



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

Notice of Decision

Decision Date: November 1, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008885

[REDACTED]

Dear [REDACTED]

On October 24, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's denial of a Special Enrollment Period (SEP).

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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Decision

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NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008885



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 qualified health plan (QHP) for 2016 outside of the 2016 open enrollment period?

Procedural History

On December 15, 2015, NYSOH received your updated application for health insurance.

On December 16, 2015, NYSOH issued a notice of eligibility determination that stated that you were eligible to receive advance payments of the premium tax credit (APTC) of up to \$96.00 per month, effective January 1, 2016.

Also on December 15, 2015, NYSOH issued a notice of enrollment confirmation confirming your enrollment in a silver level QHP, effective January 1, 2016.

On January 13, 2016, your NYSOH enrollment was updated.

On January 14, 2016, NYSOH issued a notice of enrollment confirmation confirming your enrollment in your silver level QHP, effective January 1, 2016.

On February 3, 2016, NYSOH issued a cancellation notice stating that your enrollment in your silver level QHP was cancelled effective January 1, 2016 because a premium payment had not been received by your health plan.

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On March 2, 2016, you updated your NYSOH account.

On March 3, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to receive up to \$96.00 per month in APTC, effective April 1, 2016. The notice also stated that you did not qualify to select a health plan outside of the open enrollment period for 2016.

On March 14, 2016, you updated your NYSOH account.

On March 15, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to receive up to \$96.00 per month in APTC, effective April 1, 2016. The notice also stated that you qualified to select a health plan outside of the 2016 open enrollment period, and that you had until May 29, 2016 to select a health plan for enrollment.

On April 13, 2016, you spoke to NYSOH's Account Review Unit and appealed the fact that you had been unable to select a health plan outside of the 2016 open enrollment period.

On October 24, 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 15, 2015.
- 2) You testified that you received an invoice from your QHP with a deadline for the payment of your January 2016 premium.
- 3) You testified that you had only \$200.00 in your bank account, and were unable to pay the premium by the date on which it was due.
- 4) You testified that you contacted your health plan in January 2016 after the premium due date, and were informed that you could not make a payment and they could not reinstate you.
- 5) You testified that your health plan advised you that all you needed to do was contact NYSOH and sign up for coverage again.

- 6) You testified that you went online in mid-January 2016 and reapplied for coverage.
- 7) The “Events” tab in your online NYSOH account reflects that someone with the username [REDACTED] updated your enrollment on January 13, 2016.
- 8) You testified that you did not hear anything back from NYSOH after you signed up again, so you logged into your NYSOH account and saw the February cancellation notice.
- 9) You stated that you do not understand why your January 2016 application was not processed and you were not re-enrolled into coverage.
- 10) You testified that you contacted NYSOH several times from January 2016 to the date you filed an appeal.
- 11) You testified that a NYSOH representative told you that you needed to appeal through your health plan.
- 12) You testified that your health plan told you that you could not file an appeal through them.
- 13) You testified that you did not receive the March 15, 2016 notice stating that you had been granted an SEP and that you had until May 29, 2016 to select a health plan.
- 14) You testified that you tried to enroll in coverage in April 2016 by speaking with a NYSOH representative on the phone, but were told that you could not enroll because it was outside of open enrollment, so you filed an appeal.
- 15) You testified that, at this point, you are not looking to enroll in coverage as you have coverage outside of NYSOH, but are appealing because you do not want this to happen again in the future.

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

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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 (155.405), 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 SEP's to qualified individuals. During a SEP, 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)).

Legal Analysis

The issue under review is whether NYSOH properly denied your request to enroll in coverage outside of the open enrollment period.

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 15, 2015. Therefore, you did complete your application during the open enrollment period.

However, the record reflects that your enrollment was terminated effective January 1, 2016 for nonpayment of premiums. You testified that you missed the

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deadline for the payment of January's premiums, and tried to contact both NYSOH and your health plan to be reinstated.

The New York State of Health Appeals Unit only has the authority to review issues related to the following: (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, and (5) a denial of a for a special enrollment period.

Since the Appeals Unit is not given the authority to review termination of enrollment due to non-payment of premiums, we cannot reach the merits as to whether or not you were properly terminated from your health plan for nonpayment of premiums. Likewise, we lack the authority to make a determination that you should be placed back into the coverage that was terminated for nonpayment of premiums.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a SEP in order to enroll in, or change to another health plan offered in NYSOH. In order to qualify for a SEP, a person must experience a triggering event.

For reasons that are unclear from the record, NYSOH granted you a SEP in its March 15, 2016 eligibility determination notice. This notice stated that you had until May 29, 2016 to select a health plan for enrollment.

You testified that you did not receive this notice, but that you nevertheless attempted to enroll in a plan in April 2016, which was within the SEP granted by the March 15, 2016 eligibility determination, and were told that you could not enroll. You testified that this is why you requested an appeal, and the record reflects that you requested your appeal on April 13, 2016.

Therefore, since you were granted a SEP on March 15, 2016 that did not expire until May 29, 2016, NYSOH's refusal to enroll you in a health plan in April 2016 was not correct.

Your case is RETURNED to NYSOH so that you may enroll in a QHP for 2016, beginning as early as June 1, 2016. You have 60 days from the date of this decision to enroll in a plan.

You are responsible for any premiums that you incur, after the application of your APTC, should you choose to enroll in a health plan.

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Decision

You were eligible to enroll in coverage outside of the 2016 open enrollment period for a period of time from March 15, 2016 through May 29, 2016.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage, beginning as early as June 1, 2016, should you decide you wish to enroll in coverage.

Effective Date of this Decision: November 1, 2016

How this Decision Affects Your Eligibility

You qualify for a special enrollment period, pursuant to an eligibility determination notice issued by NYSOH on March 15, 2016.

You have 60 days from the date of this decision to enroll into a plan, and may choose to have coverage begin as early as June 1, 2016.

You will be responsible for any premiums you incur, after the application of your APTC, should you choose to enroll in a health 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.

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If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

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Summary

You were eligible to enroll in coverage outside of the 2016 open enrollment period for a period of time from March 15, 2016 through May 29, 2016.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage, beginning as early as June 1, 2016, should you decide you wish to enroll in coverage.

You qualify for a special enrollment period, pursuant to an eligibility determination notice issued by NYSOH on March 15, 2016.

You have 60 days from the date of this decision to enroll into a plan, and may choose to have coverage begin as early as June 1, 2016.

You will be responsible for any premiums you incur, after the application of your APTC, should you choose to enroll in a health plan.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:

