



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

### Notice of Decision

Decision Date: November 18, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009524

[REDACTED]

Dear [REDACTED],

On November 15, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's May 10, 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).

This page intentionally left blank.



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

## Decision

Decision Date: November 18, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009524



## 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 spouse were not eligible for a special enrollment period outside the open enrollment period as of May 10, 2016?

## Procedural History

On January 12, 2016, NYSOH issued an eligibility redetermination notice that stated you and your spouse were newly conditionally eligible to receive advance payments of the premium tax credit (APTC) and newly conditionally eligible to receive cost-sharing reductions, effective February 1, 2016.

Also on January 12, 2016, NYSOH issued an enrollment notice confirming in part that you and your spouse were enrolled in a platinum-level qualified health plan (QHP) effective February 1, 2016, and your monthly premium responsibility was \$833.96 after your APTC of \$583.00 was applied.

On May 10, 2016, NYSOH received your updated application for health insurance.

Also on May 10, 2016, NYSOH issued a preliminary eligibility determination that stated that you and your spouse were conditionally eligible to purchase a QHP with APTC through the NYSOH. You also attempted to enroll in a QHP that day but were denied.

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).

Also on May 10, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you and your spouse were not eligible to enroll in a health plan outside of the open enrollment period.

On May 11, 2016, NYSOH issued a notice of eligibility determination that stated, based on your May 10, 2016 application, you and your spouse were eligible to purchase a QHP with APTC of up to \$583.00 per month. It further stated that you do 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. Your spouse was sworn in and testified on your behalf. 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) According to your NYSOH account, you submitted an updated application for 2016 health insurance coverage on May 10, 2016.
- 2) Your spouse testified that you purchased a platinum-level QHP through the NYSOH website and that the QHP you chose was not accepted by your healthcare providers.
- 3) Your spouse testified that the NYSOH website gave misinformation about whether your medical providers participated in the QHP you and your spouse chose
- 4) Your spouse testified that your QHP and your medical providers gave erroneous information regarding whether or not your doctors participated in the QHP you chose. Your spouse feels that, if the medical provider's offices and the QHP do not know what health plans are taken by your doctors, that despite doing due diligence to choose a plan, it is too complicated for her and anyone else to choose the correct health plan.
- 5) Your spouse testified there have been no changes in your household since you applied on May 10, 2016.

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 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 denied you and your spouse a special enrollment period as of May 10, 2016, within which to switch to a QHP that your medical providers accepted.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on January 11, 2016. 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 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).

A special enrollment period can be granted if a qualified individual's enrollment or non-enrollment into a QHP 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.

Your spouse testified that, although she feels she did her due diligence in choosing a QHP, because of the misrepresentation on the NYSOH website, her QHP, and medical providers, she chose a health plan that wasn't taken by your or her medical providers. She also feels that the process of choosing a health plan is too complicated for herself and the public at large.

However, the QHP and medical providers are not instrumentalities or agents of NYSOH. Since the record does not support that NYSOH, by action or inaction, made an error or misrepresented information, a special enrollment period cannot be granted. Moreover, your spouse's contention that the process of choosing a health plan is too complicated for the public at large is speculative and will not be addressed

Your spouse testified, and according to your NYSOH account, there have been no changes in your household since you applied on May 10, 2016. Since the open enrollment period closed on January 31, 2016 and there have been no other triggering events that have occurred that would qualify you and your spouse for a special enrollment period, NYSOH's May 11, 2016 eligibility determination notice that stated you and your spouse do not qualify to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

## **Decision**

The May 11, 2016 eligibility determination notice is AFFIRMED.

**Effective Date of this Decision:** November 18, 2016

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

You and your spouse 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.

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).

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 QHP, APTC, 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 notice is AFFIRMED.

You and your spouse 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:**

