



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

Notice of Decision

Decision Date: December 27, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009585

[REDACTED]

Dear [REDACTED],

On November 28, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's November 23, 2015 disenrollment notice.

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.

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Decision

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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 your enrollment in your qualified health plan (QHP) ended effective December 31, 2015?

Procedural History

You first applied for health insurance through NYSOH on October 7, 2013, at which time you declined to apply for financial assistance.

On October 18, 2014, NYSOH issued renewal notice stating that you were eligible to purchase a QHP at full cost, effective January 1, 2015. You were advised that you had been reenrolled in your current plan, and that if you did not want to change that plan, you did not need to do anything more.

On December 9, 2014, NYSOH issued an enrollment notice confirming your enrollment in a QHP, with coverage beginning as early as January 1, 2015 if you paid your first month's premium.

On October 29, 2015, NYSOH issued a renewal notice stating that it was again time to renew your NYSOH coverage. The notice stated that you were eligible to buy a QHP at full cost, effective January 1, 2016, and that you needed to select a new health plan between November 16, 2015 and December 15, 2015 in order to continue your coverage for the upcoming coverage year.

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On October 30, 2015, NYSOH issued a notice informing you that your coverage through Health Republic would be ending on November 30, 2015 because that company would no longer be able to offer health care coverage after December 1, 2015. The notice directed you to select a new plan for December 2015 between November 1, 2015 and November 15, 2015.

On November 4, 2015, NYSOH issued a disenrollment notice stating that your coverage in your silver-level PrimarySelect QHP would end on November 30, 2015 because this health plan was being discontinued.

On November 7, 2015, you logged into your NYSOH account and selected a health plan; you did not change your application to request financial assistance.

On November 8, 2015, NYSOH issued an enrollment confirmation notice, based on your plan selection on November 7, 2015, stating that your enrollment in your Fidelis Care bronze-level QHP would begin on December 1, 2015.

On November 16, 2015, NYSOH issued a renewal notice stating that it was time to renew your coverage for 2016. The notice stated that you were still qualified to buy a QHP at full cost through NYSOH. The notice also stated that you had been re-enrolled into your Fidelis Care bronze-level QHP, effective January 1, 2016, and if you wished to remain in this plan you did not need to do anything more.

On November 23, 2015, NYSOH issued a disenrollment notice stating that your 2015 enrollment in your Fidelis Care bronze-level QHP would end effective December 31, 2015, but that you would be automatically renewed into the same plan for 2016.

On November 26, 2015, NYSOH issued a notice of enrollment confirmation stating that your enrollment in your Fidelis Care bronze-level QHP would begin effective January 1, 2016.

On December 5, 2015, you modified your NYSOH account, requested financial assistance for the first time, and uploaded documentation to your NYSOH account.

On December 6, 2015, NYSOH issued a notice stating that your December 5, 2015 application had been reviewed, and that more information was needed to make a determination as to your eligibility. The notice directed you to submit documentation of your income by December 21, 2015 in order to confirm your eligibility.

On December 7, 2015, your NYSOH account was updated.

On December 8, 2015, NYSOH issued an eligibility determination notice stating that you were eligible for Medicaid, effective December 1, 2015.

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Also on December 8, 2015, NYSOH issued an enrollment confirmation notice confirming your enrollment in a Healthfirst Medicaid Managed Care plan, effective January 1, 2016.

On December 18, 2015, NYSOH issued a cancellation notice stating that your coverage in your Fidelis Care bronze-level plan was cancelled, effective January 1, 2016.

On May 13, 2016, you contacted the NYSOH Account Review Unit and appealed the date you were disenrolled from your QHP, requesting the disenrollment be made effective December 1, 2015.

On November 28, 2016, you had a telephone hearing with a Hearing Officer from the NYSOH's Appeals Unit. The record was developed during the hearing and closed at the end of the proceeding.

