



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

## Notice of Decision

Decision Date: November 16, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009530

[REDACTED]

Dear [REDACTED],

On October 20, 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

Decision Date: November 16, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009530



## 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 were not eligible to enroll in a qualified health plan (QHP) outside of the 2016 open enrollment period?

## Procedural History

On April 11, 2016, NYSOH received your application for health insurance.

On April 12, 2016, NYSOH issued a notice stating that your April 11, 2016 application had been reviewed, but that more information was needed to make a determination as to your eligibility. The notice further directed you to submit documentation of your income by April 27, 2016.

On April 16, 2016, NYSOH again issued a notice stating that your April 11, 2016 application had been reviewed, but that more information was needed. This notice directed you to submit documentation of your income by May 1, 2016.

On April 25, 2016, documentation was uploaded to your NYSOH account, and your account was updated.

On April 26, 2016, NYSOH issued a notice of eligibility determination that stated that you were eligible to purchase a QHP at full cost, effective June 1, 2016. The notice further stated that you could still get coverage for 2016 if you qualified for

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a Special Enrollment Period (SEP), and you were directed to update your account

On April 26, 2016, your NYSOH account was updated.

On April 27, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to purchase a QHP at full cost, effective June 1, 2016. The notice further stated that you could still get coverage for 2016 if you qualified for a SEP.

On May 4, 2016, your NYSOH account was updated.

On May 5, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to purchase QHP at full cost, effective June 1, 2016. It further stated that you do not qualify to select a health plan outside of the open enrollment period for 2016.


On May 11, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination, insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On October 20, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and kept open at the end of the hearing for fifteen days to give you the opportunity to submit proof of when your Unemployment Insurance Benefits (UIB) payments ended. On October 24, 2016, you uploaded a one-page document to your NYSOH account. No further documents were submitted by the end of the fifteen day period, and the record is now closed.

## **Findings of Fact**

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

- 1) You submitted your initial application for 2016 health insurance coverage on April 11, 2016.
- 2) You testified that you had insurance through your employer that ended on February 16, 2016, which was your last day of employment with your former employer.
- 3) You testified that you understood that you had 60 days to apply for health insurance through NYSOH from the date your existing insurance through your employer ended, and that you applied within that timeframe.

- 4) You testified that you completed your April 11, 2016 application by phone with a NYSOH representative, and that you were informed that it looked like you would be eligible for Medicaid, once you verified your citizenship status.
- 5) You testified that your understanding is that updates you made to your account (and documents you uploaded), after the 60 day time period caused your application date to be changed to a date that was outside of the 60-day timeframe.
- 6) You testified that you thought your updates and documentation uploads were part of your "original" application.
- 7) You testified that you tried to purchase coverage outside of NYSOH, but were told by the health plans you spoke with that you had to go through NYSOH.
- 8) You testified that you received UIB payments from sometime in March 2016 to sometime in September 2016.
- 9) Your NYSOH account contains a document that you uploaded on September 6, 2016 with the words "Secure Message" on top. The document appears to be a memo dated August 30, 2016, addressed to you, from the Department of Labor, with the subject "End of Unemployment Benefits." The document states that it is proof that you have received all of your regular Unemployment Insurance benefits available on your current claim, and that you are not eligible for further benefits, and that no extensions are available (document 
- 10) You testified that the last UIB payment you received was on September 1, 2016 in the amount of \$106.25. You testified that, prior to that, you were receiving weekly payments of \$425.00.
- 11) You testified that you have had no income since you stopped receiving UIB, and are living off of money you saved from your severance while you look for work.
- 12) You testified that your household still consists of yourself and no one else, and that there have been no other changes in your immediate household since you applied for insurance.
- 13) After the hearing, you uploaded a one-page document to your NYSOH account on October 24, 2016. The document appears to be a screenshot of your Official Record of Benefit Payment History from the New York State Department of Labor. It shows that you have zero effective days remaining

on your claim for UIB, and that the last payment you received was on August 31, 2016 for \$106.25. The document further shows that you were receiving \$425.00 per week prior to that, and the earliest date shown in the payment history is for a UIB payment made on July 19, 2016. (Document [REDACTED] For purposes of this appeal, this document is referred to as "Appellant's Exhibit One."

