



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

## Notice of Decision

Decision Date: November 2, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009468

[REDACTED]

Dear [REDACTED]

On October 28, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's May 5, 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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## Decision

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NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009468



## Issue

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

Did NY State of Health (NYSOH) properly determine on May 5, 2016, that you and your spouse did not qualify for a special enrollment period to select a health plan outside the 2016 open enrollment period?

## Procedural History

On March 22, 2016, NYSOH issued a notice of eligibility determination based on your March 21, 2016 application that stated that you and your spouse were eligible to purchase a qualified health plan at full cost through NYSOH. This eligibility was effective as of May 1, 2016. It further stated that you and your spouse do not qualify to select a health plan outside of the open enrollment period for 2016.

On April 12, 2016 you updated your and your spouse's application for financial assistance for health insurance.

On April 13, 2016, NYSOH issued an eligibility redetermination based on the April 12, 2016 application stating that you and your spouse were eligible to purchase a qualified health plan at full cost through NYSOH and that you could still get coverage for 2016 if you qualify for a Special Enrollment Period. The notice further stated that you must have a qualifying event in order to select a plan outside of open enrollment. This eligibility was effective as of May 1, 2016.

On May 5, 2016, NYSOH issued another eligibility redetermination based on the April 12, 2016 application stating that you and your spouse were eligible to purchase a qualified health plan at full cost through NYSOH. The notice further stated that you and your spouse did not qualify to select a health plan outside of the open enrollment period for 2016.

On May 6, 2016, you spoke to NYSOH's Account Review Unit and appealed the May 5, 2016 eligibility determination insofar as you and your spouse were not eligible to enroll in a health plan outside of the open enrollment period.

On October 28, 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) The record indicates that you submitted your initial application for 2016 health insurance coverage for you and your spouse on March 21, 2016.
- 2) You testified that both you and your spouse are Immigrant Non-Citizens with I-551 Permanent Resident Cards and your NYSOH account confirms this.
- 3) You testified that the address listed in your account is correct and that you and your spouse have lived there for about two and a half years.
- 4) You testified that you had been employed and obtained your and your spouse's health insurance through your employer.
- 5) You testified that on or about December 10, 2015 a close relative became seriously ill and you terminated your employment so you and your spouse could return to France to take care of the relative. When you left, you did not know how long you would be gone from the United States.
- 6) You testified that you and your spouse returned to the United States toward the end of February 2016.
- 7) You testified that you did not return to your previous employment, instead you are [REDACTED] and are self-employed.
- 8) You testified that your spouse works part time and is not entitled to health insurance through her employer.

- 9) You testified that your income is approximately the same now as it was before you left your previous employment.
- 10) You testified that you continue to reside in the same apartment that you have lived in for the last two and a half years. You have not changed counties of residence.
- 11) You testified that you have not had any changes in your family situation or household size.
- 12) You testified you are not sure when your previous health insurance ran out but believe it terminated at the end of December, 2015. You stated you do not believe you have a letter stating when that health insurance terminated.
- 13) You testified that when you spoke to NYSOH, there were no statements made by them that turned out to be untrue.
- 14) You are applying for insurance for yourself and your spouse.

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 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)).

## **Legal Analysis**

The issue under review is whether NYSOH properly denied you and your spouse a special enrollment period to enroll in a qualified health plan outside the open 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 submitted a complete application on March 21, 2016. Therefore, you did not complete your application during the open enrollment period.

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.

You testified that you left your employment on or about December 10, 2015. Further, that you believe your health insurance provided through your employment terminated at the end of December 2015.

These two events could be considered triggering life events.

When a triggering life event occurs, the qualified individual has sixty days from the date of that event to select a qualified health plan.

Sixty days from December 31, 2015 was March 1, 2016; therefore, you would have qualified to select a qualified health plan outside of the open enrollment period until March 1, 2016. The record reflects that your application was not submitted until March 21, 2016, which was after your special enrollment period expired.

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 May 5, 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 May 5, 2016 eligibility determination is AFFIRMED.

**Effective Date of this Decision:** November 2, 2016

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

You 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:

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Albany, NY 12211

- By fax: 1-855-900-5557

## **Summary**

The May 5, 2016 eligibility determination is AFFIRMED.

You 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:**

