



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

## Notice of Decision

Decision Date: January 6, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000010289

[REDACTED]

[REDACTED]

On December 22, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's June 16, 2016 eligibility determination 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 6, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000010289

[REDACTED]

## 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 did not qualify for a special enrollment period, as of June 15, 2016, to enroll in health insurance for 2016 outside of the open enrollment period?

## Procedural History

On May 9, 2016, NYSOH received your initial application for health insurance.

On May 11, 2016, NYSOH issued a notice of eligibility determination that stated that you were eligible to receive \$101.00 of monthly Advance Premium Tax Credits to help pay for the cost of health coverage, effective June 1, 2016. The notice also stated that you qualified to select a health plan outside of the 2016 open enrollment period, and that you had until June 29, 2016 to select a plan.

Also, on May 11, 2016, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in a silver-level qualified health plan (QHP), with a monthly premium of \$307.88 and an enrollment start date of May 1, 2016.

On June 15, 2016, you contacted NYSOH to re-enroll into a health plan wherein you were advised that you did not qualify to select a health plan outside of the 2016 open enrollment period.

Also on June 15, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On June 16, 2016, NYSOH issued a cancellation notice stating that your enrollment in your QHP was terminated, effective May 1, 2016, because a premium payment had not been received by your health plan.

Also on June 16, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to receive \$101.00 of monthly Advance Premium Tax Credits to help pay for the cost of health coverage, effective July 1, 2016. The notice further stated that you did not qualify to select a health plan outside of the 2016 open enrollment period.

On December 22, 2016, you had a 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) The record indicates that you submitted your initial application for 2016 health insurance coverage on May 9, 2016 and enrolled into a silver level QHP.
- 2) You testified, and the application states, you had health insurance through Medicaid, outside of NYSOH, which ended April 30, 2016.
- 3) You were granted a special enrollment period to enroll into coverage that expired as of June 29, 2016.
- 4) You testified that you did not know your enrollment in your QHP began May 1, 2016 because you did not receive an invoice from your health plan.
- 5) You testified that you first learned you had been dis-enrolled from your health coverage for non-payment of premiums when you contacted your health plan and were advised that you owed premium payments for the months of May, June and July 2016.
- 6) You testified that you contacted NYSOH on June 15, 2016 to re-enroll into a health plan and were denied because you did not qualify for a special enrollment period.

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 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'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

(45 CFR § 155.420(d)).

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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)).

### Effective Date of Coverage

If a qualified individual is granted an SEP due to the loss of minimal essential coverage, and selects a new plan on or before the last date of that coverage, NYSOH must ensure that the new plan is effective on the first date of the month following the date that coverage was lost. If the new plan is selected prior to the date the previous coverage ends, then the new plan may be made effective on the first date of the month following plan selection (45 CFR § 155.420(b)).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined that you did not qualify for a special enrollment period, as of June 15, 2016, to enroll in health insurance for 2016 outside the open enrollment period.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on May 9, 2016. Therefore, you did not complete your application during the open enrollment period. However, in that application you indicated that your prior health insurance through Medicaid ended on April 30, 2016. Loss of minimum essential coverage, such as insurance through an employer, is considered a triggering life event for purposes of enrolling into a plan outside of the annual open enrollment period.

When a triggering life event occurs, the qualified individual has sixty days from the date of that event to select a qualified health plan. Accordingly, you were given a special enrollment period until June 29, 2016 to select a plan, which you did on May 9, 2016. On May 11, 2016, NYSOH issued an enrollment confirmation notice stating that your enrollment in your QHP was effective as of May 1, 2016.

When an individual loses minimum essential coverage and is found eligible for a special enrollment period, if they select a plan before their prior coverage ends, the plan can be effective on the first day of the month following the month when coverage was lost. In your case, if you had applied before April 30, 2016 – the last date of your prior health insurance coverage – your NYSOH plan could have started May 1, 2016.

However, if an individual selects a plan after the day on which he or she loses essential coverage, NYSOH can make the start date of the plan on the first day

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of the month following the date of plan selection. Since you selected a plan on May 9, 2016, your plan should not have started any earlier than June 1, 2016.

Therefore, the credible evidence of record indicates that NYSOH erred in making your enrollment effective May 1, 2016. As a result of this error, on June 16, 2016 you were then dis-enrolled from your QHP, as of May 1, 2016, because a premium payment had not been received by your health plan. You testified that you had not received an invoice from your health plan for the month of May 2016, and therefore you did not know you were enrolled as of May 1, 2016 and responsible for the premium payment.

You updated your application on June 15, 2016 and attempted to reenroll in a health plan but you were denied on the ground that you did not qualify for a special enrollment period.

A special enrollment period can be granted if qualified individual's enrollment or non-enrollment into a QHP 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.

Since your disenrollment from your QHP, as of May 1, 2016, was the direct result of NYSOH's error in granting you a retroactive enrollment date that you did not request, and was not proper under the law, you should have been eligible to select another health plan within 60 days of NYSOH's error. When you updated your application on June 15, 2016 and attempted to enroll, you were within the 60-day window.

As such, NYSOH's June 16, 2016 eligibility determination 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 special enrollment period as of the date of your application. You may choose to enroll into a qualified health plan going back to June 1, 2016 because of NYSOH's initial error in the start date of your plan.

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->

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[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 June 16, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this decision.

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

You may elect to reenroll into a QHP effective June 1, 2016.

**Effective Date of this Decision:** January 6, 2017

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

NYSOH erred in the start date of your original QHP.

You qualified for a special enrollment period as of the June 15, 2016 application for health insurance.

You and your spouse may elect to enroll into a QHP effective June 1, 2016.

## **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.

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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 eligibility determination is MODIFIED to reflect that you and your spouse are eligible for a special enrollment period as of the date of your June 15, 2016 application. You and your spouse may choose to enroll into a qualified health plan going back to June 1, 2016 because of NYSOH's initial error in the start date of your and your spouse's plan.

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

NYSOH erred in the start date of you and your spouse's original QHP.

You and your spouse qualified for a special enrollment period as of the June 15, 2016 application.

You and your spouse may elect to reenroll into a QHP effective June 1, 2016.

## **Legal Authority**

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

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

