



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

## Notice of Decision

Decision Date: December 8, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009589

[REDACTED]

Dear [REDACTED],

On November 28, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's May 14, 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: December 8, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009589

[REDACTED]

## 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 did not qualify for a special enrollment period as of May 13, 2016 to enroll in health insurance for 2016 outside of the open enrollment period?

## Procedural History

On March 23, 2016, NYSOH received your initial application for health insurance.

On March 24, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to purchase a full cost qualified health plan (QHP), effective May 1, 2016. The notice also stated that you qualified to select a health plan outside of the 2016 open enrollment period, and that you had until April 19, 2016 to select a plan.

On March 24, 2016, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in a bronze-level QHP with a monthly premium of \$324.45, with an enrollment start date of March 1, 2016.

On March 31, 2016, NYSOH issued a cancellation notice stating that your enrollment in your QHP was terminated, effective March 1, 2016, because a premium payment had not been received by your health plan.

On May 13, 2016, you updated your NYSOH account. That same day, NYSOH prepared a preliminary eligibility determination stating that you were qualified

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enroll in a full cost QHP. You also attempted to select a qualified health plan this day but were unable to.

Also on May 13, 2016, you spoke to NYSOH's Account Review Unit and appealed NYSOH's verbal denial of your request to enroll in a health plan outside of the 2016 open enrollment period.

On May 14, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to enroll in a full cost QHP, effective June 1, 2016, however you did not qualify to select a health plan outside of the 2016 open enrollment period.

On November 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 supports the following findings of fact:

- 1) The record indicates that you submitted your initial application for 2016 health insurance coverage on March 23, 2016.
- 2) You testified that you had health insurance through your employer, but that you left your job in January 2016.
- 3) You testified that your health coverage through your employer ended on February 19, 2016.
- 4) You testified that you went onto NYSOH's website in March 2016 to apply for coverage.
- 5) You testified that there was a lot of confusion after you applied because you somehow ended up with coverage that was made retroactive to March 1, 2016.
- 6) You testified that you were under the impression that your coverage would begin once you made a payment, and that you were not looking for your coverage to begin any earlier than April 1, 2016.
- 7) You testified that you did not receive an invoice from your health plan, so you went onto your health plan's website within a week of applying and saw that your account was already showing as unpaid.
- 8) You testified that you made a payment that same day, which was March 30, 2016.

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- 9) You testified that you received NYSOH's March 31, 2016 disenrollment notice, but that you were confused by it because you had just made a payment.
- 10) You testified that, after that point, you had many phone calls with your health plan and found out that your coverage had actually started on March 1, 2016.
- 11) You testified that you received a notice from your health plan in May 2016 stating that your payment was late.
- 12) You testified during the hearing that you are concerned about incurring a tax penalty as a result of being without coverage.

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 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 (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 certain triggering events occur, including the following:

- (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'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

(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)).

### Effective Date of Coverage

If a qualified individual is granted an SEP due to the loss of minimum essential coverage, and selects a new plan on or before the last date of that coverage, NYSOH must ensure that the new plan is effective on the first day of the month following the date that coverage was lost. If the new plan is not selected prior to the date the previous coverage ends, then the new plan may be made effective on the first date of the month following plan selection. (45 CFR § 155.420(b))

## **Legal Analysis**

The issue under review is whether NYSOH properly determined that you did not qualify for a special enrollment period as of May 13, 2016 to enroll in health insurance for 2016 outside of the open enrollment period.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 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.

You filed your initial application with NYSOH on March 23, 2016, which is outside the annual open enrollment period. However, in that application you indicated that your health insurance through your employer ended on February 19, 2016. Loss of minimum essential coverage, such as insurance through an employer, is considered a triggering life event.

When a triggering life event occurs, the qualified individual has sixty days from the date of that event to select a QHP. Accordingly, you were given a special enrollment period until April 19, 2016 to select a plan, which you did on March 23, 2016. On March 24, 2016, NYSOH issued an enrollment confirmation notice stating that your enrollment in your QHP was effective as of March 1, 2016.

When an individual loses minimum essential coverage and is found eligible for a special enrollment period, if they select a plan before their prior coverage ends, the plan can be effective on the first day of the month following the month when coverage was lost. In your case, if you had applied before February 19, 2016 – the last date of your health insurance coverage through your employer – your NYSOH health plan could have started on March 1, 2016.

However, if an individual selects a plan after the day on which he or she loses essential coverage, NYSOH can make the start date of the plan on the first day of the month following the date of plan selection. Since you selected a plan on March 23, 2016, your plan should not have started any earlier than April 1, 2016.

Therefore, the credible evidence of record indicates that NYSOH erred in making your QHP enrollment effective March 1, 2016. As a result of this error, on March 31, 2016 you were then disenrolled from the QHP you had just selected eight days prior because a premium payment had not been received by your health plan for the month of March 2016.

You then contacted NYSOH on May 13, 2016 to reenroll into a QHP but you were denied because you did not qualify for a special enrollment period.

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.

Since your disenrollment from your QHP as of March 1, 2016 was the direct result of NYSOH's error in granting you a retroactive enrollment date that you did not request, and that was not proper under the law, you should have been eligible to select another health plan within sixty days of NYSOH's error. When you updated your application on May 13, 2016 and attempted to enroll you were within the sixty day window.

As such, NYSOH's May 14, 2016 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your May 13, 2016 application. You may choose to enroll into a qualified health plan going back to April 1, 2016 because of NYSOH's initial error in the start date of your plan.

The record indicates that NYSOH's failure to grant you a special enrollment period resulted in you being without insurance coverage for part of the 2016 coverage year. During the hearing, you testified that you are concerned about receiving a tax penalty as a result of being without coverage.

Sometimes after an appeal decision, an appellant can claim an exemption from the requirement to have health insurance. You might qualify for a health coverage exemption in 2016 if you didn't have health coverage while you were waiting for an appeal decision about coverage eligibility or savings and your appeal was eventually successful.

You must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, NYSOH does not accept hardship exemption applications.

You will find the information you need to claim the exemption due to an appeal decision at <https://www.healthcare.gov/exemptions-tool/#/results/2016/details/eligible-based-on-appeal>. You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word "pending" in column "c" and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

## **Decision**

The May 14, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your May 13, 2016 application. You may choose to enroll into a qualified health plan going back to April 1, 2016 because of NYSOH's initial error in the start date of your plan.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage if you so choose.

**Effective Date of this Decision:** December 8, 2016

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

NYSOH erred in the start date of your original QHP.

You qualified for a special enrollment period as of the May 13, 2016 application for health insurance.

You may elect to reenroll into QHP effective April 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:  
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- By fax: 1-855-900-5557

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## **Summary**

The May 14, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your May 13, 2016 application. You may choose to enroll into a qualified health plan going back to April 1, 2016 because of NYSOH's initial error in the start date of your plan.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage if you so choose.

NYSOH erred in the start date of your original QHP.

You qualified for a special enrollment period as of the May 13, 2016 application for health insurance.

You may elect to reenroll into QHP effective April 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:**