Findings of Fact

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

- 1) Your NYSOH account reflects that you were enrolled in a QHP through NYSOH, and that your coverage was effective as of January 1, 2015.
- 2) Your NYSOH account reflects that you were asked to select a new health plan for the month of December 2015 because your Health Republic coverage was no longer being offered as of November 30, 2015.
- 3) Your NYSOH account reflects that you logged in on November 7, 2015, and that the only action you performed on that date was to select a new health plan.
- 4) You testified that you found the whole process very confusing because you were receiving notices that told you that you needed to select a new health plan for December 2015, and were also receiving renewal notices.
- 5) Your NYSOH account reflects that you logged in on December 5, 2015 and changed your application to one for financial assistance.
- 6) You testified that, when you saw the information that said that you might be eligible for Medicaid, you started making phone calls to ask about the possible eligibility, and about the difference between selecting a health plan for December 2015 and one for January 2016.

- 7) You testified that you were confused by the information stating that you were eligible for Medicaid as of December 1, 2015, as you thought it was illegal to have two health insurances at the same time.
- 8) You testified that you spoke to someone at NYSOH who told you that, if you were approved for Medicaid, your premium payment for December 2015 would be refunded.
- 9) You testified that you are very careful about paying your bills on time, so you paid your December 2015 QHP premium because you did not want your payment to be late.
- 10) You testified that you were not told that you could have waited to find out whether you were Medicaid eligible, and therefore not have paid for your QHP for December 2015.
- 11) Your NYSOH account reflects that you were found eligible for Medicaid in an eligibility determination dated December 8, 2015.
- 12) You testified that you spent hours speaking with Fidelis and NYSOH, and that Fidelis said that they would refund your QHP premium if NYSOH changed the termination date of your plan.
- 13) You testified that you are seeking an earlier disenrollment date because you had Medicaid coverage in December 2015, when you were still enrolled in your QHP, and you want your QHP premium refunded.
- 14) You testified you are not sure if you used any insurance coverage in the month of December 2015, but, if you did, you think it would have been your Medicaid coverage.

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

Applicable Law and Regulations

Termination of a Qualified Health Plan

NYSOH must permit an enrollee to terminate his or her coverage with a QHP, with appropriate notice to the NYSOH or QHP (45 CFR § 155.430(b)(1)(i)).

If an enrollee is newly eligible for Medicaid, the last day of coverage for the QHP is the day before the Medicaid coverage begins (45 CFR § 155.430(d)(2)(iv)).

For enrollee-initiated terminations, the last day of coverage is either:

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- 1) The termination date specified by the enrollee, if the enrollee provides reasonable notice (at least 14 days before the requested termination date);
- 2) Fourteen days after the enrollee requests the termination, if they do not provide reasonable notice; or
- 3) On a date on or after the date the enrollee requests the termination, if the enrollee's QHP issuer and the enrollee agree to such a date

(45 CFR § 155.430(d)(2)(i)-(iii)).

NYSOH must permit an enrollee to retroactively terminate or cancel their enrollment in a QHP if:

- 1) The enrollee demonstrates that they attempted to terminate their coverage and experienced a technical error that did not allow the coverage to be terminated, and requests retroactive termination within 60 days after they discovered the technical error.
- 2) The enrollment in the qualified health plan was unintentional, inadvertent, or erroneous and was the result of the error or misconduct of an officer, employee, or agent of NYSOH or HHS, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities. Such enrollee must request cancellation within 60 days of discovering the unintentional, inadvertent, or erroneous enrollment.
- 3) The enrollee was enrolled in a QHP without their knowledge or consent by any third party, including third parties who have no connection with the Exchange, and requests cancellation within 60 days of discovering of the enrollment.

(45 CFR § 155.430(b)(1)(iv)(A-C)).

NYSOH permits a QHP to terminate an individual's coverage when (1) the enrollee is no longer eligible for coverage or (2) the enrollee fails to pay premiums (45 CFR § 155.430(b)(2)(i)-(ii)).

Legal Analysis

The issue under review is whether NYSOH properly determined that your enrollment in your QHP ended effective December 31, 2015.

