



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

## Notice of Decision

Decision Date: January 12, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000010272

[REDACTED]

[REDACTED]

On January 3, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's June 16, 2016 disenrollment 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.

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

Decision Date: January 12, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000010272



## 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 and your spouse's enrollment in your dental plan ended effective June 30, 2016?

## Procedural History

On December 29, 2015, NYSOH issued an enrollment confirmation notice stating that you and your spouse were enrolled in a Delta Care Basic dental plan with a monthly premium each of \$19.99, effective February 1, 2016.

On June 15, 2016, you contacted NYSOH to cancel your and your spouse's dental plan coverage, which NYSOH made effective June 30, 2016.

Also on June 15, 2016, you contacted NYSOH's Account Review Unit and appealed the disenrollment date of your and your spouse's dental plan, requesting the disenrollment be made effective February 1, 2016.

On June 16, 2016 NYSOH issued a disenrollment notice indicating that your and your spouse's coverage in your Delta Care dental plan would end effective June 30, 2016.

On January 3, 2017, you had a telephone hearing with a Hearing Officer from the NYSOH's Appeals Unit. The record was developed during the hearing and closed at the end of the proceeding.

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).

## Findings of Fact

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

- 1) According to your NYSOH account and your testimony, you and your spouse became eligible for the Essential Plan, effective February 1, 2016, and selected an Essential Plan 1 and a dental plan, both of which were to begin as of that date.
- 2) You testified that your spouse told the NYSOH representative who was assisting her by telephone on December 28, 2015, who your dentist was and that representative indicated that your dentist participated in Delta Care Basic dental plan.
- 3) You further testified that your spouse selected Delta Care Basic dental plan for both of you based on the NYSOH representative's statement that your dentist participated in that plan.
- 4) You testified that you made the monthly premium payments in the amount of \$39.98 to the Delta Care Basic dental plan every month for coverage from February 1, 2016 through June 2016.
- 5) You testified that you needed dental work and contacted your dentist's office on or about June 15, 2016 to make an appointment.
- 6) You testified that during the telephone call with your dentist's office, it was confirmed that your dentist does not and has never participated in the Delta Care Basic dental plan.
- 7) You testified that, on June 15, 2016, you contacted NYSOH to disenroll yourself and your spouse from the Delta Care Basic dental plan because you had just learned that your dentist does not and has never participated in this dental plan.
- 8) You testified that neither you nor your spouse used your dental plan from February 1, 2016 through June 30, 2016.
- 9) You testified that you are seeking retroactive disenrollment from your and your spouse's Delta Care Basic dental plan, effective February 1, 2016, and want to be reimbursed for the premium payments you made of \$39.98 each for five months, totaling \$199.90.

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

## **Applicable Law and Regulations**

### 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)).

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 issue under review is whether NYSOH properly determined that your and your spouse's enrollment in your dental plan ended effective June 30, 2016.

On December 29, 2015, NYSOH issued an enrollment confirmation notice stating that you and your spouse were enrolled in the Delta Care Basic dental plan with a \$19.99 monthly premium each, effective February 1, 2016.

On June 16, 2016, based on your June 15, 2016 request, NYSOH issue a disenrollment notice indicating you and your spouse would be disenrolled from your dental plan, effective June 30, 2016.

You testified that you are seeking retroactive disenrollment from your and your spouse's Delta Care Basic dental plan effective February 1, 2016.

NYSOH must permit an enrollee to be retroactively disenroll from their health or dental 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 or dental plan without their knowledge or consent by a third party.

You credibly testified that your and your spouse's enrollment in the Delta Care dental plan was based on misinformation provided by a NYSOH representative that your dentist participated in that dental plan when he did not. Therefore, it is reasonable to conclude that your and your spouse's enrollment was unintentional, inadvertent, or erroneous, and your and your spouse's enrollment in the Delta Care Basic dental plan 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.

The credible evidence of record further demonstrates that you and your spouse did not receive any dental care from February 1, 2016 through June 30, 2016, paid your monthly premiums totaling \$39.98 each month for that five month period, and requested cancellation on June 15, 2016, upon learning that same day that your dentist did not participate in Delta Care Basic dental plan.

As such, there is sufficient basis to find you timely requested cancellation on the same day that you discovered you and your spouse had been erroneously enrolled in a Delta Care Basic dental plan, such that NYSOH must permit you to retroactively terminate or cancel your and your spouse's enrollment in the Delta Care Basic dental plan as of February 1, 2016.

Therefore, since you and your spouse qualify to be retroactively disenrolled from that dental plan as of February 1, 2016, the June 16, 2016 disenrollment notice is MODIFIED to state that you and your spouse will no longer have dental coverage with the Delta Care Basic dental plan, effective February 1, 2016.

Your case is RETURNED to NYSOH to facilitate your and your spouse's disenrollment from the Delta Care Basic dental plan as of February 1, 2016, and to further assist you in reimbursement from the Delta Care Basic dental plan of \$39.98 in monthly premiums you paid for five months. NYSOH is directed to notify you once your disenrollment has been effectuated and assist you in being reimbursed by that dental plan in the total amount of \$199.90.

## **Decision**

The June 16, 2016 disenrollment notice is MODIFIED to state that you and your spouse will no longer have dental coverage with Delta Care Basic dental plan, effective February 1, 2016.

Your case is RETURNED to NYSOH to facilitate your and your spouse's disenrollment from Delta Care Basic dental plan as of February 1, 2016, and to further assist you in reimbursement from the Delta Care Basic dental plan of \$39.98 in monthly premiums you paid for five months. NYSOH is directed to notify you once your disenrollment has been effectuated and assist you in being reimbursed by that dental plan in the total amount of \$199.90.

**Effective Date of this Decision:** January 12, 2017

## **How this Decision Affects Your Eligibility**

This decision changes your and your spouse's disenrollment date in the Delta Care Basic dental plan from June 30, 2016 to February 1, 2016.

In effect, you and your spouse did not have dental insurance with Delta Care Basic dental plan in 2016.

Your case is being sent back to NYSOH to retroactively terminate/cancel your and your spouse's enrollment in that dental plan as of February 1, 2016 and to

notify you according. NYSOH will also assist you in being reimbursed the monthly premiums you paid.

## **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

## **Summary**

The June 16, 2016 disenrollment notice is MODIFIED to state that you and your spouse will no longer have dental coverage with Delta Care Basic dental plan, effective February 1, 2016.

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 case is RETURNED to NYSOH to facilitate your and your spouse's disenrollment from Delta Care Basic dental plan as of February 1, 2016, and to further assist you in reimbursement from the Delta Care Basic dental plan of \$39.98 in monthly premiums you paid for five months. NYSOH is directed to notify you once your disenrollment has been effectuated and assist you in being reimbursed by that dental plan in the total amount of \$199.90.

This decision changes your and your spouse's disenrollment date in the Delta Care Basic dental plan from June 30, 2016 to February 1, 2016.

In effect, you and your spouse did not have dental insurance with Delta Care Basic dental plan in 2016.

Your case is being sent back to NYSOH to retroactively terminate/cancel your and your spouse's enrollment in that dental plan as of February 1, 2016 and to notify you accordingly. NYSOH will also assist you in being reimbursed the monthly premiums you paid.

## **Legal Authority**

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

**A Copy of this Decision Has Been Provided To:**

