



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

Notice of Decision

Decision Date: January 9, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009857

[REDACTED]

[REDACTED]

On November 21, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's March 20, 2016 disenrollment notice and April 15, 2016 eligibility redetermination notice regarding your spouse.

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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Decision Date: January 9, 2017

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 properly determine that your spouse's eligibility to enroll in and her enrollment in a qualified health ended effective March 31, 2016?

Procedural History

On December 13, 2015, NY State of Health (NYSOH) issued a notice of eligibility determination stating in part that your spouse was conditionally eligible to purchase a qualified health plan at full cost, effective January 1, 2016. The notice further requested that you provide documentation confirming your spouse's citizenship status before March 11, 2016.

Also on December 13, 2015, NYSOH issued a notice confirming your and your spouse's enrollment in a couple's silver-level qualified health plan (QHP).

On March 20, 2016, NYSOH issued an eligibility determination notice stating that your spouse was not eligible to enroll in a QHP at full cost because you/she had not confirmed her citizenship status within the required timeframe and her eligibility for coverage would end effective March 31, 2016.

Also on March 20, 2016, NYSOH issued a disenrollment notice confirming that your spouse's enrollment in your couple's silver-level QHP would end effective March 31, 2016.

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On April 15, 2016 and again on April 27, 2016, NYSOH issued notices of eligibility redetermination that in part stated your spouse was eligible to enroll in a QHP at full cost, effective May 1, 2016, but did not qualify to select a health plan outside of the open enrollment period.

On May 24, 2016, you spoke to NYSOH's Account Review Unit and appealed the eligibility determination insofar as it ended your spouse's eligibility for and enrollment in a QHP at full cost on March 31, 2016.

On November 21, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The Hearing Officer allowed you to amend your appeal to include your concern about exposure to an IRS tax penalty because your spouse did not have health insurance coverage for the requisite number of months in 2016 and your appeal was not heard until November 21, 2016. 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 and your spouse had coverage in your group health plan as of 1/1/2015 and lost coverage thereafter as of 1/1/2016. A copy of the Certificate of Insurance to this effect was uploaded to your NYSOH account on May 25, 2016.
- 2) On your initial December 12, 2015 application, you listed your spouse's Social Security number and her citizenship status as a "US citizen."
- 3) According to your NYSOH account and your testimony, you receive all of your notices from NYSOH via regular mail.
- 4) You testified that you did not receive any notices stating that your spouse's eligibility was only conditional and that you needed to provide documentation of her citizenship status.
- 5) You testified that you were in the middle of moving at that time and not all of your mail was being properly forwarded by the postal service.
- 6) No notices that were sent to the address listed on your NYSOH account have been returned as undeliverable.
- 7) You testified that you did not know that you needed to submit documentation of your spouse's citizenship status until you received the March 20, 2016 notices stating she was no longer eligible to be

enrolled in a QHP and, therefore, was disenrolled as of March 31, 2016.

- 8) According to your NYSOH account and your testimony, on March 29, 2016, a copy of your spouse's U.S. Passport was uploaded and stated it was issued on "11 SEP 2006" and would expire "10 SEP 2016" (see Document [REDACTED]).
- 9) According to your NYSOH account and testimony, on April 11, 2016, a copy of an undated letter from you addressed to NYSOH was uploaded. It states in relevant part that:

...I would like to confirm my conversation with one of your employees whose name is [REDACTED]. We spoke on March 28, 2016 regarding my wife's health insurance status. [REDACTED] said we missed the 90 day period to prove that my wife was a citizen of the United States. She has been a citizen since 2007. I informed him that we never received a letter requesting documentation proving her citizenship. I did receive a letter on March 20, 2016 saying her insurance was being cancelled. Upon receiving the letter on March 20th, we faxed a copy of my wife's passport proving her citizenship.

[REDACTED] informed me that it is possible to have my wife's insurance reinstated, but that would have to be handled by a senior representative. I informed [REDACTED] that my wife had insurance up until the beginning of April, 2016 and that we should have been contacted by phone before the 90 day period was up cancelling her insurance....

(see Document [REDACTED]).

