



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

Notice of Decision

Decision Date: January 5, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000010150

[REDACTED]

[REDACTED],

On December 8, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's November 25, 2015 enrollment confirmation notice and December 10, 2015 disenrollment confirmation 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 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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Decision

Decision Date: January 5, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000010150

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Issues

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

Was your appeal of NY State of Health's (NYSOH) December 10, 2015 enrollment confirmation notice timely?

Did NYSOH properly determine that you were enrolled in a United Healthcare silver level qualified health plan effective December 1, 2015?

Did NYSOH properly determine that you were enrolled in a Fidelis silver level qualified health plan effective December 1, 2015?

Procedural History

On December 14, 2014, NYSOH issued a notice of eligibility determination, based on your December 13, 2014 application for financial assistance with health insurance, stating that you were eligible to receive up to \$317.00 per month in advance premium tax credits as well as cost sharing reductions if you chose a silver level qualified health plan, effective January 1, 2015.

On December 21, 2014, NYSOH issued a notice of enrollment confirming your enrollment selection on December 13, 2014 of a Health Republic silver level qualified health plan with a start date of January 1, 2015.

On October 30, 2015, NYSOH issued a notice advising you that Health Republic would no longer be able to offer health care coverage beginning December 1, 2015, and that you would need to select a new health plan to maintain health

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care coverage for the month of December 2015. This same notice advised that you would need to select a new plan by November 15, 2015 to have coverage beginning December 1, 2015, and that if you did not make a selection by November 15, 2015 you would have no health care coverage for the month of December 2015.

On November 4, 2015, NYSOH issued a disenrollment notice advising you that your coverage through Health Republic would end effective November 30, 2015.

On November 20, 2015, NYSOH issued you a notice advising that as of that date, NYSOH had not yet received your plan selection for December 2015 and that to help ensure you did not have an unexpected gap in coverage, your information had been forwarded to Fidelis to allow them to offer you the opportunity to enroll effective December 1, 2015.

On November 22, 2015, NYSOH issued a disenrollment notice advising you that your coverage through Fidelis would end effective December 31, 2015.

On November 25, 2015, NYSOH issued a notice of enrollment confirming your enrollment in a silver level qualified health plan through Fidelis effective December 1, 2015.

On December 10, 2015, NYSOH issued a notice of enrollment confirming your enrollment in a silver level qualified health plan through United Healthcare effective December 1, 2015.

On December 10, 2015 NYSOH issued a notice of disenrollment advising you that your enrollment in your United Healthcare silver level qualified health plan would terminate on December 31, 2015.

On June 7, 2016, you spoke to NYSOH's Account Review Unit and appealed your enrollment in the United Healthcare silver level qualified health plan for December 2015.

On December 8, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and left open for fourteen days to allow you the opportunity to submit your appeal statement, a photocopy of the envelope you received from Fidelis which contained your welcome letter and Fidelis insurance card, welcome letter from Fidelis, photocopy of the front and back of your Fidelis insurance card, explanation of benefits statement from Fidelis, and handwritten notes regarding your phone calls with NYSOH representatives. On December 19, 2016, the Appeals Unit received via fax a 15-page document (including cover sheet) containing the above documents. These documents were collectively marked as Appellant's Exhibit #1 and incorporated into the record. The record is now closed.

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Findings of Fact

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

- 1) The record reflects that you were enrolled in a Health Republic silver level qualified health plan with a start date of January 1, 2015.
- 2) Your enrollment in your Health Republic silver level qualified health plan ended November 30, 2015, as Health Republic was no longer able to offer health care coverage.
- 3) NYSOH sent you a notice advising you to select a new health plan before November 15, 2015 in order to have coverage for December 2015.
- 4) You did not select a new health plan by November 15, 2015.
- 5) NYSOH enrolled you with a Fidelis silver level qualified health plan for December 2015, so you would not have a lapse in coverage.
- 6) The recording of the November 25, 2015 phone call with NYSOH demonstrates that on that date you contacted NYSOH and enrolled in a United Healthcare silver level qualified health plan for December 2015. During that phone call, you were advised that you had until November 30, 2015 to change your health plan for December 2015.
- 7) The recording of the November 30, 2015 phone call with NYSOH demonstrates that on that date you contacted NYSOH and requested to cancel your request to enroll in a United Healthcare silver level qualified health plan and to remain in the Fidelis silver level qualified health plan for December 2015.
- 8) You testified that after November 30, 2015, you did not change your plan for December 2015.
- 9) You testified that on December 1, 2015, you made your premium payment to Fidelis.
- 10) You submitted a letter from Fidelis stating that the effective date of your enrollment was December 1, 2015. This letter also indicates that Fidelis received your first monthly premium payment. You also submitted a photocopy of the envelope this letter came in, indicating that the letter was postmarked on December 9, 2015.