On October 30, 2015, NYSOH issued a notice stating that you needed to select a new QHP because your Health Republic coverage was ending on November 30, 2015, as Health Republic was no longer offering coverage through NYSOH beginning December 1, 2015. On November 7, 2015, you logged into your NYSOH account and selected a new Fidelis Care bronze-level QHP for enrollment for December 2015.

You testified that you are seeking retroactive disenrollment from your QHP effective December 1, 2015.

NYSOH must permit an enrollee to be retroactively disenrolled from their QHP if: the enrollee demonstrates that there was a technical error that should have allowed them to terminate coverage earlier; their enrollment in the plan was unintentional, inadvertent, or erroneous and was the result of the error or misconduct of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities; or the enrollee was enrolled into a QHP without their knowledge or consent by a third party.

The credible evidence of record reflects that you logged into your NYSOH account on November 7, 2015 and selected a new plan for enrollment for the month of December 2015 because you had received a notice telling you that your QHP coverage through Health Republic was ending as of November 30, 2015, and you needed to select a new QHP. The record also reflects that you did not update your application to one for financial assistance on that date, but instead did so on December 7, 2015 because you were responding the renewal notice you had received regarding your 2016 coverage.

You testified that you felt pressured to select a QHP for December 2015 because of the letter you received stating that you needed to select a new plan by November 15, 2015, or you would not have coverage for December 2015. However, there is no indication in the record that your enrollment in a plan on November 7, 2015 was an error, or that it was the result of misconduct or error of an employee or agent of NYSOH. Though you testified that you were given misleading information regarding whether you would get your December 2015 premium back if you were found eligible for Medicaid, this information appears to have been provided by NYSOH in December 2015, after you had already logged in on November 7, 2015 and enrolled into a plan for December 2015. While this information may have been inaccurate and may have caused you to choose to pay your December 2015 premium, it does not appear to have caused you to select the plan for enrollment on November 7, 2015.

As such, there is no indication in the record that your enrollment in a QHP, as confirmed in the November 8, 2015 enrollment notice was unintentional, inadvertent, or erroneous, nor was your enrollment in a QHP the result of the error or misconduct of an officer, employee, or agent of NYSOH, its

instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities. Furthermore, since you logged in yourself and selected a plan, there is no indication that your enrollment in a QHP as confirmed in the November 8, 2015 enrollment notice was without your knowledge or consent.

Therefore, there is no basis to find that NYSOH must permit you to retroactively terminate or cancel your enrollment in a QHP.

On December 7, 2015, you updated your application and applied for financial assistance, and on December 7, 2015, you contacted NYSOH to further update that application. As a result, you were found eligible for Medicaid effective December 1, 2015. On November 23, 2015, NYSOH issued a disenrollment notice stating that your enrollment in your QHP would end effective December 31, 2015.

You testified that you are seeking an earlier disenrollment date because you had Medicaid coverage in December 2015, when you were still enrolled in your QHP.

If an enrollee is newly eligible for Medicaid, the last day of coverage through their QHP is the day before the Medicaid coverage begins. Since you were determined eligible for Medicaid on December 8, 2015, under the regulations your QHP should have terminated that day. However, NYSOH does not allow for prorated or partial premiums based on the number of days in a month you were enrolled in a QHP, and, as such, your plan was terminated at the end of the calendar month in which you became eligible for Medicaid.

Therefore, NYSOH properly determined that your plan terminated as of December 31, 2015 and NYSOH's November 23, 2015, disenrollment notice is AFFIRMED.

Decision

The November 23, 2015 disenrollment notice is AFFIRMED.

Effective Date of this Decision: December 27, 2016

How this Decision Affects Your Eligibility

This decision does not change your disenrollment date. Your enrollment in your QHP ended as of December 31, 2015.

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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 November 23, 2015 disenrollment notice is **AFFIRMED**.

This decision does not change your disenrollment date. Your enrollment in your QHP ended as of December 31, 2015.

Legal Authority

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

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A Copy of this Decision Has Been Provided To:

