



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

## Notice of Decision

Decision Date: January 24, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000010872

[REDACTED]

Dear [REDACTED],

On January 10, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's June 8, 2016 eligibility determination.

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 24, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000010872



## 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 were not eligible to enroll in a qualified health plan (QHP) outside of the 2016 open enrollment period?

## Procedural History

On April 27, 2016, NYSOH received your application for health insurance.

On April [REDACTED] 2016, NYSOH issued a notice of eligibility determination that stated that you were eligible to receive up to \$129.00 per month in advance payments of the premium tax credit (APTC), effective June 1, 2016. It further stated that you qualified to select a health plan outside of the 2016 open enrollment period, and that you had until June 27, 2016 to select a plan.

Also on April 28, 2016, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in a QHP, effective May 1, 2016, with the application of your APTC to your monthly premium also beginning on May 1, 2016.

On May 24, 2016, NYSOH issued a cancellation notice stating that your enrollment in your QHP was cancelled effective May 1, 2016 because a premium payment was not received by your health plan.

On June 7, 2016, you updated your NYSOH account.

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On June 8, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to receive up to \$129.00 per month in APTC, 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 July 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 January 10, 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) The record indicates that you submitted your initial application for 2016 health insurance coverage on April 27, 2016, and were granted a special enrollment period (SEP) so that you could select a health plan outside of open enrollment.
- 2) The notice issued on April [REDACTED] 2016, and your NYSOH account, both indicate that your SEP did not expire until June 27, 2016.
- 3) You testified that you applied for insurance in April because you were turning 26 years old on [REDACTED], and were therefore no longer eligible to remain on your parents' health insurance.
- 4) You testified that it was your understanding that your insurance with NYSOH would begin May 1, 2016 because your insurance through your parents ended on April 30, 2016.
- 5) You testified that you expected to receive a bill for your May 2016 premium from your health plan, but you never did.
- 6) You testified that, sometime after May 20, 2016, you receive a notice from Fidelis (your QHP) stating that you had failed to make a premium payment, and your coverage was cancelled.
- 7) You testified that you immediately contacted Fidelis and were informed that your premium payment had been due by May 20, 2016.

- 8) You testified that you informed the person you spoke with at Fidelis that you never received a bill or notice regarding your premium payment, and that this person confirmed that you had never been sent a notice.
- 9) You testified that, as you continued to try to resolve the situation, the next person you spoke with at Fidelis claimed that you had in fact been sent a notice regarding your premium payment.
- 10) You testified that spent between 15 and 20 hours on the phone with Fidelis trying to straighten the issue out, and that you filed three formal complaints with Fidelis, which were all rejected.
- 11) You testified that Fidelis rejected your request to be reinstated in your health plan.
- 12) You testified that you were sent back and forth between Fidelis and NYSOH multiple times.
- 13) You testified, and your NYSOH account reflects, that an application counselor tried to get you re-enrolled in coverage through NYSOH in early June 2016.
- 14) Your NYSOH account reflects that you updated your account and tried to re-enroll in coverage on June 7, 2016.
- 15) You testified that you were informed by NYSOH that you did not qualify for a SEP, and that you could not enroll in coverage until the open enrollment period for 2017.
- 16) You testified that you do not think it is right that you will have to pay a tax penalty for not having coverage for part of 2016, and that you think Fidelis should have to pay for this penalty, since you believe that they lied to you and caused you not to have coverage from May 2016 onward.

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

## **Applicable Law and Regulations**

### Appealable Issues

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

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cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by NYSOH to provide timely notice of an eligibility determination, 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)).

### Enrollment in a Qualified Health Plan

NYSOH must provide annual open enrollment periods during which time qualified individuals may enroll in a 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 SEPs to qualified individuals. During a SEP, a qualified individual may enroll in a QHP, and an enrollee may change their enrollment to another plan. This is generally permitted when certain triggering events occur, including the following:

- (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.

