



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

Notice of Decision

Decision Date: January 19, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000010529

[REDACTED]

[REDACTED],

On January 10, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's January 20, 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

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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:

Was your appeal of NY State of Health's (NYSOH) January 20, 2016 disenrollment notice timely?

Did NYSOH properly determine that your and your spouse's enrollment in your United Healthcare qualified health plan ended effective February 29, 2016?

Procedural History

On September 14, 2015, NYSOH issued a notice that it was time to renew your health insurance for the upcoming coverage year. That notice stated that based on information from federal and state sources, NYSOH could not make a decision about whether you and your spouse would qualify for financial help paying for your health coverage, and that you needed to update your account by October 15, 2015 or the financial assistance you and your spouse were getting may end.

No updates were made to your account by October 15, 2015.

On October 17, 2015, NYSOH issued an eligibility determination notice stating that you were not eligible for Medicaid, Child Health Plus, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance. You also could not enroll in a qualified health plan at full cost. This was because you had not

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responded to the renewal notice and had not completed your renewal within the required time frame. Your eligibility ended October 31, 2015.

On November 5, 2015, you contacted NYSOH and updated your household's application for financial assistance with health insurance.

On November 6, 2015, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible for advance payments of the premium tax credit (APTC) of up to \$634.00 per month, as well as cost sharing reductions, effective December 1, 2015.

Also on November 6, 2015, NYSOH issued an enrollment notice confirming your enrollment in a United Healthcare qualified health plan effective December 1, 2015 with a monthly premium of \$278.89 per month.

On December 1, 2015, you contacted NYSOH and updated your household's application for financial assistance with health insurance for 2016.

On December 6, 2015, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible for APTC of up to \$393.00 per month, effective January 1, 2016.

Additionally, on December 6, 2015, NYSOH issued a disenrollment notice indicating that coverage in your and your spouse's United Healthcare qualified health plan for 2015 would end effective December 31, 2015.

Also on December 6, 2015, NYSOH issued an enrollment notice confirming your and your spouse's enrollment, based on the plan selection on December 2, 2015, in a United Healthcare qualified health plan for 2016 effective January 1, 2016.

On January 20, 2016, NYSOH issued an enrollment notice, confirming your and your spouse's plan selection on December 3, 2015 of an MVP qualified health plan, with a plan enrollment start date of March 1, 2016.

Also on January 20, 2016, NYSOH issued a disenrollment notice stating that your and your spouse's enrollment in your United Healthcare qualified health plan would end February 29, 2016.

On June 28, 2016, you contacted the NYSOH Account Review Unit and appealed the date you and your spouse were disenrolled from your United Healthcare qualified health plan, requesting the disenrollment be made effective January 1, 2016.

On January 10, 2017, you and your spouse 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.

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Findings of Fact

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

- 1) You testified that you and your spouse are seeking to be disenrolled from your and your spouse's United Healthcare qualified health plan for January 2016 and February 2016.
- 2) A review of the phone recordings demonstrates that you contacted NYSOH on November 5, 2015 to update your enrollment and enroll in a plan for December 2015. At that time, you selected a United Healthcare qualified health plan for yourself and your spouse.
- 3) A review of the phone recordings demonstrates that you contacted NYSOH on December 1, 2015 to change health plans, as you were not satisfied with your coverage under your and your spouse's United Healthcare qualified health plan. During that phone call, you updated your household's application for health insurance for the 2016 coverage year. You did not enroll in a qualified health plan at that time.
- 4) On December 6, 2015, NYSOH issued an enrollment confirmation notice, confirming your and your spouse's enrollment in a United Healthcare qualified health plan with a plan enrollment start date of January 1, 2016. The notice indicates that the enrollment was selected on December 2, 2015.
- 5) There is no indication in the record that you or your spouse selected the United Healthcare qualified health plan for enrollment on December 2, 2015, or at any other time, for the 2016 coverage year, nor is there any indication in the record that an officer, employee, or agent of NYSOH enrolled you into the United Healthcare qualified health plan for enrollment on December 2, 2015.
- 6) A review of the phone recordings demonstrates that you contacted NYSOH on December 3, 2015 and were informed that you and your spouse had been enrolled in a United Healthcare qualified health plan, which would begin on January 1, 2016. You indicated repeatedly that you did not want to enroll in a United Healthcare qualified health plan for January 1, 2016. During that phone call, you enrolled yourself and your spouse in an MVP qualified health plan.
- 7) The record reflects that you receive all of your notices from NYSOH by electronic mail.