- 14) You testified that you are appealing to be eligible for insurance for the remainder of the year.
- 15) You also testified that you are concerned about incurring a tax penalty due to your lack of coverage for part of 2016.
- 16) The record reflects that, on November 4, 2016, NYSOH issued an eligibility determination notice stating that you were eligible for Medicaid as of November 1, 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 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 SEP's to qualified individuals. During a SEP, 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)).

### Medicaid

Medicaid can be provided through NYSOH to adults who: (1) are age 19 or older and under age 65, (2) are not pregnant, (3) are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act, (4) are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part, and (5) have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)), NY Social Services Law § 366(1)(b)).

In an analysis of Medicaid eligibility, the determination is based on the FPL “for the applicable budget period used to determine an individual's eligibility” (42 CFR § 435.4). On the date of your application, that was the 2016 FPL, which is \$11,880.00 for a one-person household (81 Federal Register 4036).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

### Affordability Exemption

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing health insurance coverage. Such an exemption may be granted if that person can show that he or she experienced a financial hardship or has domestic circumstances that (1) caused an unexpected increase in essential expenses that prevented that person from obtaining health coverage under a QHP; (2) would have caused the person to experience serious deprivation of food, shelter, clothing, or other necessities, as a result of the expense of purchasing health coverage under a QHP; or (3) prevented that person from obtaining coverage under a QHP (45 CFR § 155.605(a), (g)).

NYSOH has deferred to the U.S. Department of Health and Human Services (HHS) on the matter of hardship exemptions (see 45 CFR § 155.505(c)).

## **Legal Analysis**

The issue under review is whether NYSOH properly denied you an SEP as of May 5, 2016.

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NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on April 25, 2016 (the date you uploaded your income documentation). 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 SEP in order to enroll in, or change to another health plan offered in NYSOH. In order to qualify for a SEP, a person must experience a triggering event.

You testified that your previous insurance coverage ended on February 16, 2016, which is considered a triggering life event.

When a triggering life event occurs, the qualified individual has 60 days from the date of that event to select a qualified health plan.

Sixty days from February 16, 2016 was April 16, 2016; therefore, you would have qualified to select a qualified health plan outside of the open enrollment period until April 16, 2016. The record reflects that your application was not complete until April 25, 2016, as this is the date when your income documentation was submitted. Therefore, your application was not complete until after your SEP 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 SEP.

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**.

However, during the hearing you testified that you are looking for whatever coverage you may be eligible for. You also testified that, as of September 2016, you were no longer receiving UIB, and that you have no other income. The record reflects that you have since been found eligible for Medicaid, effective November 1, 2016. After the hearing, you uploaded documentation indicating that your last UIB payment was made on August 31, 2016 (Appellant's Exhibit One). Based on your testimony and this documentation, the record reflects that your income has been \$0.00 per month since September 1, 2016.

Medicaid can be provided through NYSOH to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size.

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However, financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size.

To be eligible for Medicaid, you would need to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$1,366.20 per month. Since the documentation you provided shows that you earned \$0.00 in September 2016, your income was below the monthly income limit for Medicaid.

Therefore, your case is RETURNED to NYSOH to make a determination as to your eligibility for Medicaid on a monthly income basis, based on a monthly income of \$0.00, effective September 1, 2016.

You also testified at the hearing that you are concerned about incurring a tax penalty because you did not have insurance coverage for part of 2016.

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance during 2016, you can check the Federal Marketplace website ([www.healthcare.gov](http://www.healthcare.gov)) for an application.

## **Decision**

The May 5, 2016 eligibility determination is AFFIRMED.

Your case is RETURNED to NYSOH for a determination as to your eligibility for Medicaid on a monthly income basis, based on a monthly income of \$0.00, effective September 1, 2016.

**Effective Date of this Decision:** November 16, 2016

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

You do not qualify for a SEP, and did not qualify for one as of May 5, 2016.

Your case is being sent back to NYSOH to make a determination as to your eligibility for Medicaid, based on your monthly income of \$0.00, beginning September 1, 2016.

## **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 5, 2016 eligibility determination is **AFFIRMED**.

Your case is **RETURNED** to NYSOH for a determination as to your eligibility for Medicaid on a monthly income basis, based on a monthly income of \$0.00, effective September 1, 2016.

You do not qualify for a SEP, and did not qualify for one as of May 5, 2016.

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).

Your case is being sent back to NYSOH to make a determination as to your eligibility for Medicaid, based on your monthly income of \$0.00, beginning September 1, 2016.

### **Legal Authority**

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

**A Copy of this Decision Has Been Provided To:**

