



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

## Notice of Decision

Decision Date: November 30, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000008915



Dear [REDACTED],

On October 27, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's April 16, 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: November 30, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000008915



## 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 to select a health plan outside of the open enrollment period as of April 16, 2016?

## Procedural History

On April 15, 2016, you and your spouse applied for health insurance through NYSOH. NYSOH rendered a preliminary eligibility determination that you and your spouse were eligible to enroll a qualified health plan at full cost.

Also on April 15, 2016, you spoke to NYSOH's Account Review Unit and requested an appeal insofar as your and your spouse's eligibility to select a health plan outside of the open enrollment period.

On April 16, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible to purchase a qualified health plan at full cost through NYSOH effective as of May 1, 2016. The notice also stated that you and your spouse did not qualify to select a health plan outside of the open enrollment period for 2016.

On April 19, 2016, you uploaded additional documentation to your NYSOH account ([REDACTED]).

On October 27, 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 proceeding. The record is complete and closed.

## **Findings of Fact**

A review of the record support the following findings of fact:

- 1) You testified that you are seeking to enroll you and your spouse in coverage through NYSOH.
- 2) You testified that you and your spouse moved from Connecticut to New York in September 2015.
- 3) You testified that you and your spouse were enrolled in a HealthyCT health plan while living in Connecticut.
- 4) You testified that you paid your health insurance premiums to HealthyCT for the months of January, February and March 2016.
- 5) On March 11, 2016, you were reimbursed \$1,789.84 for your HealthyCT March 2016 health insurance premium [REDACTED].
- 6) You testified that you first found out that your HealthyCT plan was cancelled when you received reimbursement for your March 2016 premium.
- 7) On April 4, 2016, you received a check from HealthyCT reimbursing you for your January and February 2016 health insurance premiums [REDACTED]).
- 8) You testified that you contacted HealthyCT and was informed that you and your spouse's health plan had been cancelled because you were no longer residents of Connecticut.
- 9) On April 13, 2016, HealthyCT emailed you a Certificate of Coverage stating that your and your spouse's coverage ended December 31, 2015 [REDACTED]).
- 10) You testified that you first found out that your and your spouse's HealthyCT coverage had ended on December 31, 2015, upon receiving the email on April 13, 2016.
- 11) You initially applied for health insurance coverage through NYSOH on April 15, 2016.

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 (QHP)

The NYSOH must provide annual open enrollment periods during which time qualified individuals may enroll in a 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 Period (SEP)

After each open enrollment period ends, the 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)).

#### SEP-Misinformation, Misrepresentation and Inaction

CMS has defined misinformation, misrepresentation, or inaction to include misconduct by individuals or entities providing formal enrollment assistance (like an insurance company, Navigator, certified application counselor, Call Center Representative, or agent or broker) resulting in one of the following: (1) A failure to enroll the consumer in a plan; (2) Consumers being enrolled in the wrong plan against their wish; or (3) The consumer not receiving advance premium tax credits or cost-sharing reductions (Guidance for Issuers on Special Enrollment Periods for Complex Cases in after the Initial Open Enrollment Period, Affordable Exchange Guidance, Department of Health & Human Services, CMS, dated March 26, 2014, as retrieved on November 1, 2016

at: <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/complex-cases-SEP-3-26-2014.pdf>

#### Length of 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).

As a general rule, a qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP (45 CFR §155.420(c)(1)). A qualified individual or their dependent, who loses health insurance that is considered to be minimum essential coverage, has 60 days before or after the loss of coverage to select a QHP (45 CFR §155.420(c)(2)).

## **Legal Analysis**

The issue under review is whether the NYSOH properly denied you and your spouse a special enrollment period as of April 16, 2016.

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

Once the annual open enrollment period ends, an applicant must qualify for a special enrollment period in order to enroll in health insurance coverage offered by 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 the NYSOH.

The record reflects that you and your spouse were enrolled in a HealthyCT health plan while residing in Connecticut. You and your spouse relocated to New York in September 2015 and continued to pay your health insurance premiums to HealthyCT for the months of January, February and March 2016. However, you did not find out that your HealthyCT plan was cancelled until March 11, 2016, when you received a reimbursement check for your March 2016 premium.

The record reflects you contacted HealthyCT and was informed that you and your spouse's health plan had been cancelled because you were no longer residents of Connecticut. On April 13, 2016, you found out that your and your spouse's plan had been cancelled on December 31, 2015, when you received a Certificate of Coverage from HealthyCT. You and your spouse were never enrolled in health insurance coverage through NYSOH because you were not aware that your HealthyCT plan had been cancelled.

In order to be eligible for a special enrollment period based on error, misrepresentation, or inaction, the activities must have been done by an officer, employee, agent or instrumentality of NYSOH. HealthyCT has no affiliation with NYSOH, and is therefore, not an instrumentality of NYSOH.

A qualified individual or their dependent, who loses health insurance that is considered to be minimum essential coverage, has 60 days before or after the loss of coverage to select a QHP.

The record supports that your and your spouse's HealthyCT plan was cancelled December 31, 2015. Losing your health insurance coverage as of December 31, 2015 was the triggering event that qualified you and your spouse for a 60-day special enrollment period. The 60-day special enrollment period began on December 31, 2015, and expired on February 29, 2016. The record reflects that you and your spouse first applied through NYSOH on April 15, 2016. Therefore, you did not apply within the 60-day special enrollment period.

The record supports that you and your spouse did not qualify to enroll in a health plan as of April 16, 2016.

## **Decision**

The April 16, 2016, eligibility determination insofar as stating that you and your spouse were not eligible for a special enrollment period is **AFFIRMED**.

**Effective Date of this Decision:** November 30, 2016

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

You and your spouse do not qualify for a special enrollment period to enroll in a qualified health plan 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 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).



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 16, 2016, eligibility determination insofar as stating that you and your spouse were not eligible for a special enrollment period is **AFFIRMED**.

You and your spouse do not qualify for a special enrollment period to enroll in a qualified health plan 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:**

