



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

Notice of Decision

Decision Date: November 25, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009148

[REDACTED]

[REDACTED]

Dear [REDACTED],

On November 17, 2016, you and your representative appeared by telephone at a hearing on your appeal of NY State of Health's March 11, 2016 disenrollment notice and April 28, 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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NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009148

[REDACTED]

[REDACTED]

Issue

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

Did NY State of Health (NYSOH) properly disenroll you from your catastrophic health plan for non-payment of premium effective January 31, 2016?

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

Procedural History

On October 22, 2015, a renewal notice was issued stating that you have been re-enrolled in your current health plan for another year and you do not have to do anything more.

On November 25, 2015, an enrollment confirmation notice was issued confirming your enrollment in a catastrophic level health plan starting January 1, 2016.

On March 11, 2016, a disenrollment notice was issued terminating your enrollment in your catastrophic level health plan for non-payment of premium effective January 31, 2016.

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On April 25, 2016, you contacted NYSOH's Account Review Unit and appealed a determination from NYSOH insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On April 28, 2016, an eligibility determination was issued finding you eligible to purchase a qualified health plan at full cost effective January 1, 2016. The notice further stated you did not qualify to select a health plan outside of the open enrollment period for 2016.

On November 17, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Your authorized representative was appointed and appeared on the record during the hearing. The record was developed during the hearing and closed at the end of the proceeding.

Findings of Fact

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

- 1) You are seeking insurance for yourself.
- 2) You testified you are concerned about receiving a tax penalty for 2016.
- 3) The record indicates that you enrolled in a catastrophic health plan on November 16, 2015.
- 4) You testified that you believed you were signed up for automatic payments.
- 5) You testified you believed your premium payment was deducted from your bank account.
- 6) The record supports that you contacted a NYSOH representative on April 25, 2016 to try and enroll in a qualified health plan, but were denied.
- 7) You testified that your household has not changed since initially applying for health insurance.
- 8) You testified you have not moved since initially applying for health insurance.

- 9) You testified that your income has not changed significantly since initially applying for health insurance.
- 10) You testified that NYSOH did not make any representations to you that turned out to be untrue in regards to your enrollment with your health plan.
- 11) You reside in New York County.

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:

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- (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 first issue presented for review is whether NYSOH properly disenrolled you from your catastrophic qualified health plan for non-payment of premium effective January 31, 2016.

On November 25, 2015, an enrollment confirmation notice was issued confirming your enrollment in a catastrophic level health plan starting January 1, 2016.

You testified that you believed you were signed up for automatic payments and you believed your premium payment was deducted from your bank account.

However, NYSOH issued a disenrollment notice dated March 11, 2016, which stated your insurance with your catastrophic health plan was terminated effective January 31, 2016, as a premium payment was not received by your health plan issuer. This relates to payment of premiums to qualified health plan issuers 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 11, 2016 disenrollment notice is **DISMISSED**.

The second issue under review is whether NYSOH properly denied you a special enrollment period.

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

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After your disenrollment for non-payment of premium effective February 29, 2016, you attempted you contacted a NYSOH representative on April 25, 2016 to try and reenroll in a qualified health plan.

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.

Loss of health insurance deemed to be minimum essential coverage can be considered a triggering life event. However, a loss of health insurance coverage such as described by federal regulation does not include voluntary termination of coverage or other loss due failure to pay premiums on a timely basis.

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.

During your telephone hearing you were asked if NYSOH made any representations to you that turned out to be untrue regarding your health plan and enrollment. You answered that there were no such misrepresentation's provided to you by your health plan or NYSOH.

Since the record does not indicate that NYSOH, by action or inaction, made an error or misrepresented information with relation to your enrollment or non-enrollment in your catastrophic health plan, a special enrollment period cannot be granted on this basis.

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 28, 2016, eligibility determination notice, finding that you do not qualify to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

Decision

Your appeal on the issue of disenrollment for non-payment of premium as described in the March 11, 2016, disenrollment notice is DISMISSED.

The April 28, 2016, eligibility determination is AFFIRMED.

Effective Date of this Decision: November 25, 2016

How this Decision Affects Your Eligibility

You do not qualify for a special enrollment period at this time.

You may re-apply to NYSOH for coverage during the open enrollment period for 2017.

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:

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- By fax: 1-855-900-5557

Summary

Your appeal on the issue of disenrollment for non-payment of premium as described in the March 11, 2016, disenrollment notice is **DISMISSED**.

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

You do not qualify for a special enrollment period at this time.

You may re-apply to NYSOH for coverage during the open enrollment period for 2017.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

[REDACTED]

[REDACTED]