- 11) You submitted copies of the front and back of your Fidelis card stating that your coverage began on December 1, 2015.
- 12) You testified that you made no payments to United Healthcare, nor did you receive an insurance card from United Healthcare.
- 13) On February 5, 2016, NYSOH created incident [REDACTED], the note for which indicates that you contacted NYSOH requesting reinstatement with Fidelis effective December 1, 2015. This complaint was marked as closed on April 14, 2016.
- 14) On February 16, 2016 NYSOH created incident [REDACTED] which again indicates that you were having issues with your enrollment for December 2015. This complaint was marked as closed on April 14, 2016.
- 15) On April 14, 2016 NYSOH created incident [REDACTED] which indicates that you contacted NYSOH in order to have Fidelis show your enrollment from December 1, 2015 to December 31, 2015. This complaint was marked as closed on May 17, 2016.
- 16) On June 7, 2016, NYSOH created incident [REDACTED] wherein it is noted that you were requesting to appeal the resolutions of the previous complaints.
- 17) You testified that you wanted to be enrolled into the Fidelis silver level qualified health plan for December 2015 as you have medical bills that will not be covered by United Healthcare.

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 NYSOH's Appeals Unit: (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 45 CFR § 155.505; and (5) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

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

Termination of a Qualified Health Plan

NYSOH must permit an enrollee to terminate his or her coverage with a qualified health plan coverage, with appropriate notice to the NYSOH or qualified health plan (45 CFR § 155.430(b)(1)(i)).

For enrollee-initiated terminations, the last day of coverage is either:

- 1) The termination date specified by the enrollee, if the enrollee provides reasonable notice (at least 14 days before the requested termination date);
- 2) Fourteen days after the enrollee requests the termination, if they do not provide reasonable notice; or
- 3) On a date on or after the date the enrollee requests the termination, if the enrollee's qualified health plan issuer and the enrollee agree to such a date

(45 CFR § 155.430(d)(2)(i)-(iii)).

NYSOH must permit an enrollee to retroactively terminate or cancel their enrollment in a qualified health plan if:

- 1) The enrollee demonstrates that they attempted to terminate their coverage and experienced a technical error that did not allow the coverage to be terminated, and requests retroactive termination within 60 days after they discovered the technical error.
- 2) The enrollment in the qualified health plan was unintentional, inadvertent, or erroneous and was the result of the error or misconduct of an officer, employee, or agent of NYSOH or HHS, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities. Such enrollee must request cancellation within 60 days of discovering the unintentional, inadvertent, or erroneous enrollment.
- 3) The enrollee was enrolled in a qualified health plan without their knowledge or consent by any third party, including third parties who have no connection with the Exchange, and requests cancellation within 60 days of discovering of the enrollment.

(45 CFR § 155.430(b)(2)(iv)(A-C)).

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NYSOH permits a qualified health plan to terminate an individual's coverage if (1) the enrollee is no longer eligible for coverage or (2) non-payment of the premiums by the enrollee (45 CFR § 155.430(b)(2)(i)-(ii)).

Legal Analysis

The first issue under review is whether your appeal of NYSOH's December 10, 2015 disenrollment notice was timely.

The record reflects that you first contacted NYSOH to dispute the December 10, 2015 disenrollment notice on February 5, 2016 and a complaint was created at that time. Several other complaints were subsequently created.

The record further reflects that you followed-up with the complaint on February 16, 2016, April 15, 2016, May 12, 2016, and June 7, 2016 but that a determination was not made on these complaints by NYSOH until April 14, 2016 and May 17, 2016. On June 7, 2016 you filed a formal appeal because you were not satisfied with the resolutions that occurred on the dates stated above.

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH.

As you contacted NYSOH regarding your plan enrollment within 60 days of the December 10, 2015 enrollment notice and filed a formal appeal within 60 days of the determination on the complaint, your appeal was timely filed.

The second issue under review is whether NYSOH properly determined that you were enrolled in a United Healthcare silver level qualified health plan effective December 1, 2015.

On October 30, 2015 you were notified that Health Republic would no longer be able to offer health care coverage beginning December 1, 2015, and that you would need to select a new health plan to maintain health care coverage for the month of December 2015.

On November 20, 2015 NYSOH issued you a notice advising that as of that date, NYSOH had not yet received your plan selection for December 2015 and that to help ensure you did not have an unexpected gap in coverage, your information had been forwarded to Fidelis to allow them to offer you the opportunity to enroll effective December 1, 2015.

