



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

## Notice of Decision

Decision Date: February 21, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000010827

[REDACTED]

Dear [REDACTED],

On January 19, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's May 18, 2016 notice of a 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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## Decision

Decision Date: February 21, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000010827

## Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NY State of Health (NYSOH) properly deny you and your spouse the ability to change your qualified health plan outside of the open enrollment period for 2016?

## Procedural History

On November 27, 2015, NYSOH received your application for health insurance.

On December 4, 2015, NYSOH issued a notice of eligibility determination stating you and your spouse were eligible to purchase a qualified health plan at full cost effective January 1, 2016.

On January 28, 2016, NYSOH issued an enrollment confirmation notice confirming you and your spouse's enrollment on January 27, 2016 in a gold level qualified health plan effective March 1, 2016.

On April 1, 2016, you contacted NYSOH and requested to change plans from the gold level qualified health plan.

On May 18, 2016, NYSOH issued a notice stating that a determination was made that you and your spouse did not qualify to select a health plan outside of the open enrollment period.

On July 13, 2016, you spoke to NYSOH's Account Review Unit and requested an appeal of a denial to change your plan outside of the open enrollment period for 2016.

On January 19, 2017, 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) You reside in a two-person household.
- 2) The record indicates that you and your spouse enrolled in a qualified health plan on January 27, 2016.
- 3) You contacted NYSOH representatives on April 1, 2016 and requested a plan change as your physician was not in your health plan's network. An incident filed on that date states you told the representative you had researched provider networks directly with your health plan but did not check with the provider, and after your enrollment in the health plan you learned your physician does not take that plan. See Incident [REDACTED].
- 4) The record supports you contacted NYSOH representatives on May 3, 2016 and requested to change your health plan.
- 5) Your request to change your health plan outside of the open enrollment period was denied on May 18, 2016.
- 6) You testified that you had reviewed the health plan website with your health plan and your physician's name was generated as participating with the health plan for 2016.
- 7) You testified when you spoke with your physician you confirmed the information on the health plan website was incorrect and your physician did not participate in the health plan you enrolled in.
- 8) You provided a letter from your physician dated June 3, 2016, in which he describes that you both went onto your health plan's website and it stated your physician was still a participating provider. Your physician confirms that this information is false and he does not accept your health plan. The letter indicates there was a merger of your physician's practice. See Document: [REDACTED].

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)).

## **Legal Analysis**

The issue under review is whether NYSOH properly denied you and your spouse a special enrollment period to change your health plan.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application and enrolled in a gold level qualified health plan effective March 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).

You then contacted NYSOH representatives on April 1, and May 3, 2016 in an effort to change your health plan to one your physician accepted.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered in NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

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

The credible evidence of record indicates that you had reviewed the health plan website and your physician's name was generated as participating with the health plan for 2016. You testified you relied on that information in enrolling you and your spouse in that plan.

In a letter from your physician dated June 3, 2016, your physician stated together you went onto your health plan's website and it stated your physician was still a participating provider. He explains in his letter that the information contained in that website is not accurate, and he was not accepting the Gold level qualified health plan for his practice. The letter further stated the change was in response to a merger of your physician's practice with another. As confirmed in your physician's letter, your choice of health plan was based on your review of the health plan's website, and information received from the plan itself.

A health plan's website and a physician are not considered officers, employees, or agents of NYSOH and any misrepresentations by those entities are not considered the fault of NYSOH. Since it has not been alleged that an officer, employee, or agent of NYSOH or its instrumentalities through misconduct, error, or misrepresentation lead you to choose the health plan you enrolled in for 2016, a special enrollment period cannot be granted on this basis.

Therefore, NYSOH's May 18, 2016 eligibility determination that you and your spouse do not qualify to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

## **Decision**

The May 18, 2016 eligibility determination is AFFIRMED.

**Effective Date of this Decision:** February 21, 2017

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

You and your spouse do not qualify for a special enrollment period for 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.

### **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
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## **Summary**

The May 18, 2016 eligibility determination is AFFIRMED.

You have 60 days from the date of this decision to enroll into a plan.

## **Legal Authority**

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

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

