



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

Notice of Decision

Decision Date: November 28, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009998

[REDACTED]

Dear [REDACTED],

On November 22, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's June 3, 2016 denial of a special enrollment period.

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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NY State of Health Account ID: [REDACTED]
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Issues

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

Does NY State of Health have the authority to address whether your coverage in your qualified health plan covers certain medical expenses or to issue a refund of your health insurance premiums?

Did NY State of Health properly determine that you and your spouse were not eligible for a special enrollment period outside the open enrollment period as of June 3, 2016?

Procedural History

On January 28, 2016, NY State of Health (NYSOH) issued an enrollment notice confirming in part that you and your spouse were enrolled in a gold-level qualified health plan (QHP) effective March 1, 2016, and your monthly premium responsibility was \$999.17 after your advance premium tax credit (APTC) of \$312.00 was applied.

On May 31, 2016, NYSOH received your updated application for health insurance.

Also on May 31, 2016, NYSOH prepared a preliminary eligibility determination finding you and your spouse conditionally eligible to purchase a QHP with APTC through NYSOH. You also attempted to enroll in a QHP that day but were denied.

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 May 31, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you and your spouse were not eligible to enroll in a health plan outside of the open enrollment period.

On June 3, 2016, NYSOH issued a notice of eligibility determination that stated, based on your May 31, 2016 application, you and your spouse were eligible to purchase a QHP with APTC of up to \$312.00 per month. It further stated that you do not qualify to select a health plan outside of the open enrollment period for 2016.

On November 22, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. You and your spouse were sworn in and testified. 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) According to your NYSOH account, you submitted an updated application for 2016 health insurance coverage on May 31, 2016.
- 2) You testified that your income has decreased since you applied on May 31, 2016. You told a NYSOH representative this but did not reapply for financial assistance.
- 3) You and your spouse testified that you purchased a gold-level QHP through NYSOH's website and that the QHP you chose was not accepted by your healthcare providers. Your spouse testified that the list of providers that accepted your health insurance was far greater than the actual number of doctors that accepted your health insurance plan.
- 4) You testified that there are no doctors in the New York City area that take the plan you are enrolled in and, as a result, you and your spouse have had to pay for medical services out-of-pocket.
- 5) You testified that you have been forced to pay many out of pocket medical expenses along with your high premiums.
- 6) You testified that you are seeking to have NYSOH pay back the premiums that you paid for your insurance or cover the medical bills that you had to pay out-of-pocket.
- 7) You testified that you are planning to seek financial assistance through NYSOH for health insurance for the 2017 insurance year.

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

Applicable Law and Regulations

Valid Appeal Requests

An applicant has the right to appeal to the Appeals Unit of NYSOH: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) an eligibility determination for an exemption; (4) a failure by the Exchange to provide timely notice of an eligibility determination; and (5) the denial of a request for a special enrollment period (45 CFR § 155.505, 45 CFR § 155.420(d)).

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by the Marketplace (45 CFR § 155.520(b)(2); 18 NYCRR § 358-3.5(b)(1)).

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
 - (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)).

Advance Payments of Premium Tax Credit

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on NYSOH application) with their actual income (stated on their federal income tax return). Those who take less tax credit in advance than they claim on the tax return may get the rest of it as an income tax refund or have their tax bill reduced. Those who take more tax credit in advance than they can claim on their tax return will owe the difference as additional income taxes (26 CFR § 1.36B-4).

Legal Analysis

The first issue under review is whether NYSOH has the authority to address whether your coverage in your qualified health plan covers certain medical expenses or to issue a refund of your health insurance premiums.

You testified that you are seeking to have NYSOH pay back the premiums that you paid for your insurance or cover the medical bills that you have. You testified that this is due to the fact that there are no doctors in the New York City area that take your health plan. As a result, you testified that you and your spouse have been forced to pay many out-of-pocket medical expenses along with your high premiums.

The NYSOH Appeals Unit only has the authority to review issues related to the following: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination, and (5) a denial of a request to vacate dismissal made by the NYSOH Appeals Unit.