On November 25, 2015, you contacted NYSOH and selected a United Healthcare silver level qualified health plan for December 2015 enrollment. Thereafter, on November 30, 2015, you contacted NYSOH and requested to

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cancel your enrollment in the United Healthcare silver level qualified health plan and reenroll into the Fidelis silver level qualified health plan for December 2015.

NYSOH must permit an enrollee to be retroactively disenrolled from their qualified health plan if the enrollee demonstrates that there was a technical error that should have allowed them to terminate coverage earlier, or if their enrollment in the plan was unintentional, inadvertent, or erroneous and was the result of the error or misconduct of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities, or the enrollee was enrolled into a qualified health plan without their knowledge or consent by a third party.

In the present instance, the recording of the November 25, 2015 phone call with NYSOH demonstrates that on that date you contacted NYSOH and enrolled in a United Healthcare silver level qualified health plan for December 2015. However, during that phone call, you were advised that you had until November 30, 2015 to change your health plan for December 2015.

The record reflects that the NYSOH agent erred when advising you that you had until November 30, 2015 to change your health plan for December 2015. You relied upon this misinformation when selecting the United Healthcare plan for enrollment. Therefore, your enrollment in the United Healthcare silver level qualified health plan for December 1, 2015 was erroneous and the result of the error of an NYSOH agent. As a result, NYSOH must permit you to retroactively cancel your enrollment in the United Healthcare silver level qualified health plan.

Therefore, the December 10, 2015 disenrollment notice is MODIFIED to reflect that your coverage in the United Healthcare silver level qualified health plan will end effective December 1, 2015.

The third issue is whether NYSOH properly determined that you were enrolled in a Fidelis silver level qualified health plan effective December 1, 2015.

The record reflects that NYSOH enrolled you into a Fidelis silver level qualified health plan for December 1, 2015, as you had been enrolled with Health Republic, and Health Republic was no longer able to offer coverage after November 30, 2015.

On November 22, 2015, NYSOH issued a disenrollment notice advising that your enrollment in the Fidelis silver level qualified health plan would end December 31, 2015.

NYSOH did not issue any disenrollment notices advising that your enrollment in the Fidelis silver level qualified health plan would terminate prior to December 31, 2015.

You submitted proof confirming your enrollment in the Fidelis silver level qualified health plan for December 2015 in the form of a welcome letter from Fidelis indicating that your first monthly premium had been received and that your enrollment was effective December 1, 2015 as well as copies of your insurance cards indicating that your plan with Fidelis began on December 1, 2015.

As the record reflects that you were enrolled into the Fidelis silver level qualified health plan effective December 1, 2015, were not disenrolled from the Fidelis silver level qualified health plan until December 31, 2015, that you paid your premium for December 2015 to Fidelis, received a welcome letter confirming your enrollment with Fidelis effective December 1, 2015, received insurance cards from Fidelis for your plan beginning December 1, 2015, and requested to remain enrolled in the Fidelis silver level qualified health plan on November 30, 2015, the November 25, 2015 enrollment confirmation notice finding you enrolled in the Fidelis silver level qualified health plan effective December 1, 2015, is **AFFIRMED**.

Your case is **RETURNED** to NYSOH to ensure that you are enrolled in the Fidelis silver level qualified health plan from December 1, 2015 to December 31, 2015.

Decision

The December 10, 2015 disenrollment notice is **MODIFIED** to reflect that your coverage in the United Healthcare silver level qualified health plan will end effective December 1, 2015.

The November 25, 2015 enrollment confirmation notice is **AFFIRMED**.

The case is **RETURNED** to NYSOH to ensure that you are enrolled in the Fidelis silver level qualified health plan from December 1, 2015 to December 31, 2015.

Effective Date of this Decision: January 5, 2017

How this Decision Affects Your Eligibility

Your enrollment in the United Healthcare plan ended December 1, 2015.

You are enrolled in the Fidelis silver level qualified health plan from December 1, 2015 to December 31, 2015.

Your case is being sent back to NYSOH to enroll you in the Fidelis silver level qualified health plan from December 1, 2015 to December 31, 2015.

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).

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 December 10, 2015 disenrollment notice is MODIFIED to reflect that your coverage in the United Healthcare silver level qualified health plan will end effective December 1, 2015.

Your enrollment in the United Healthcare plan ended December 1, 2015.

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The November 25, 2015 enrollment confirmation notice is AFFIRMED.

You are enrolled in the Fidelis silver level qualified health plan from December 1, 2015 to December 31, 2015.

The case is RETURNED to NYSOH to ensure that you are enrolled in the Fidelis silver level qualified health plan from December 1, 2015 to December 31, 2015.

Your case is being sent back to NYSOH to enroll you in the Fidelis silver level qualified health plan from December 1, 2015 to December 31, 2015.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

