



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: AP000000009833

[REDACTED]

Dear [REDACTED]

On December 1, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's May 26, 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

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NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009833



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 do not qualify to select a health plan outside of the open enrollment period for 2016?

Procedural History

On December 15, 2015, NYSOH received your updated application for health insurance.

On December 16, 2015, NYSOH issued a notice of eligibility redetermination that stated you were eligible to receive an advance premium tax credit of up to \$230.00 per month, effective January 1, 2016.

Also on December 16, 2015, NYSOH issued a notice of enrollment confirmation stating that you were enrolled in Qualified Health Plan (QHP) and dental plan effective January 1, 2016.

On January 15, 2016, NYSOH issued a notice of disenrollment stating that, at your request, you would no longer have coverage with your QHP effective January 31, 2016.

Also on January 15, 2016, NYSOH issued a notice of enrollment confirmation stating that you were enrolled with a new QHP and dental plan effective February 1, 2016.

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On March 22, 2016, NYSOH issued a notice of eligibility redetermination stating that you were eligible to receive an advance premium tax credit of up to \$230.00 per month, effective May 1, 2016. The notice also stated that you do not qualify to select a health plan outside of the open enrollment period for 2016.

On April 7, 2016, NYSOH issued a notice of eligibility redetermination stating that you are eligible to receive an advance premium tax credit of up to \$230.00 per month, effective May 1, 2016. The notice also stated that you qualify to select a health plan outside of the open enrollment period for 2016. The notice directed you to confirm your selection no later than May 31, 2016.

On April 8, 2016, NYSOH issued a notice of disenrollment stating that, at your request, you will no longer have coverage with your QHP, effective April 30, 2016. Also on April 8, 2016, NYSOH issued a notice of disenrollment stating that, at your request, you will no longer have coverage with your dental plan, effective April 30, 2016.

On May 23, 2016, you contacted NYSOH and were advised that you were not eligible to enroll in a health plan outside of the open enrollment period.

Also on May 23, 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 open enrollment period.

On May 26, 2016, NYSOH issued a notice of eligibility redetermination stating that you were eligible to receive an advance premium tax credit of up to \$230.00 per month, effective July 1, 2016. The notice further stated that you do not qualify to select a health plan outside of the open enrollment period for 2016.

On November 21, 2016 you were scheduled to have a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. That day, a Hearing Officer called you but you were unable to go forward with your scheduled hearing. You requested an adjournment and it was granted.

On December 1, 2016, you had an adjourned 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) You testified that you contacted NYSOH on January 14, 2016 to switch health plans because you were unhappy with your current plan. You

testified that a representative from NYSOH told you that you had 90 days from the date to switch plans if you desired.

- 2) You testified that you contacted NYSOH on March 21, 2016, to switch health plans.
- 3) You testified that during the March 21, 2016 phone call a NYSOH representative told you that the January phone call would be reviewed to determine whether you would be granted a SEP on the basis of misinformation given by the previous representative.
- 4) The record indicates that you were granted a SEP on April 6, 2016 until May 31, 2016.
- 5) The record reflects that you were dis-enrolled from your QHP and dental plan on April 7, 2016.
- 6) You testified that it was not your intention to dis-enroll from your plan on April 7, 2016, but rather to enroll in a new plan. You testified that you were unable to enroll in a new health plan online.
- 7) You testified that you subsequently contacted NYSOH to enroll in a new health plan, but were advised that you could not because you had already been dis-enrolled from your old plan.

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

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

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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
- (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)).

Legal Analysis

The issue under review is whether NYSOH properly denied you a special enrollment period on May 23, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record reflects that you contacted NYSOH on January 14, 2016, during the open enrollment period, and enrolled in a new health plan. You testified that during the call, a representative from NYSOH told you that you had 90 days from the date you select your plan to switch plans if you desired.

You testified and the record reflects that you contacted NYSOH on March 21, 2016, to switch health plans. The record reflects that you were denied a SEP at this time. You testified that the NYSOH representative told you that they would review the previous phone call to determine whether you would be granted a SEP on the basis of misinformation given by the previous representative.

You were then subsequently granted a SEP on April 6, 2016 until May 31, 2016. You testified that you contacted NYSOH to enroll in a new plan, but were advised that you could not.

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.

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.

The credible evidence of record indicates that on April 6, 2016, NYSOH granted you a SEP until May 31, 2016 on the basis of misrepresentations made to you by a NYSOH representative during a January 14, 2016 telephone call wherein you were told that you had 90 days to switch plans. The record also establishes that you were thereafter denied a SEP by NYSOH on May 23, 2016 when you

attempted to enroll in a new health plan within the window given to you in the April 7, 2016 eligibility determination notice.

As the evidence clearly establishes that you attempted to enroll in a new health plan prior to the May 31, 2016 expiration date of the SEP granted by NYSOH, you should have been permitted to do so.

Therefore, NYSOH's May 26, 2016 notice of eligibility determination stating 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 SEP as of the date of your April 6, 2016 application. You may choose to enroll into a qualified health plan as of that date because NYSOH granted you an SEP that day that should have been honored.

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.

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 26, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a SEP until as of the date of your April 6, 2016 application. You may choose to enroll into a qualified health plan as of that date because NYSOH granted you an SEP that day that should have been honored.

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

How this Decision Affects Your Eligibility

You qualify for a special enrollment period.

You qualified for a SEP as of the date of your April 6, 2016 application that should have been honored.

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

Summary

The May 26, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a SEP until as of the date of your April 6, 2016 application. You may choose to enroll into a qualified health plan as of that date because NYSOH granted you an SEP that day that should have been honored.

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

You qualify for a special enrollment period.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

