



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

Notice of Decision

Decision Date: December 12, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009737

[REDACTED]

Dear [REDACTED]

On November 21, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 7, 2016 eligibility determination notice, March 7, 2016 disenrollment notice and the March 24, 2016 eligibility determination 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 NY State of Health 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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Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did NY State of Health (NYSOH) properly determine that you and your spouse's eligibility for financial assistance and enrollment in a qualified health plan ended effective March 31, 2016?

Did NYSOH properly determine that you and your spouse were not eligible to enroll in a qualified health plan outside of the open enrollment period for 2016?

Procedural History

On December 6, 2015, NYSOH issued a notice of eligibility determination stating that you and your spouse were conditionally eligible to receive advance premium tax credits of up to \$434.00 per month, effective January 1, 2016. The notice further requested that you provide documentation confirming your and your spouse's citizenship status before March 1, 2016.

Also on December 6, 2015, NYSOH issued a notice confirming your and your spouse's enrollment in qualified health plan, effective January 1, 2016.

On March 7, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were not eligible for Medicaid, Child Health Plus, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance. You also could not enroll in a qualified health plan at full cost because

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you had not confirmed your citizenship status within the required timeframe. Your and your spouse's eligibility for coverage ended effective March 31, 2016.

Also on March 7, 2016, NYSOH issued a disenrollment notice, confirming your and your spouse's disenrollment from your qualified health plan, effective March 31, 2016.

On March 23, 2016, you updated your application for health insurance.

On March 24, 2016, NYSOH issued a notice of eligibility determination that stated that you and your spouse were conditionally eligible to receive an advance premium tax credit of up to \$434.00 per month, effective May 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 19, 2016 you spoke to NYSOH's Account Review Unit and appealed the eligibility determinations insofar as they ended your and your spouse's financial assistance eligibility and enrollment in a qualified health plan on March 31, 2016 and you and your spouse were not eligible to reenroll in a qualified health plan outside of the open enrollment period for 2016.

On November 21, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, Korean Interpreters # [REDACTED] # [REDACTED] and # [REDACTED] interpreted. 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) You testified, and the record reflects that you applied for health insurance through NYSOH on December 2, 2015 with a certified application counselor.
- 2) The record reflects that at the time you completed your and your spouse's application for health insurance on December 2, 2015, you and your spouse listed your citizenship status as being United States citizens, rather than naturalized citizens.
- 3) You testified that the certified application counselor asked you when you and your spouse became naturalized citizens. You testified that you and your spouse brought your passports with you when you updated your application on December 2, 2015. You also testified that you could not recall if you brought your and your spouse's

naturalization certificates with you when you updated your application on December 2, 2015.

- 4) You testified, and the record reflects, that you receive all of your notices from NYSOH via regular mail.
- 5) You testified that you did not receive any notices stating that your eligibility was only conditional and that you needed to provide documentation of your citizenship status.
- 6) Only one notice that was sent to the address listed on your NYSOH account was returned as undeliverable. This was the May 21, 2016 eligibility determination notice.
- 7) You testified that you did not know that you needed to submit documentation of your citizenship status until you spoke to an NYSOH representative on March 23, 2016.
- 8) The record reflects that on April 13, 2016, NYSOH received documentation of your citizenship status.
- 9) The record reflects that on April 21, 2016, NYSOH received documentation of your spouse's citizenship status.
- 10) You testified that there have been no changes in your immediate household, such as a birth, death, marriage, or permanent move.

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

Applicable Law and Regulations

Citizenship and Immigration Status

To enroll in a qualified health plan through NYSOH, an applicant must be a citizen or national of the United States, or a non-citizen who is lawfully present in the United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1)).

NYSOH must verify or obtain information in order to determine that an applicant is eligible for enrollment in a qualified health plan, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

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If an applicant attests to citizenship, status as a national, or lawful presence, and NYSOH is unable to verify such attestation, NYSOH must provide the applicant with notice of the inconsistency. NYSOH must then provide the applicant with 90 days to provide satisfactory documentary evidence, from the date the notice of inconsistency is received by the applicant. Notice is considered received 5 days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the 5-day period. (45 CFR § 155.315(c)(3), (f)(2)(i)).