- 8) You testified that you did not get any electronic alerts regarding the disenrollment notice stating that you and your spouse were disenrolled from your United Healthcare qualified health plan, effective February 29, 2016.
- 9) You testified that you thought that your and your spouse's enrollment in your United Healthcare qualified health plan had ended on December 31, 2015 and that you had no coverage through United Healthcare after that date.
- 10) You testified that you paid your monthly premium to United Healthcare for your December 2015 coverage.
- 11) You testified that you paid your March 2016 premium to MVP and have continued to make premium payments to MVP.
- 12) You testified that you received a bill from United Healthcare for January 2016 and February 2016 in June 2016.
- 13) You testified that after you received the bill from United Healthcare you contacted NYSOH and filed an appeal.
- 14) The record reflects that on June 27, 2016 you filed an appeal with NYSOH, requesting that your coverage with United Healthcare for January 2016 and February 2016 be cancelled.

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)).

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)).

However, where an appeal request is untimely, the appeal request may be considered valid if the applicant or enrollee sufficiently demonstrates within a reasonable timeframe as determined by NYSOH that failure to timely submit the appeal was due to exceptional circumstances and should not preclude the appeal (45 CFR §155.520(d)(2)(i)(D)).

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 first issue under review is whether your appeal of NYSOH's January 20, 2016 disenrollment notice was timely.

The record reflects that you first contacted NYSOH to file a formal appeal regarding your disenrollment date from your and your spouse's United Healthcare qualified health plan on June 28, 2016.

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

For an appeal to have been valid on the issue of the disenrollment date from your and your spouse's United Healthcare qualified health plan, an appeal should have been filed by February 21, 2016. The record reflects that you filed your appeal on June 28, 2016, which is beyond the 60-day deadline.

Although your appeal was untimely on its face, the record reflects that you elected to receive alerts regarding notices from NYSOH electronically. You credibly testified that you did not receive an electronic alert regarding the January 20, 2016 disenrollment notice. There is no evidence in your account documenting that any email alert was sent to you regarding the renewal notice or the need to renew your application.

As you did not receive the January 20, 2016 disenrollment notice, there is no indication that you were ever made aware of the disenrollment date or your appeal rights.

You further testified that you became aware of the disenrollment date from your and your spouse's United Healthcare qualified health plan, when you received the bill for January 2016 and February 2016 from United Healthcare in June of 2016.

As you were not properly provided with the January 20, 2016 disenrollment notice nor were you properly made aware of your appeal rights, and you contacted NYSOH shortly after learning that your enrollment with your and your spouse's United Healthcare qualified health plan had continued after December 31, 2015, your failure to timely submit the appeal was due to exceptional circumstances and should not preclude the appeal.

The second issue under review is whether NYSOH properly determined that your enrollment in your United Healthcare qualified health plan ended effective February 29, 2016.

On December 6, 2015, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible to receive APTC of up to \$393.00 per month effective January 1, 2016. You subsequently enrolled into a qualified health plan.

On January 20, 2016, NYSOH issue a disenrollment notice indicating you would be disenrolled from your qualified health plan effective February 29, 2016.

You testified that you are seeking disenrollment from your qualified health plan effective January 1, 2016.

The record reflects that on December 3, 2015, you contacted NYSOH and requested that you be disenrolled from your United Healthcare qualified health plan as you no longer wanted to remain enrolled after December 31, 2015.

Enrollees must be allowed to terminate their coverage with a qualified health plan at the date they specify if they provide reasonable notice to NYSOH or to their health plan. Reasonable notice is defined as at least 14 days prior to the requested termination date.

NYSOH terminated your insurance coverage with your qualified health plan effective February 29, 2016.

Since you contacted NYSOH on December 3, 2015 and requested that you be disenrolled from your United Healthcare qualified health plan after December 31, 2015, more than 14 days prior to the requested termination date, you provided reasonable notice to NYSOH.

Therefore, the January 20, 2016, disenrollment notice is MODIFIED to reflect that your and your spouse are disenrolled from your United Healthcare qualified health plan effective January 1, 2016.

Your case is RETURNED to NYSOH to disenroll you and your spouse from your United Healthcare qualified health plan effective January 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).

Decision

The January 20, 2016 disenrollment notice is MODIFIED to reflect that you and your spouse are disenrolled from your United Healthcare qualified health plan effective January 1, 2016.

Your case is RETURNED to NYSOH to disenroll you and your spouse from your United Healthcare qualified health plan effective January 1, 2016.

Effective Date of this Decision: January 19, 2017

How this Decision Affects Your Eligibility

This decision changes your and your spouse's disenrollment date. You and your spouse's enrollment in your United Healthcare qualified health plan should have ended as of January 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.

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

Summary

The January 20, 2016 disenrollment notice is MODIFIED to reflect that you and your spouse are disenrolled from your United Healthcare qualified health plan effective January 1, 2016.

Your case is RETURNED to NYSOH to disenroll you and your spouse from your United Healthcare qualified health plan effective January 1, 2016.

This decision changes your and your spouse's disenrollment date. You and your spouse's enrollment in your United Healthcare qualified health plan should have ended as of January 1, 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