The issues of payment of premiums and whether certain medical expenses are covered are contractual in nature between you and your QHP. Since NYSOH's Appeals Unit does not have the authority to review a request for a refund of premium payments or what services are covered under your contract with your QHP, we cannot reach the merits as to whether you are due a refund on your premium payments or to have certain medical expenses covered. Therefore, your request for a refund of premiums and to have certain medical expenses covered is **DISMISSED** as a non-appealable issue.

The remaining issue under review is whether NYSOH properly denied you and your spouse a special enrollment period, effective May 31, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted an updated application on May 31, 2016. Therefore, you did not complete your application during the open enrollment period.

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.

You and your spouse testified that you purchased a gold-level QHP through NYSOH's website and that the QHP you chose was not accepted by your healthcare providers. You and your spouse testified that the list of medical providers accepting your QHP was far greater than the actual number of doctors that accepted your QHP.

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.

You testified that you looked at a list of medical providers and you relied upon that information. However, the list of medical providers is not an instrumentality or agent of NYSOH. Since the record does not indicate that NYSOH, by action or inaction, made an error or misrepresented information, a special enrollment period cannot be granted.

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 June 3, 2016 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

In addition, you testified that your income has decreased since you applied for health insurance and that you will be seeking new coverage for 2017. You testified that you told a NYSOH representative about the decrease in your household income, but did not reapply to have your eligibility for financial assistance redetermined this year.

When you receive APTC, you are receiving a credit is given to you in advance so that you can afford to get the coverage.

NYSOH estimates your monthly APTC based on your projected income so as to come as close as possible to what your ultimate tax credit will be. Ultimately, however, the IRS determines what your tax credit will be for the completed year when it reconciles your actual income with your projected income to determine the amount of APTC to which your household was entitled.

To this end, you will be required to file a 2016 federal tax return, in which the total of the monthly APTC you received will be reconciled with the tax credit associated with your actual reported annual income for the year. For example, if you received less APTC than you were entitled to, you will be eligible for a larger income tax refund or a credit toward your tax liability. Conversely, if you received more APTC than you were entitled to, you will be required to pay that back.

This determination is made by the IRS and is made using the information you report in your income taxes. Since we are already in open enrollment for the 2017 insurance year, NYSOH's calculation of your APTC in 2016 is no longer relevant; the amount of tax credit you were in fact entitled to for the 2016 year will be recalculated and confirmed by the IRS at tax time.

Open enrollment for 2017 is currently underway and you indicated that you and your spouse would like to re-enroll in a QHP through NYSOH but need some assistance in your QHP selection. You can contact NYSOH for a list of local certified assistance counselors or navigators, who can assist you through the application process and help you choose a QHP in the upcoming year. You may also apply for financial assistance for the 2017 insurance year by contacting NYSOH at 1-855-355-5777 or by going online to www.nystateofhealth.ny.gov.

Decision

Your request for a refund of premiums and/or to have certain medical expenses covered by NYSOH is DISMISSED as a non-appealable issue.

The June 3, 2016 eligibility determination is AFFIRMED.

Effective Date of this Decision: November 28, 2016

How this Decision Affects Your Eligibility

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

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).

Your and your spouse's current eligibility does not change.

The amount of APTC that you and your spouse received this year will be reconciled by the IRS at the time you file your 2016 income tax return.

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

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Summary

Your request for a refund of premiums and/or to have certain medical expenses covered by NYSOH is DISMISSED as a non-appealable issue.

The June 3, 2016 eligibility determination is AFFIRMED.

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

Your and your spouse's current eligibility does not change.

The amount of APTC that you and your spouse received this year will be reconciled by the IRS at the time you file your 2016 income tax return.

You can contact NYSOH for a list of local certified assistance counselors or navigators, who can assist you through the application process and help you choose a QHP in the upcoming year. You may also apply for financial assistance for the 2017 insurance year by contacting NYSOH at 1-855-355-5777 or by going online to www.nystateofhealth.ny.gov.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