If NYSOH remains unable to verify the citizenship attestation after the 90-day period ends, it must determine the applicant's eligibility based on the information available (45 CFR § 155.315(f)(5)).

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 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

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- (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)).

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

- (1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or

(2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128”
(45 CFR § 155.420(e)).

Legal Analysis

The first issue under review is whether NYSOH properly determined that you and your spouse were no longer eligible to enroll in a qualified health plan through NYSOH, effective March 1, 2016.

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH, and must confirm, among other things, that their citizenship status is satisfactory.

If NYSOH cannot verify an individual’s citizenship status, it must provide the individual with notice of the inconsistency. NYSOH must then provide the individual with a period of 90 days from the date notice is received to resolve the inconsistency. For purposes of verifying citizenship, notice is considered received 5 days after the date on the notice.

In the eligibility determination issued on December 6, 2015, you were advised that your and your spouse’s eligibility was only conditional, and that you and your spouse needed to confirm your citizenship status before March 1, 2016.

The record reflects that NYSOH did not receive the requested citizenship documentation before the deadline.

Therefore, NYSOH properly notified you of an inconsistency in your account and you and your spouse did not submit the requested citizenship documentation before the deadline.

If NYSOH remains unable to verify the inconsistency after the 90-day period ends, then it must determine the applicant’s eligibility based on the information available in the data sources.

Since the requested citizenship documentation was not received within the 90-day period, NYSOH was required to redetermine your and your spouse’s eligibility without verification of your and your spouse’s citizenship status. As a result, NYSOH properly determined that you and your spouse could not enroll in a qualified health plan through NYSOH effective March 31, 2016 because you did not provide the information requested by NYSOH.

Therefore, NYSOH’s March 7, 2016 eligibility determination notice and March 7, 2016 disenrollment confirmation notice are correct and must be **AFFIRMED**.

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The second issue under review is whether NYSOH properly denied you and your spouse a special enrollment period, effective May 1, 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.

Generally, the loss of health insurance coverage is considered a triggering event. Here, your and your spouse's enrollment was terminated effective March 31, 2016 because you and your spouse did not submit citizenship documentation by March 1, 2016. NYSOH considers your and your spouse's failure to provide proof of citizenship as a voluntary action causing the termination of your and your spouse's coverage; therefore, you and your spouse would not be entitled to a special enrollment period in which to enroll in new coverage on this basis.

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 special enrollment period.

Therefore, NYSOH's March 24, 2016 eligibility determination that you and your spouse do not qualify to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

This decision does not affect your eligibility to enroll during open enrollment in a plan for the benefit year beginning on January 1, 2017, which open enrollment period began on November 1, 2016, and will extend through January 31, 2017.

Decision

The March 7, 2016 notice of eligibility determination is AFFIRMED.

The March 7, 2016 disenrollment notice is AFFIRMED.

The March 24, 2016 notice of eligibility determination is AFFIRMED.

Effective Date of this Decision: December 12, 2016

How this Decision Affects Your Eligibility

NYSOH properly found you and your spouse not eligible to enroll in a qualified health plan because you did not submit proof of your citizenship status.

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).

NYSOH properly found you and your spouse disenrolled from your qualified health plan because you did not submit proof of your citizenship status.

You and your spouse do not qualify for a special enrollment period at this time.

This decision does not affect your eligibility to enroll during open enrollment in a plan for the benefit year beginning on January 1, 2017, which open enrollment period began on November 1, 2016, and will extend through January 31, 2017.

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 after 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

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Summary

The March 7, 2016 notice of eligibility determination is AFFIRMED.

NYSOH properly found you and your spouse not eligible to enroll in a qualified health plan because you did not submit proof of your citizenship status.

The March 7, 2016 disenrollment notice is AFFIRMED.

NYSOH properly found you and your spouse disenrolled from your qualified health plan because you did not submit proof of your citizenship status.

The March 24, 2016 notice of eligibility determination is AFFIRMED.

You and your spouse do not qualify for a special enrollment period at this time.

This decision does not affect your eligibility to enroll during open enrollment in a plan for the benefit year beginning on January 1, 2017, which open enrollment period began on November 1, 2016, and will extend through January 31, 2017.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

