being unfairly punished by not being allowed to obtain health insurance coverage and that you are concerned about incurring a tax penalty as a result of being without coverage.
- 8) According to your NYSOH account and your testimony, you live in a household of one person and file your taxes as single.
- 9) You testified that you reside in Kings County and have not moved since applying for health insurance through NYSOH.
- 10) You testified that you lost your full-time employment in July 2016 and as a result your income decreased significantly.

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)).

### Special Enrollment Period – Voluntary Termination

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 first issue under review is whether NYSOH properly cancelled your qualified health plan for non-payment of premium, effective March 1, 2016, due to nonpayment of the initial monthly premium.

NYSOH issued a cancellation notice dated March 19, 2016, which stated your insurance with your bronze-level qualified health plan was cancelled effective March 1, 2016, as a premium payment was not received by your health plan issuer within the required timeframe in order for coverage to begin. This issue relates to payment of premiums to qualified health plan issuer, which is not an issue that the NY State of Health Appeals Unit is authorized to address. Therefore, your appeal as it relates to the March 19, 2016 cancellation notice is **DISMISSED**.

The second issue under review is whether NYSOH properly denied you 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).

According to your NYSOH account, on February 26, 2016, NYSOH issued a notice of eligibility determination that stated you were eligible to receive APTC of up to \$46.00 per month and qualified to select a health plan outside of the open enrollment period for 2016. The corresponding enrollment notice of that date confirmed your enrollment in a bronze-level qualified health plan effective March 1, 2016.

The record reflects that your bronze-level qualified health plan was cancelled at the request of the plan because the initial premium payment had not been received within the required timeframe to begin coverage. NYSOH issued the cancellation notice on March 19, 2016, with an effective date of March 1, 2016. After your cancellation for non-payment of premium effective March 1, 2016, you contacted NYSOH on April 12, 2016, to request a special 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.

Here, your enrollment was terminated effective March 1, 2016, the date of its intended inception, because your qualified health plan did not receive the initial premium payment within the required timeframe to begin coverage. In these circumstances, NYSOH considers your failure to make a timely premium payment to be a voluntary action causing the termination of your coverage. As such, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis.

You testified that you lost your employment in July 2016 and your income substantially decreased. A substantial change in your income could change your eligibility for the type of health insurance you qualified for and, therefore, would be considered a triggering event.

When a triggering life event occurs, the qualified individual is required to notify NYSOH within 30 days of the event and, if granted a special enrollment based on a qualifying life event, has sixty days from the date of that event to select a qualified health plan. The record reflects that you did not notify NYSOH that you lost your employment and experienced a decrease in income within 30 days of that event.

According to your NYSOH account, you have not updated your application since April 11, 2016. Absent notice of any changes in your employment and income status in July 2016, NYSOH was not aware of any changes in order to evaluate whether it needed to redetermine your eligibility for financial assistance.



As such, 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 12, 2016 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

The record indicates that NYSOH's denial of 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 **and** your appeal was eventually successful.

If you choose to proceed, 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**

Your appeal on the issue of disenrollment for non-payment of premium as described in the March 19, 2016, disenrollment notice is **DISMISSED**.

The April 12, 2016 eligibility determination is **AFFIRMED**.

**Effective Date of this Decision:** December 2, 2016

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

You did not qualify for a special enrollment period in April 2016 and 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)).

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**

Your appeal on the issue of disenrollment for non-payment of premium as described in the March 19, 2016, disenrollment notice is **DISMISSED**.

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).

The April 12, 2016 eligibility determination is AFFIRMED.

You did not qualify for a special enrollment period in April 2016 and 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:**

