



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

Notice of Decision

Decision Date: January 10, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009786



On December 5, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's May 21, 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.

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

Procedural History

On October 22, 2015, NYSOH issued a notice that it was time to renew your health insurance for 2016. That notice stated that, based on information from federal and state sources, NYSOH could not make a decision about whether you would qualify for financial help paying for your health coverage, and that you needed to update your account by December 15, 2015, or you might lose the financial assistance you were currently receiving.

No updates were made to your account by December 15, 2015.

On December 21, 2015, NYSOH issued a notice stating that you were newly eligible to purchase a QHP at full cost, effective January 1, 2016. This was because you did not respond to the renewal notice and did not complete your renewal within the required timeframe.

On December 22, 2015, NYSOH issued an enrollment confirmation notice, confirming your enrollment in the same silver level QHP in which you were enrolled in 2015, but at full cost, effective January 1, 2016.

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On January 4, 2016, NYSOH received your updated application for health insurance.

On January 5, 2016, NYSOH issued a notice of eligibility determination that stated that you were newly eligible to receive up to \$241.00 per month in advance payments of the premium tax credit (APTC), and eligible for cost-sharing reductions (CSR), effective February 1, 2016.

Also on January 5, 2016, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in your same silver level QHP, effective January 1, 2016, with the application of your APTC to your monthly premium beginning February 1, 2016.

On April 1, 2016, NYSOH issued a cancellation notice stating that your insurance through your QHP was cancelled effective January 1, 2016 because a premium payment had not been received by your health plan.

On May 20, 2016, you updated your NYSOH account. That same day, NYSOH issued a preliminary eligibility determination stating that you were eligible to receive up to \$241.00 per month in APTC, and eligible for CSR, effective July 1, 2016. That day, you also attempted to reenroll into a QHP but were unable to.

Also on May 20, 2016, you spoke to NYSOH's Account Review Unit and appealed insofar as you were not eligible to enroll in a health plan outside of the 2016 open enrollment period.

On May 21, 2016 NYSOH issued a notice acknowledging receipt of an appeal request and identifies one of the issues on appeal as "Denial of Special Enrollment Period (SEP)."

On May 21, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to receive up to \$241.00 per month in APTC, and eligible for CSR, effective July 1, 2016. The notice also stated that you could still get coverage for 2016 if you qualified for a Special Enrollment Period (SEP), and that you needed to sign into your account to find out whether you would qualify.

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 kept open for fifteen days at the end of the hearing so that you could submit any other phone numbers from which you might have called NYSOH during the month of November 2015. No additional information was submitted, and the record is now closed.

Findings of Fact

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

- 1) You testified that you contacted NYSOH in November 2015 and spoke to someone about whether you needed to reapply for insurance for 2016.
- 2) You testified that the individual you spoke with from NYSOH in November told you that you did not need to reapply, and that they also told you that your premium would change in 2016, but your subsidy would remain the same.
- 3) You testified that you did not receive the October 22, 2015 renewal notice, nor the December 22, 2015 eligibility determination or enrollment confirmation notices.
- 4) You testified, and your NYSOH account reflects, that you receive notices from NYSOH by regular mail.
- 5) You testified that your mailing address was [REDACTED] in October 2015, and your NYSOH account confirms that this was the address of record.
- 6) No notices sent to you by NYSOH have been returned to NYSOH as undeliverable.
- 7) You testified that you knew that your 2015 insurance was ending at the end of December 2015, which is why you called NYSOH in November 2015.
- 8) You testified that you were not sure whether you contacted NYSOH in November 2015 from the cell phone listed on your NYSOH account, or from another number
- 9) You testified that you attempted to pay your January 2016 premium but you were told that your coverage was not active.
- 10) You testified that you spoke to someone who told you had not reapplied for 2016 coverage, and you informed the person that you were told by someone from NYSOH in November 2015 that you didn't need to reapply.
- 11) Your NYSOH account reflects that you updated your application for financial assistance on January 4, 2016, and were found eligible for APTC and CSR, effective February 1, 2016.

- 12) You testified that you received a letter at some point stating that you owed over \$1,000.00 in premiums, which you did not understand.
- 13) You testified that you spoke to someone from NYSOH in January who said not to worry about the January premium payment, and to just pay for February, which you did.
- 14) You testified that, at this point, you are not looking to enroll in coverage retroactively, but are concerned about having a tax penalty for not having coverage in 2016.
- 15) On April 12, 2016, a Complaint was recorded in NYSOH's system with tracking [REDACTED] for a review of whether you were eligible for a SEP. The resolution of that complaint states: "Left consumer a message regarding Tracking [REDACTED]. Upon further review consumer must contact her health plan directly since her coverage was dis-enrolled due to nonpayment to request reinstatement as reinstatement is not a marketplace decision. Not a valid SEP request."
- 16) The Hearing Officer requested recordings of any phone calls between you and NYSOH in November 2015 and January 2016, one phone call recording was found for January 4, 2016, which is the date your application was updated. The Hearing Officer listened to this recording in its entirety. The following findings of fact are taken from this recording:
 - a. You informed the NYSOH representative that you had received two letters: one stating that you were disenrolled, and one stating that you were enrolled but your premium payment for January 2016 was double what you were previously paying.
 - b. The NYSOH representative informed you that you needed to update your account, and went through your application with you.
 - c. After updating your account, the NYSOH representative informed you that you would be eligible for tax credits, and that your eligibility would begin in February 2016.
 - d. You told the representative that you wanted to enroll into the same plan you were in before, and the NYSOH representative enrolled you in that silver-level health plan.
 - e. You asked the NYSOH representative if this meant that you would not have coverage in January 2016, and the NYSOH representative responded that if you did not pay your January 2016 premium your

coverage for January would be cancelled, and you would be enrolled starting on February 1, 2016.

