



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: AP000000010806

[REDACTED]

[REDACTED]

On December 22, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's July 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]
Appeal Identification Number: AP000000010806



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 do not qualify to select a health plan outside of the open enrollment period for 2016?

Procedural History

On May 24, 2016, NYSOH received your application for health insurance.

On May 25, 2016, NYSOH issued a notice of eligibility determination stating that you are eligible to receive an advance premium tax credit of up to \$168.00 per month, effective July 1, 2016. It further stated that you qualify, until July 2, 2016, to select a health plan outside of the open enrollment period for 2016.

No plan selections were made by July 2, 2016.

On July 12, 2016, you spoke to NYSOH's Account Review Unit and appealed insofar as you were no longer eligible to enroll in a health plan outside of the 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.

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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 24, 2016.
- 2) You testified you had prior health coverage, outside of NYSOH, that ended around May 1, 2016.
- 3) The May 25, 2016 application lists the end date of your prior coverage as May 3, 2016.
- 4) You testified that you began a job on March 28, 2016 that provided a monthly subsidy to help pay for the cost of health insurance after the expiration of a three-month probation period.
- 5) You testified that you applied for insurance through the NYSOH website in May 2016 to see what kind of plans you qualified for.
- 6) You testified that you did not know that you had been granted a special enrollment period until July 2, 2016, so you did not pick a plan before that time.
- 7) You testified that you did receive the email alert from NYSOH regarding the May 25, 2016 eligibility determination notice, but you think the email went to your spam box.
- 8) You testified that you accessed the NYSOH website again in July 2016 to complete another application, but you were unable to. You testified that you contacted potential health plans to inquire about enrollment and were advised that it was outside of the open enrollment period for 2016.
- 9) You testified that you enrolled in a health plan with NYSOH during the open enrollment period for 2017 and your health plan is to begin January 1, 2017.
- 10) You testified that you have been without health coverage since May 2016 and you are concerned about potential tax penalties due to being uninsured during this time.

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 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)).

De Novo Review

NYSOH Appeals Unit must review each appeal de novo and "consider all relevant facts and evidence adduced during the appeals process" (45 CFR § 155.535(f)). "De novo review means a review of an appeal without deference to prior decisions in the case" (45 CFR § 155.500).

Affordability Exemption

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing health insurance coverage. Such an exemption may be granted if that person can show that he or she experienced a financial hardship or has domestic circumstances that (1) caused an unexpected increase in essential expenses that prevented that person from obtaining health coverage under a QHP; (2) would have caused the person to experience serious deprivation of food, shelter, clothing, or other necessities, as a result of the

expense of purchasing health coverage under a QHP; or (3) prevented that person from obtaining coverage under a QHP (45 CFR § 155.605(a), (d)).

NYSOH has deferred to the U.S. Department of Health and Human Services (HHS) on the matter of hardship exemptions (see 45 CFR § 155.505(c)).

Legal Analysis

The issue under review is whether NYSOH properly denied you a special enrollment period for 2016.

The record does not contain a notice of eligibility determination denying you a special enrollment period at the time of your July 12, 2016 request for appeal. However, you testified that you accessed the NYSOH website in July 2016 to complete an application, but you were unable to. You testified that you contacted potential health plans to inquire about enrollment and were advised that it was outside of the open enrollment period for 2016.

Here, the lack of a notice of eligibility determination denying you a special enrollment period does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Your credible testimony that you attempted to submit an application for health insurance on the NYSOH website in July 2016 and were unable to do so combined with evidence in the record that you were not enrolled into health coverage through NYSOH until the open enrollment period for 2017, permits an inference that NYSOH did deny your special enrollment request.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued.

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 24, 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 into a qualified health plan offered in NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event. The qualified individual has sixty days from the date of the triggering event to select a qualified health plan.

There is no evidence in the record to establish grounds for an additional special enrollment period. The triggering event in this case, the loss of health insurance coverage, occurred on May 3, 2016, wherein you were granted a 60-day special enrollment period until July 2, 2016. You did not pick a plan within this time frame. You acknowledge that you received the email alert concerning the May 25, 2016 eligibility determination which provided the deadline by which you must pick a health plan. However, you testified that you believe the email alert went to your spam box. This is not sufficient grounds to grant an additional special enrollment period.

There is no evidence in the record of any subsequent loss of health coverage or any other triggering event by which you would be entitled to an additional special enrollment period. Additionally, you testified that there have been no changes to your household in 2016. Accordingly, the credible evidence of record indicates that, since your special enrollment period ended on July 2, 2016, you have not experience a triggering event that would qualify you for an additional special enrollment period as of the date of the hearing.

Therefore, NYSOH's denial of a special enrollment period to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance during 2016, you can check the Federal Marketplace website (www.healthcare.gov) for an application.

Decision

NYSOH's denial of a special enrollment period to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

Effective Date of this Decision: January 6, 2017

How this Decision Affects Your Eligibility

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

This decision has no effect on your 2017 coverage.

If You Disagree with this Decision (Appeal Rights)

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).

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

NYSOH's denial of a special enrollment period to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

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

This decision has no effect on your 2017 coverage.

Legal Authority

We are issuing this determination in accordance with 45 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).

A Copy of this Decision Has Been Provided To:

