



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

Notice of Decision

Decision Date: November 28, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009014

[REDACTED]

Dear [REDACTED],

On November 7, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's April 28, 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).

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NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009014



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 select a new qualified health plan (QHP) outside of the 2016 open enrollment period?

Procedural History

On December 30, 2015, NYSOH received your updated application for health insurance.

On December 31, 2015, NYSOH issued a notice of eligibility determination that stated that you were eligible to receive an advance premium tax credit (APTC) of up to \$178.00 per month, and eligible to receive cost-sharing reductions, effective February 1, 2016.

Also on December 31, 2015, NYSOH issued a notice of enrollment confirmation confirming your enrollment in an individual Empire Blue Cross Blue Shield platinum QHP, effective January 1, 2016. The notice also stated that your APTC would be applied to your monthly premium effective January 1, 2016.

On April 20, 2016, you spoke to NYSOH's Account Review Unit and appealed NYSOH's verbal denial of your request to select a new QHP outside of the 2016 open enrollment period.

On April 28, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to receive up to \$178.00 per month in APTC, and eligible for

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cost-sharing reductions, effective June 1, 2016. The notice also stated that you were not eligible to select a QHP outside of the 2016 open enrollment period.

On November 7, 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) Your NYSOH account indicates that you updated your application for 2016 health insurance coverage on December 30, 2015.
- 2) You testified that you updated your account over the phone with a NYSOH representative.
- 3) You testified that you went over your medical history with the representative and reviewed the health plans that were available.
- 4) You testified that the NYSOH representative told you that the platinum plan you selected was the best option for the coverage you were looking for.
- 5) You testified that your insurance card says "Pathway X" on the bottom of it, and that when you went for a [REDACTED], you were told by your provider that they accept Empire Blue Cross Blue Shield, but not "Pathway" plans.
- 6) You testified that the NYSOH representative you spoke with on December 30, 2015 did not mention anything about a "Pathway" plan.
- 7) You testified that you did not know until April 2016 that your providers did not accept your coverage.
- 8) You testified that you want to switch to a new plan, and that you want to have the change made retroactively.
- 9) After the hearing, the Hearing Officer requested the recording of your phone call with a NYSOH representative on December 30, 2015. The following findings of fact are based on that phone call:
 - a. The representative updated your NYSOH account for the 2016 coverage year, and asked you what plan you wanted to enroll in;

- b. There was no discussion of your medical history during the phone call;
- c. There was no review of the plans that were available to you;
- d. You informed the NYSOH representative that you would just stay with the same plan you were enrolled in at the time, as you were not sure what plans your providers participated in;
- e. You asked the NYSOH representative if you could change plans if necessary, and she told you that you could change your plan before January 15, 2016 to have coverage effective February 1, 2016;
- f. The NYSOH representative offered to go over the Empire platinum plan with you if you wanted her to, and you stated that you did not want to do so at that time;
- g. The NYSOH representative informed you of the new premium amount for your Empire platinum plan, and what your payment would be after the application of your APTC.

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 (SEP) 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 you a SEP.

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 30, 2015. Therefore, you did complete your application during the open enrollment period.

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.

A SEP 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.

You testified that you the NYSOH agent you spoke with on December 30, 2015 did not explain that you would be in a "Pathway" plan, and that the agent recommended that you choose the Empire platinum plan in which you are enrolled. You testified that you need to be able to change to a new plan because your providers do not accept "Pathway" plans.

However, a review of the phone recording of your conversation with the NYSOH agent on December 30, 2015 showed that you did not discuss what plans were available to you, and that you informed the agent that you would remain in your Empire platinum plan for the time being. Further, you declined to have the agent review the plan features with you after she offered to do so. Lastly, the recording shows that the NYSOH agent did correctly inform you that you needed to make any change to your plan selection by January 15, 2016 in order to have coverage effective on February 1, 2016. Since the record does not indicate that NYSOH, by action or inaction, made an error or misrepresented information, a SEP cannot be granted to allow you to select a new health plan.

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 SEP.

Therefore, NYSOH's April 28, 2016 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

Decision

The April 28, 2016 eligibility determination is **AFFIRMED**.

Effective Date of this Decision: November 28, 2016

How this Decision Affects Your Eligibility

You do not qualify for a SEP 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
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- By fax: 1-855-900-5557

Summary

The April 28, 2016 eligibility determination is AFFIRMED.

You do not qualify for a SEP 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:

