



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

Notice of Decision

Decision Date: September 1, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000010916

[REDACTED]

Dear [REDACTED],

On August 23, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's August 2, 2016 eligibility determination notice and the 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 NY State of Health 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.

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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:

Did NY State of Health (NYSOH) properly determine that you were eligible to enroll in the Essential Plan effective September 1, 2016?

Did NYSOH properly determine that you did not qualify for a special enrollment period in order to enroll in standard qualified health plan, outside of the open enrollment period?

Procedural History

On April 8, 2016, NYSOH issued a disenrollment notice stating that your insurance coverage with your qualified health plan (QHP) issued by UnitedHealthcare (UHC) was terminated effective February 29, 2016 for non-payment of premiums.

On July 26, 2016 NYSOH received your updated application for financial assistance. On August 1, 2016, NYSOH redetermined your eligibility.

Also on August 1, 2016, NYSOH received a letter issued by [REDACTED], dated as of July 26, 2016, requesting that your enrollment in your QHP with UHC be reinstated.

On August 2, 2016, NYSOH issued an eligibility determination based on the August 1, 2016 application, stating that you are eligible to enroll in the Essential Plan for a limited period of time. In order to finalize your eligibility you were

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directed to provide proof of income by October 30, 2016. You contacted NYSOH's Account Review Unit and requested an appeal of that eligibility determination insofar as you were not eligible to reenroll in a QHP and receive advance premium tax credits (APTC).

Also on August 2, 2016, NYSOH issued a notice of enrollment confirming your selection of an Essential Plan with UHC as of August 1, 2016. The notice further confirmed that your coverage would begin effective September 1, 2016. This notice, however, did not address your eligibility for a special enrollment period.

On August 19, 2016, NYSOH received your Official Record of Benefit Payment History reflecting that you had been awarded \$274.00 per week in unemployment benefits beginning June 26, 2016.

On August 20, 2016, NYSOH issued an eligibility redetermination notice based on updated information received as of August 19, 2016. The notice stated that you were eligible to enroll in the Essential Plan, without condition, effective October 1, 2016.

On August 23, 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) NYSOH received a non-financial assistance application on November 23, 2015. Based on this application, you were found eligible to enroll in a QHP at full cost, effective January 1, 2016.
- 2) You testified that you made a late payment to UHC for your QHP coverage during 2016. Accordingly, you were disenrolled from your coverage with UHC as of February 29, 2016.
- 3) You testified that you have been physically separated from your spouse since 2010, but you have not sought nor been issued a legal separation agreement or divorce decree.
- 4) You testified that you expect to file your 2016 taxes with a tax filing status of married filing separately. You will claim no dependents on that tax return.
- 5) You are seeking insurance for yourself only.

- 6) The application that was submitted on August 1, 2016, which requested financial assistance, listed annual household income of \$22,124.00, consisting of approximately \$15,000.00 you earned from your employment from [REDACTED] between January 1, 2016 and June 7, 2016, and \$274.00 per week in unemployment benefits you anticipate receiving over 26 weeks during 2016. You testified that this amount was correct.
- 7) Your application states that you will not be taking any deductions on your 2016 tax return.
- 8) You live in Westchester County, New York.
- 9) You testified that you were seeking to reenroll in the same QHP issued by UHC for the remainder of 2016. You also testified that your current physicians did not accept the Essential Plans offered by NYSOH, so you preferred to seek insurance through a QHP, preferably with UHC.

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

Applicable Law and Regulations

Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

In an analysis of Essential Plan eligibility, the determination is based on the FPL in effect on the first day of the benefit year for which coverage is requested (45 CFR § 155.300(a)). On the date of your application, that was the 2015 FPL, which is \$11,770.00 for a one-person household (80 Federal Register 3236, 3237).

A person who has a household income that is at or below 150% of the FPL has a \$0.00 premium contribution (New York's Basic Health Plan Blueprint, p. 21, as

approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

A person who has a household income greater than 150% of the FPL or below 200% of the FPL has a \$20.00 per month premium contribution (New York's Basic Health Plan Blueprint, as approved January 2016).

The Essential Plan is considered minimum essential coverage therefore, a person who is eligible for the Essential Plan is not eligible for any premium tax credit because they are eligible for minimum essential coverage through the individual market (see 26 CFR § 1.36B-2(c)(1), 26 USC § 5000A(f)(1)(C)).

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).

NYSOH Eligibility Determinations

When an individual applies for insurance through NYSOH, NYSOH must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 CFR § 435.1200(b)(3)(iii)).

NYSOH is required to provide “timely written notice to an applicant of any eligibility determination” made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual NYSOH (45 CFR § 155.310(g)).

An applicant or enrollee has the right to appeal an eligibility determination or redetermination or a failure by NYSOH to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

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 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)).

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

- (1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or
- (2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128”

(45 CFR § 155.420(e)).

Legal Analysis

The first issue under review is whether NYSOH properly determined that you were eligible for the Essential Plan, effective September 1, 2016.

The application that was submitted on August 1, 2016 listed an annual household income of \$22,124.00, which consisted of \$15,000.00 you earned from your employment from [REDACTED] between January 1, 2016 and June 7, 2016, and \$274.00 per week in unemployment benefits you anticipate receiving over the remaining 26 weeks during 2016. The eligibility determination relied upon that information.

You are in a one-person household. You expect to file your 2016 income taxes as married filing separately and will claim no dependents on that tax return.

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income

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(MAGI) that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$17,770.00 for a one-person household. Since an annual household income of \$22,124.00 is 187.97% of the 2015 FPL, NYSOH properly found you to be eligible for the Essential Plan.

Since the August 2, 2016 eligibility determination properly stated that, based on the information you provided, you were eligible for the Essential Plan, and you were not found eligible to receive APTC, it was correct and is AFFIRMED.

You submitted an application on August 1, 2016 and NYSOH issued an eligibility determination notice on August 2, 2016. However, NYSOH did not address whether you were eligible for a special enrollment period at that time.

Although NYSOH did not issue a timely notice of eligibility determination with respect to whether you were eligible for a special enrollment period, this does not prevent the NYSOH Appeals Unit from reaching the merits of your case on your appeal request. Under 45 CFR § 155.505(b), you are as entitled to appeal a NYSOH failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Also, since the NYSOH Appeals Unit reviews of NYSOH determinations on a de novo basis, no deference would have been granted to that written determination had it been issued before you filed your appeal.

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

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete non-financial assistance application on November 23, 2015. Therefore, you completed your application during the open enrollment period.

The record reflects, and you conceded, that your QHP coverage with UHC was terminated effective February 29, 2016 for non-payment of premiums.

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.

Generally, the loss of health insurance coverage is considered a triggering event. Here, your enrollment was terminated effective May 31, 2015 because you did not pay your premiums to your health plan on time. NYSOH considers the failure to pay premiums a voluntary action causing the termination of your coverage; therefore, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2016, no other triggering events have occurred that would qualify you for a special enrollment period.

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

Decision

The August 2, 2016 eligibility determination notice is AFFIRMED.

NYSOH's determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

Effective Date of this Decision: September 1, 2016

How this Decision Affects Your Eligibility

You remain eligible for the Essential Plan.

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

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

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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 August 2, 2016 eligibility determination notice is AFFIRMED.

NYSOH's determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

You remain eligible for the Essential Plan.

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

Legal Authority

We are sending you this notice in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:

