



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

## Notice of Decision

Decision Date: January 18, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009613

[REDACTED]

[REDACTED]

On December 5, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's May 17, 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: January 18, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009613

[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 were not eligible to enroll in a qualified health plan (QHP) outside of the 2016 open enrollment period, as of your May 16, 2016 application?

## Procedural History

On December 19, 2015, NYSOH received your updated application for health insurance, in which you did not request financial assistance.

On December 20, 2015, NYSOH issued a notice of eligibility determination stating that you were eligible to purchase a QHP at full cost, effective January 1, 2016.

Also on December 20, 2015, NYSOH issued a notice of enrollment confirmation stating that you were enrolled in a bronze-level QHP, effective January 1, 2016.

On March 1, 2016, you updated your NYSOH account, again without requesting financial assistance.

On March 2, 2016, NYSOH issued an eligibility determination notice stating that you were eligible to purchase a QHP at full cost, effective April 1, 2016. The notice also stated that you qualified to enroll in a health plan outside of the open enrollment period for 2016, and that you had until March 18, 2016 to select a health plan.

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 March 2, 2016, NYSOH issued a notice of enrollment confirmation confirming your enrollment in your bronze-level QHP, effective January 1, 2016.

On March 23, 2016, you updated your NYSOH account.

On March 24, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to purchase a QHP at full cost, effective May 1, 2016. The notice further stated that you did not qualify to select a health plan outside of the 2016 open enrollment period.

On May 6, 2016, NYSOH issued a cancellation notice stating that your enrollment in your QHP had been cancelled, effective January 1, 2016, for nonpayment of premiums.

On May 16, 2016, you updated your NYSOH account. That same day, NYSOH prepared a preliminary eligibility determination stating that you were eligible to purchase a QHP at full cost, effective July 1, 2016. You did not qualify for a special enrollment period.

That same day, you spoke to NYSOH's Account Review Unit and appealed because you were not allowed to re-enroll in a QHP outside of the 2016 open enrollment period.

On May 17, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to purchase a full cost QHP through NYSOH. The notice further stated that you did not qualify to select a health plan outside of the 2016 open enrollment period.

On December 5, 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) Your NYSOH account indicates that you submitted your initial application for 2016 health insurance coverage on December 19, 2015, and were subsequently enrolled into a QHP with an enrollment start date of January 1, 2016.
- 2) You testified that you were out of the country from the end of December 2015 through the middle of January 2016, and did not receive the invoice for your January 2016 premium payment because of this.

- 3) You testified that, when you returned to the United States, you contacted your health plan to try to make a payment, but were informed by your plan that they had already cancelled your coverage. You were therefore not able to pay the past due premium.
- 4) Your plan did not inform NYSOH that their intent was to cancel your coverage.
- 5) You testified that you moved from Bronx County to Kings County on January 17, 2016.
- 6) You testified that, after you were told by your health plan that your coverage had been cancelled, you tried to re-enroll in coverage through NYSOH, and to use your recent change of address as a reason for your new application.
- 7) You testified that you spoke with someone from NYSOH in March 2016 who informed you that you could not re-enroll in coverage because your QHP coverage was not showing as cancelled in NYSOH's system.
- 8) You testified that you were told by either NYSOH or your health plan that, even though you had selected your plan on March 1, 2016, you were not in fact enrolled in coverage.
- 9) You testified that you never received any invoices from your health plan after you re-enrolled in the plan on March 1, 2016.
- 10) You testified during the hearing that you are concerned about incurring a tax penalty as a result of being without coverage during 2016.
- 11) After the hearing, the Hearing Officer requested the phone records for any phone conversations that you had with NYSOH in the month of March 2016. Records were returned for conversations that you had with NYSOH's Customer Service and Account Review Unit on March 23, 2016. The following findings of fact were taken from these recordings:
  - a. You contacted NYSOH's Customer Service because you had re-enrolled in your health plan on March 1, 2016, but had not received an invoice;
  - b. You informed both the Customer Service representative and Account Review representative that your coverage had been cancelled by your health plan because your January 2016 premium payment was late;
  - c. You informed both representatives that you had re-enrolled, and that you were able to do so because you had a qualifying life event;

- d. You informed both representatives that your health plan told you that they did not receive any paperwork for a new enrollment start date;
- e. The Account Review representative informed you that there was no cancellation reflected in your NYSOH account, and that your health plan enrollment was still showing as active;
- f. The Account Review representative informed you that he could put through a new enrollment, and you would have coverage starting on May 1, 2016, and you stated that a May 1, 2016 start date was fine with you.

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 (SEPs) to qualified individuals. During an SEP, a qualified individual may enroll in a QHP, and an enrollee may change their enrollment to another plan.

This is permitted when various triggering events occur, including when an enrollment or disenrollment 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 (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)).

## 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 a second SEP.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on December 19, 2015. Therefore, you did complete your application during the open enrollment period.

However, you testified that you were out of the country from the end of December 2015 through mid-January 2016, and so you did not receive the invoice for your health plan premium. You testified that, when you returned to the United States, you realized that you had not made the payment and contacted your health plan to try to pay, but were told by your health plan that they had cancelled your coverage.

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 special enrollment period, a person must experience a triggering event.

You testified that you moved from Bronx County to Kings County on January 17, 2016, so you attempted to re-enroll in coverage through NYSOH on March 1, 2016, using your move as a reason to re-enroll. NYSOH issued a notice on March 2, 2016 stating that you were eligible to enroll in a QHP at full cost, and that you were eligible for a SEP until March 18, 2016.

Also on March 1, 2016, you re-enrolled into the same QHP that you had previously selected. As a result, NYSOH issued an enrollment confirmation

notice on March 2, 2016 stating that you were enrolled in your QHP, effective January 1, 2016.

You testified that, after you re-enrolled in coverage, you never received an invoice from your health plan, so you contacted them, and they stated that they had not received any paperwork from NYSOH regarding a new enrollment start date.

You contacted NYSOH on March 23, 2016 and informed both the Customer Service representative and the Account Review representative of the problem that you were having with getting enrolled. The Account Review representative informed you that you were still enrolled in your QHP with a January 1, 2016 start date, according to NYSOH's system, and that NYSOH did not have any information to show that you had been cancelled for nonpayment of your premium. The Account Review representative told you that you could be re-enrolled in a plan as of May 1, 2016, and that he would put through your enrollment paperwork for a May 1, 2016 start date.

An SEP can be granted if a qualified individual's enrollment or non-enrollment into a qualified health plan 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.

In this case, the problems in reenrolling in a plan, which you were entitled to do because of your permanent move to a different county, were caused by the failure of your plan to inform NYSOH that your plan had been cancelled due to nonpayment of premiums.

When you attempted to reenroll, in the same plan, NYSOH, apparently not having been informed of the purported cancellation, noted the original enrollment date. Because of that, no new start date was sent to the plan, because, according to NYSOH's records, you were already enrolled. Had the plan properly advised NYSOH of the cancellation, or if NYSOH had properly addressed the cancellation, your coverage would have been reestablished as of April 1, 2016 as a result of your new application of March 1, 2016.

The credible evidence of record indicates that, because of the failure of your plan to properly advise NYSOH that it had canceled your coverage due to nonpayment of premiums or the failure of NSYOH to properly process this information, you were effectively and improperly stopped from reenrolling in a plan, which could have been effective as early as April 1, 2016.

Therefore, NYSOH's May 17, 2016 eligibility determination that you did not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you should have been allowed a further SEP.



## **Decision**

The May 17, 2016 eligibility determination is MODIFIED to reflect that you should have been allowed a further SEP.

The Appeals Unit finds that any lack of coverage subsequent to April 1, 2016 was due to no fault of your own.

The matter will be RETURNED to NYSOH to assist you in examining your options as to whether you should retroactively enroll in coverage in your old plan, or if this is unnecessary, since you have not been able to use any such coverage over the past year.

**Effective Date of this Decision:** January 18, 2017

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

It is your option as to whether you would like to retroactively enroll in coverage, as early as April 1, 2016.

You may qualify for a health coverage exemption in 2016 if you did not 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.

## **If You Disagree with this Decision (Appeal Rights)**

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 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 17, 2016 eligibility determination is MODIFIED to reflect that you should have been allowed a further SEP.

The Appeals Unit finds that any lack of coverage subsequent to April 1, 2016 was due to no fault of your own.

The matter will be RETURNED to NYSOH to assist you in examining your options as to whether you should retroactively enroll in coverage in your old plan,

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## **Legal Authority**

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

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