- f. You indicated to the NYSOH representative that you were satisfied with not having coverage for January 2016, and the NYSOH representative told you that you would receive information from your health plan regarding payment of your February 2016 premium and that it would be due before February 1, 2016.

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

Applicable Law and Regulations

De Novo Review

The NYSOH Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “De novo review means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

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 certain triggering events occur, including the following:

- (1) 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)).

Legal Analysis

On April 12, 2016, a complaint was recorded in NYSOH's system with tracking [REDACTED] for a review of whether you were eligible for a SEP to reenroll into a QHP outside of the open enrollment period. The resolution of this complaint was to deny you an SEP.

On May 21, 2016, NYSOH issued a notice of eligibility determination stating that you could still get coverage for 2016 if you qualified for a Special Enrollment Period (SEP), and that you needed to sign into your account to find out whether you would qualify.

The record does not contain a notice of eligibility determination or redetermination on the issue of your eligibility for a SEP. However, the record does contain a May 21, 2016 notice in which NYSOH acknowledges receipt of an appeal request and identifies one of the issues on appeal as "Denial of Special Enrollment Period (SEP)."

Here, the lack of a notice of eligibility determination on the issue of SEP denial does not prevent the Appeals Unit from reaching the merits of the case. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH's failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the May 21, 2016 notice, which acknowledges the appeal on the issue of a SEP denial, permits an inference that NYSOH did deny your special enrollment request.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued. Therefore, the issue under review is whether you were properly denied a SEP for 2016.

NYSOH provided a 2016 open enrollment period from November 1, 2015 until January 31, 2016. On October 22, 2015, NYSOH issued a notice that it was time to renew your health insurance for 2016 but that NYSOH could not make a decision about whether you would qualify for financial help paying for your health coverage.

You testified that you knew your coverage was going to end as of December 31, 2015, and so you called NYSOH to find out whether you needed to reapply. You

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testified that the person you spoke with in November 2015 informed you that you did not need to do anything, and that your subsidy would remain the same, only your premium would increase. However, the Hearing Officer requested phone records for any phone calls you had with NYSOH during the month of November 2015 but no records were found.

You further testified that you did not receive the October 22, 2015 renewal notice, nor the December 22, 2015 notice informing you that you had been re-enrolled into your same QHP at full cost, effective January 1, 2016. The record indicates that you were sent these notices by regular mail, you confirmed that the mailing address on file was correct at that time, and none of the notices were returned to NYSOH as undeliverable.

Therefore, it is concluded that you had proper notice of the need to renew your application for financial assistance for 2016, and of your enrollment into a QHP at full cost, effective January 1, 2016.

On January 4, 2016 you contacted NYSOH to update your application for financial assistance. As a result, you were found newly eligible to receive up to \$241.00 per month in APTC and CSR, effective February 1, 2016. You testified that when you updated your application, you were informed that your coverage would start February 1, 2016 if you did not pay the January 2016 premium. You testified that you made a premium payment for February 2016, but that you then received a bill for over \$1,000.00, and your health plan told you that you still owed for January 2016.

According to the record, you did not make the necessary premium payments for January 2016, so your coverage was cancelled as of January 1, 2016. You testified, and the record reflects, that you contacted NYSOH to try to re-enroll in coverage in May 2016, but were told that you could not.

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.

A special enrollment period 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.

After the hearing, the Hearing Officer listened to the recording of your phone conversation with a NYSOH representative on January 4, 2016, when you updated your account. It was clear from the conversation that you wanted to ensure that you would have coverage going forward, and that you were

concerned about the January 2016 premium payment. The NYSOH representative did not explain to you that, if you chose to remain enrolled in the same QHP in which you were already enrolled for January 2016, you could still be held responsible by the QHP for that January 2016 premium payment. Instead, the NYSOH representative told you that, if you did not pay the January 2016 premium amount, your coverage for January 2016 would be cancelled, and you would have coverage starting February 1, 2016.

Since the NYSOH representative misrepresented what would happen if you chose to remain enrolled in the same QHP and you reasonably relied on this information, you should have been eligible for a SEP on April 12, 2016, the day you requested to re-enroll in coverage. Furthermore, it was still open enrollment when you spoke to the NYSOH representative and as such, you could have chosen a different health plan to enroll into for February 1, 2016.

Therefore, NYSOH's May 21, 2016, eligibility determination notice stating 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 until 60 days from the date of this decision.

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 21, 2016, eligibility determination notice is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this decision.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for health coverage as of April 12, 2016, if you so choose.

Effective Date of this Decision: January 10, 2017

How this Decision Affects Your Eligibility

You should have been permitted to re-enroll in coverage through NYSOH as of April 12, 2016.

You qualify for a SEP for 2016 coverage until 60 days from the date of this decision.

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.

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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
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NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The May 21, 2016, eligibility determination notice is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this decision.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for health coverage as of April 12, 2016, if you so choose.

You should have been permitted to re-enroll in coverage through NYSOH as of April 12, 2016.

You qualify for a SEP for 2016 coverage until 60 days from the date of this decision.

Legal Authority

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

A Copy of this Decision Has Been Provided To:



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