(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 a special enrollment period, as of June 7, 2016.

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NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on April 27, 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 an SEP 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.

You testified that you were previously covered by your parents' health insurance, but that your coverage ended on April [REDACTED], 2016, because you turned 26 on April [REDACTED]. You testified that, since your previous coverage was ending on April [REDACTED], 2016, you applied for coverage through NYSOH. This loss of coverage is considered a triggering event for a SEP.

When a triggering life event occurs, the qualified individual has 60 days from the date of that event to select a QHP. Sixty days from April 28, 2016 was June 27, 2016. On April [REDACTED], 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to receive APTC of up to \$129.00 per month, effective June 1, 2016. The notice also granted you an SEP, and gave you until June 27, 2016 to select a health plan.

Your NYSOH account reflects that you selected a health plan on April 27, 2016, and that your enrollment in that plan began on May 1, 2016. You testified that you were aware that your coverage was beginning on May 1, 2016, and that you waited for an invoice or notice from your QHP regarding how to make your premium payment. You testified that you never received an invoice and, instead, received a letter sometime around May 20, 2016 from Fidelis informing you that your coverage had been cancelled for nonpayment of your premium.

You testified that you contacted Fidelis, and that Fidelis first acknowledged that they had not sent you a notice regarding your premium, and then subsequently stated that they had sent you a notice. You testified that you spent hours on the phone with Fidelis and filed three formal complaints, but that, ultimately, Fidelis refused to reinstate you in coverage.

The New York State of Health Appeals Unit only has the authority to review issues related to the following: (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, and (5) a denial of a for a special enrollment period.

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Since the Appeals Unit is not given the authority to review termination of enrollment due to non-payment of premiums, we cannot reach the merits as to whether or not you were properly terminated from your health plan for nonpayment of premiums. Likewise, we lack the authority to make a determination that you should be placed back into the coverage that was terminated for nonpayment of premiums.

Therefore, the Appeals Unit can only review whether you were properly denied a SEP.

The record reflects that, after you were cancelled from your Fidelis coverage, you attempted to update your account again on June 7, 2016 and to enroll in coverage, and you confirmed this in your testimony. As a result of this update, NYSOH issued a notice of eligibility determination on June 8, 2016 again stating that you were eligible to receive up to \$129.00 per month in APTC, but this time stating that you did not qualify for a SEP, and could not enroll in coverage for 2016.

However, the SEP that NYSOH granted you on April [REDACTED], 2016 did not expire until June 27, 2016. As such, your application update and attempt to enroll on June 7, 2016 fell within the SEP for which you were already eligible. You should have been permitted to enroll in a new plan as of June 7, 2016, as you still had an active SEP.

Therefore, NYSOH's June 8, 2016 eligibility determination stating 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 an SEP until 60 days from the date of this decision. You should have been eligible to enroll in coverage for a July 1, 2016 enrollment start date.

The record indicates that NYSOH's failure to grant you a special enrollment period resulted in you being without insurance coverage for part of the 2016 coverage year. During the hearing, you testified that you are concerned about receiving a tax penalty as a result of being without coverage.

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 did not 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-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 8, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a SEP 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, should you decide to enroll in coverage. You should have been eligible to enroll in coverage with a July 1, 2016 enrollment start date.

**Effective Date of this Decision:** January 24, 2017

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

You qualify for a SEP, and were eligible to enroll in coverage with a July 1, 2016 start date.

You have 60 days from the date of this decision to enroll into a plan, should you decide to retroactively enroll in 2016 coverage.

## **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

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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 8, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a SEP 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, should you decide to enroll in coverage. You should have been eligible to enroll in coverage with a July 1, 2016 enrollment start date.

You qualify for a SEP, and were eligible to enroll in coverage with a July 1, 2016 start date.

You have 60 days from the date of this decision to enroll into a plan, should you decide to retroactively enroll in 2016 coverage.

### **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:**