- 10) According to your NYSOH account, on May 25, 2016, a letter of appeal, dated May 16, 2016, from an attorney who then represented you, was uploaded to your NYSOH account, in which it was noted that:

[Appellant], in a conversation had with a N. Y. State Department of Health employee, [REDACTED] on or about March 20, 2016, discussed the situation. He was advised that his wife had coverage until the beginning of April 2016 and that they should have been notified via phone before the 90 period elapsed before cancelling the coverage. They received no such call. [REDACTED] requested that Appellant fax a copy of [his spouse's] passport establishing her citizenship which he immediately complied with. Enclosed please find evidence of her passport. [REDACTED] further advised [Appellant] that the policy issue had to be handled by a senior representative. In a further attempt to remedy the situation, [Appellant] corresponded with [REDACTED] by correspondence dated in or about April 4, 2016 via certified mail and received by the

department on April 7, 2016...They have received no communication nor follow up contact....

(see Document [REDACTED]).

- 11) Also on May 25, 2016, copies were uploaded of your spouse's Certificate of Naturalization as of July 25, 2006; an additional copy of her U.S. Passport; and a copy of your Certificate of Marriage showing you were married in New York State on [REDACTED].
- 12) You testified that your initial appeal was to seek reinstatement of your spouse's coverage in your QHP, but due to the passage of time from the date of your appeal to the date of hearing, you are now seeking a decision in your favor to offset your exposure to an IRS tax penalty for your spouse not having coverage for most of 2016.

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)).

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)).

Legal Analysis

The issue under review is whether NYSOH properly determined that your spouse was no longer eligible to enroll in a qualified health plan through NYSOH and was disenrolled from your couple's silver-level QHP, effective March 31, 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 13, 2015, you were advised that your spouse's eligibility was only conditional, and that you/she needed to confirm her citizenship status before March 11, 2016.

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

Because there was no timely response to this notice, your spouse's eligibility to enroll in QHP and her enrollment in your couple's silver-level QHP were terminated effective March 31, 2016.

You testified that you did not receive any notice from NYSOH telling you that you needed to provide proof of your spouse's citizenship. You testified, and your NYSOH account confirms, that you elected to receive notifications by regular mail. However, there is no evidence in the record that any of the notices that were sent to your mailing address were returned as undeliverable.

Therefore, the record reflects that on December 13, 2015, NYSOH properly notified you that you needed to confirm your spouse's citizenship status before March 11, 2016, to ensure her eligibility for and enrollment in your QHP would continue.

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 spouse's eligibility without verification of her citizenship status. As a result, NYSOH properly determined on March 20, 2016 that your spouse could not enroll in a qualified health plan

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through NYSOH effective March 31, 2016, because the requested citizenship documentation had not been provided.

Therefore, strictly adhering to the law, NYSOH's March 20, 2016 notices eligibility redetermination and disenrollment regarding your spouse are correct and must be AFFIRMED.

Notwithstanding, the record reflects that your spouse is a naturalized citizen, but was listed as a "US citizen" on your December 12, 2015 initial application - - a necessary distinction not commonly known by nor flagged for consumers when completing an application. As a result of the citizenship status mismatch, NYSOH was not able to get a match with federal and state data sources despite having your spouse's Social Security number. However, once you learned of the reason for your spouse's disenrollment, the record reflects that you promptly provided a copy of her US Passport on March 29, 2016, which was valid at the time. Since adequate proof of her citizenship was provided on March 29, 2016, two days before her coverage was due to cancel, it is reasonable to conclude that the cancellation could have been stalled for her citizenship status to be confirmed and coverage reinstated had the matter been reviewed by a senior representative of NYSOH. However, the credible evidence of record indicates that this did not occur and that, thereafter, you were denied a special enrollment period within which to get your spouse's coverage reinstated. Further, your only remaining option was to file an appeal and wait to be heard on November 21, 2016, which was the date assigned by NYSOH for the hearing of your May 24, 2016 appeal.

During the hearing, you testified that you are concerned about receiving a tax penalty as a result of your spouse being without coverage for nine months in 2016. As noted in the preceding paragraph, your case has several extenuating circumstances that may be considered.

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.

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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 March 20, 2016 notices of eligibility redetermination and disenrollment regarding your spouse are AFFIRMED.

Effective Date of this Decision: January 9, 2017

How this Decision Affects Your Eligibility

NYSOH properly found your spouse no longer eligible to enroll in a QHP as of March 31, 2016 because you/she did not timely submit proof of her citizenship status.

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.

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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
- By mail at:
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Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The March 20, 2016 notices of eligibility redetermination and disenrollment regarding your spouse are AFFIRMED.

NYSOH properly found your spouse no longer eligible to enroll in a QHP as of March 31, 2016 because you/she did not timely submit proof of her citizenship status.

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.

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Legal Authority

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A Copy of this Decision Has Been Provided To:

