



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: AP000000009185

[REDACTED]

Dear [REDACTED],

On November 8, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's April 26, 2016 denial of a special enrollment period.

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: AP000000009185

[REDACTED]

## Issue

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

Can the Appeals Unit of NY State of Health consider your appeal regarding the cancellation of your qualified health plan coverage, effective February 1, 2016, because of non-payment of premiums?

Did NY State of Health (NYSOH) properly determine that you and your spouse were not eligible for a special enrollment period outside the open enrollment period as of April 26, 2016?

## Procedural History

On January 5, 2016, NYSOH issued an enrollment notice confirming in part that you and your spouse were enrolled in a Qualified Health Plan with an enrollment start date of February 1, 2016. That notice also stated you must pay your monthly premium to start and keep your coverage.

On February 24, 2016, NYSOH issued a cancellation notice stating your and your spouse's health insurance with your qualified health plan was cancelled effective February 1, 2016, because a premium payment had not been received by the plan. That notice directed you to contact your plan directly if you believed you made your premium payment.

On March 17, 2016, NYSOH received your application for health insurance.

On March 19, 2016, NYSOH issued an eligibility determination that stated, based on your March 17, 2016 application, you and your spouse were conditionally eligible to receive advance premium tax credits. That notice also stated that you can still get coverage for 2016 if you qualify for a special enrollment period.

On April 26, 2016, you contacted NYSOH and attempted to enroll in a qualified health plan but were verbally denied.

Also on April 26, 2016, you spoke to NYSOH's Account Review Unit and requested an appeal insofar as you and your spouse were not eligible to enroll in a qualified health plan outside of the open enrollment period.

On April 27, 2016, NYSOH issued a notice confirming your request for an appeal and the reason for the appeal as being "Unable to re-enroll outside of Open Enrollment Period without a SEP."

On November 8, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was kept open until November 23, 2016 for submission of proof of payment of premium. You did not provide proof of premium payment to your health plan and the record is now closed.

## **Findings of Fact**

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

- 1) You testified that you never received an invoice from your qualified health plan notifying you that a premium payment was due by a date certain.
- 2) You testified that, although you paid your February 2016 premium for that month's coverage in February 2016, you paid too late.
- 3) You further testified that you called the qualified health plan and were told your and your spouse's coverage was cancelled for non-payment of premium because the payment didn't make it in time.
- 4) You testified that the qualified health plan cashed your check and they sent a receipt to you via email. The record was kept open until November 23 2016, to allow you to submit such proof of payment of premiums to your plan, but you did not do so.
- 5) You testified that you had no other option but to buy health insurance outside of NYSOH because of the county you live in and because your qualified health plan refused to re-enroll you and your spouse.

- 6) You testified that there have been no changes in your household since you applied for insurance in March 2016, except that your spouse became pregnant and was enrolled in Medicaid as of August 1, 2016.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

## **Applicable Law and Regulations**

### De Novo Review

The Marketplace Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “De novo review means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

### Appealable Issues

An applicant has the right to appeal: (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 request to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

### 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:
  - (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 under review is whether the Appeals Unit can consider your appeal regarding the cancellation of your enrollment in your qualified health plan, effective February 1, 2016, because of non-payment of premiums.

On February 24, 2016 the Marketplace issued a cancellation notice stating that your coverage in your qualified health plan was terminated effective February 1, 2016 because of non-payment of premiums.

You testified that you did not pay any premiums because you did not receive the invoice from the qualified health plan. You also testified that, despite not receiving any invoices from your health plan, you submitted your premium payment to the health plan for the month of February 2016 that same month and were sent an email receipt of that payment. The record was kept open until November 23, 2016, to allow you time to submit proof of premium payment for the month of February 2016. Since you did not submit the receipt, this fact was not considered.

You further testified that you tried to re-enroll through your health plan, but the health plan denied you.

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 request to vacate dismissal made by the New York State of Health Appeals Unit.

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 and your spouse were properly terminated from your health plan for non-payment of premiums. Therefore, your appeal of the February 24, 2016 cancellation notice is DISMISSED as a non-appealable issue.

The second issue under review is whether NYSOH properly denied you a special enrollment period, effective April 26, 2016.

On March 24, 2016, you spoke with NYSOH's Account Review Unit and requested a special enrollment to select a new qualified health plan. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period. It does contain an April 27, 2016 notice in which NYSOH acknowledges receipt of an appeal request and identifies one of the issues on appeal as "Unable to re-enroll outside of Open Enrollment Period without a SEP."

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the April 27, 2016 notice, which acknowledges the appeal on the issue of special enrollment denial, permits an inference that NYSOH did deny your special enrollment request.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued. Therefore, the issue under review is whether you and your spouse were properly denied a special enrollment period.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016 to enroll in health insurance coverage for 2016. Once the annual open enrollment period ends, health plan enrollees 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.

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).



The record reflects that, on February 24, 2016, NYSOH issued a cancellation notice stating that your and your spouse's health insurance was cancelled effective February 1, 2016, because a premium payment had not been received within the required timeframe by your health plan.

You testified that although you did not receive the invoice from the health plan, you did in fact make the monthly premium payment for February 2016 that same month. However, you also stated and the record reflects that your and your spouse's coverage was cancelled because your payment was too late and the qualified health plan was not willing to reinstate your and your spouse's coverage.

Generally, the loss of health insurance coverage is considered a triggering event. Here, your enrollment was terminated effective February 1, 2016, because you did not pay your premiums to your health plan on time. NYSOH considers the failure to pay premiums a voluntary act causing the termination of coverage; therefore, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis.

Further, 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 26, 2016 denial of a special enrollment period to select a qualified health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

Lastly, you also testified that the qualified health plan has not reimbursed your February 2016 premium payment. This is not an issue that the Appeals Unit can address. However, Fidelis Care may be able to help you with your request for reimbursement of the February 2015 premium that you paid. If you have not already been assisted with your current billing and premium issue, please contact Fidelis Care directly.

In addition, since your issue concerns a health insurer and/or payment, reimbursement, coverage, benefits, rates and/or premiums, you can contact NY Department of Financial Services at their Consumer Hotline at (800) 342-3736 (Monday through Friday, 8:30 AM to 4:30 PM); or locally to (212) 480-6400; or you can file a complaint at <http://www.dfs.ny.gov/consumer/fileacomplaint.htm> 8:00 AM – 8:00 PM.

## **Decision**

Your appeal of the February 24, 2016 disenrollment notice is **DISMISSED** as a non-appealable issue.

NYSOH's April 26, 2016 denial of a special enrollment period to select a qualified health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

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

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

You and your spouse did not qualify for a special enrollment period in April 2016, nor do you alone 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:

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).

- 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**

Your appeal of the February 24, 2016 disenrollment notice is **DISMISSED** as a non-appealable issue.

NYSOH's April 26, 2016 denial of a special enrollment period to select a qualified health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

You and your spouse did not qualify for a special enrollment period in April 2016, nor do you alone 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:**

