



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

Notice of Decision

Decision Date: December 7, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009423

[REDACTED]

Dear [REDACTED],

On November 15, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's May 11, 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]
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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 family could not change your health plan outside of the open enrollment period for 2016?

Procedural History

On December 16, 2015, NYSOH issued an eligibility determination notice that stated that you, your spouse and children were eligible to receive an advance premium tax credit of up to \$561.00 per month.

Also on December 16, 2015, NYSOH issued an enrollment notice confirming that as of December 15, 2015, you, your spouse and children were enrolled in a platinum-level qualified health plan effective January 1, 2016.

On May 5, 2016, your NYSOH account was updated.

Also on May 5, 2016, you spoke to NYSOH's Account Review Unit and requested an appeal insofar as your eligibility to change health plans outside of the open enrollment period.

On May 6, 2016, NYSOH issued an eligibility determination notice that stated that you, your spouse and children were eligible to receive an advance premium tax credit of up to \$494.00 per month.

On May 11, 2016, NYSOH issued an eligibility determination notice, in relevant part, that you, your spouse and children did not qualify to select a health plan outside of the open enrollment period for 2016.

On November 15, 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 testified that you enrolled in an Empire Blue Cross Blue Shield (EBCBS) health plan effective December 1, 2015 after your Health Republic plan was no longer available through NYSOH.
- 2) You testified and your NYSOH account reflects that you, your spouse and children were re-enrolled in the same EBCBS health plan effective January 1, 2016.
- 3) You testified that you researched EBCBS's website before re-enrolling your family in the health plan for 2016, and the website reflected that your cardiologist and dentist participated in that health plan.
- 4) You testified that you contacted EBCBS in December 2015 or January 2016 and was told that your providers participate in the health plan that you selected through NYSOH.
- 5) You testified that you learned from your cardiologist in January 2016 that they did not participate in the EBCBS health plan selected through NYSOH.
- 6) You testified that you found out that your dentist did not participate in the EBCBS health plan in February 2016. You received an invoice for dental services that your daughter received in January 2016.
- 7) You testified that you are seeking to be reimbursed the \$800.00 that you paid out-of-pocket for your daughter's dental services.
- 8) You testified that you contacted NYSOH in March 2016 to change your family's health plan.
- 9) According to the "Appeal Summary," in the Evidence Packet that was created in anticipation of your appeal, on March 8, 2016 you submitted a complaint with NYSOH customer service: "Consumer requesting to

change plans, because she was told by health plan and provider that they participate and they did not" ([REDACTED]

10) You testified that NYSOH did not make any representations to you that turned out to be untrue.

11) You reside in Suffolk County, NY.

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

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)).

Legal Analysis

The issue under review is whether NYSOH properly determined that you could not change your health plan outside of the open enrollment period for 2016.

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NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you and your family enrolled in a QHP on December 15, 2015, and attempted to change your QHP in March 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.

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 researched EBCBS's website before enrolling your family in a health plan for 2016, and the website reflected that your cardiologist and dentist participated in that health plan. Furthermore, an EBCBS representative verbally verified in December 2015 or January 2016 that your providers participated in the health plan that you selected through NYSOH.

The record reflects that you were told by your cardiologist in January 2016 that they did not participate in the EBCBS health plan. Furthermore, you discovered in February 2016 that your dentist did not participate in the EBCBS health plan after receiving an invoice for dental services that your daughter received. However, you testified that you chose the health plan in which you are enrolled based on the information received from EBCBS, and that you did not rely on any information from NYSOH or an agent of NYSOH.

Since the record does not indicate that NYSOH, by action or inaction, made an error or misrepresented information to you when you selected your health plan, and since the record is void of any other triggering events, a special enrollment period cannot be granted.

Therefore, NYSOH's May 11, 2016, NYSOH eligibility determination notice, in relevant part, that you, your spouse and children did not qualify to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

Decision

The May 11, 2016 eligibility determination is AFFIRMED.

Effective Date of this Decision: December 7, 2016

How this Decision Affects Your Eligibility

You and your family do not qualify for a special enrollment period 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
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The May 11, 2016, eligibility determination is **AFFIRMED**.

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You and your family do not qualify for a special enrollment period 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:

