



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: AP000000009013

[REDACTED]

Dear [REDACTED],

On November 3, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's April 8, 9, and 12, 2016, eligibility determination notices.

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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
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Decision

Decision Date: November 30, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009013

[REDACTED]

Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NYSOH properly determine that you did not qualify to select a different health plan outside of the open enrollment period for 2016, effective May 1, 2016?

Procedural History

On December 10, 2015, NYSOH received your application for financial assistance.

On December 11, 2015, an eligibility determination notice was issued finding you eligible to enroll in the Essential Plan for a limited time effective January 1, 2016. You were asked to provide income documentation proving your income before March 9, 2016. This eligibility was based on your attested household income of \$22,880.00, and was effective January 1, 2016.

Also on December 11, 2015, an enrollment confirmation notice was issued confirming your enrollment in the Essential Plan on December 10, 2016. The notice stated your enrollment would begin January 1, 2016 as long as you paid your first month's premium.

On January 30, 2016, NYSOH received your updated application for health insurance.

On January 31, 2016, NYSOH issued a notice of eligibility determination that stated that you are eligible to enroll in the Essential Plan for a limited time. You

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were asked to provide income documentation proving your income before April 29, 2016. This eligibility was based on your attested household income of \$22,880.00, and was effective March 1, 2016.

On March 16, 2016, a disenrollment notice was issued terminating your enrollment in your Essential Plan effective January 31, 2016. The notice stated this was because a premium payment was not received by your health plan.

On March 29, 2016, NYSOH received your updated application and your request to enroll into a qualified health plan.

On March 30, 2016, an eligibility determination notice was issued finding you eligible to receive advance premium tax credits up to \$144.00 per month effective May 1, 2016. The notice further stated you qualified to select a health plan outside of the open enrollment period for 2016. The determination was based on your attested household income of \$31,175.00. The notice explained you qualified to select a health plan outside of open enrollment, you would need to confirm your selection no later than May 28, 2016.

Also on March 30, 2016, an enrollment confirmation notice was issued confirming your enrollment in your Silver level qualified health plan starting March 1, 2016.

On April 2, 2016, a cancellation notice was issued stating your Silver level qualified health plan was terminated effective March 1, 2016. The notice stated this was because a premium payment had not been received by your health plan.

On April 8, 9, and 12, 2016, NYSOH issued eligibility determination notices based your updated applications finding you eligible to receive advance premium tax credits up to \$144.00 per month effective May 1, 2016. The notices further stated you did not qualify to select a health plan outside of the open enrollment period for 2016. The determination was based on your attested household income of \$31,175.00.

On April 20, 2016, you spoke to NYSOH's Account Review Unit and appealed those eligibility determinations insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On November 3, 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) You are seeking insurance for yourself for 2016.
- 2) The record indicates that you submitted your initial application for 2016 health insurance coverage on December 10, 2015.
- 3) You testified, and the record reflects you lost your health insurance in the Essential Plan for non-payment of premium effective January 31, 2016.
- 4) On March 29, 2016, NYSOH granted you a special enrollment period to enroll in coverage, but you would have to make a selection no later than May 28, 2016.
- 5) The record supports you enrolled in a Silver level health plan on March 29, 2016.
- 6) The record reflects you were disenrolled from your Silver level qualified health plan for non-payment of premium effective March 1, 2016.
- 7) You testified you were informed by a NYSOH representative that you had until April 15th, to select a new health plan.
- 8) You testified you paid your premium payment for March, and April, 2016 to your silver level health plan.
- 9) The record supports you attempted to reenroll in a qualified health plan on April 7, 8, and 11, 2016.
- 10) You testified that you are concerned about receiving a tax penalty as a result of being without coverage.

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)).

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The effective date of coverage by a qualified health plan is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment, NYSOH must generally ensure that coverage is effective the first day of the following month for selections received by NYSOH from the first to the fifteenth of any month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(i)). For selections received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(ii)).

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)).

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 issue under review is whether NYSOH properly denied you 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 initially enrolled in an Essential Plan effective January 1, 2016.

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.

On March 29, 2016 you submitted an updated application for health insurance to NYSOH and selected a plan for enrollment. On March 30, 2016 a notice was issued stating that you qualified for a special enrollment period and that you had to confirm your selection of a health plan no later than May 28, 2016.

The date on which a qualified health plan can take effect depends on the day a person selects the plan for enrollment. A plan that is selected after the fifteenth day of a month goes into effect on the first day of the next following month. Since you selected a plan on March 29, 2016, that plan should not have begun until May 1, 2016. However, the record indicates that NYSOH system made the effective date of your plan selection March 1, 2016.

On April 2, 2016, a cancellation notice was issued stating your Silver level qualified health plan was terminated effective March 1, 2016. The notice stated this was because a premium payment had not been received by your health plan.

You then contacted NYSOH on April 7, 8, and 11, 2016 to reenroll into a health plan but you were denied because NYSOH stated that you did not qualify for a special enrollment period.

A special enrollment period can be granted to an enrollee 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 March 30, 2016 notice further provided you a special enrollment period of 60 days to select and confirm a qualified health plan by May 28, 2016. Although you did select a plan that day, you were subsequently disenrolled and you attempted to select another plan on April 7, 8, and 11th, but were denied.

Since the March 30, 2016, determination notice stated you had until May 28, 2016 to select and confirm a qualified health plan, NYSOH had to honor this granting of a special enrollment period until May 28, 2016. It was in error that you were not allowed to select a plan on April 7, 8, and 11th. Further, it was an error by NYSOH to even allow your plan to begin prior to March 1, 2016.

Therefore, NYSOH's April 8, 9, and 12, 2016, eligibility determination notices stating you do not qualify to select a health plan outside of the open enrollment period for 2016 are MODIFIED to reflect that you 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 April 8, 9, and 12, 2016, eligibility determination notices are MODIFIED to reflect that you 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 health coverage.

Effective Date of this Decision: November 30, 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

ESummary

The April 8, 9, and 12, 2016, eligibility determination notices are MODIFIED to reflect that you 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 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:

