



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

Notice of Decision

Decision Date: January 18, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000011104

[REDACTED]

[REDACTED]

On December 19, 2016, you and your Authorized Representative, [REDACTED] [REDACTED] appeared by telephone at a hearing on your appeal of NY State of Health's June 30, 2016 eligibility determination 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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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 did not qualify to select a health plan outside of the open enrollment period for 2016?

Procedural History

On December 21, 2015, NYSOH issued an eligibility determination notice that stated that you were newly eligible to purchase a qualified health plan (QHP) at full cost, effective January 1, 2016.

On December 22, 2015, NYSOH issued an enrollment notice confirming your selection of a QHP as of December 21, 2015. The notice stated that your QHP coverage would begin effective January 1, 2016.

On February 24, 2016, NYSOH received an update to your application for health insurance. This application reflected that you were no longer seeking health insurance through NYSOH.

On February 25, 2016, NYSOH issued a disenrollment notice stating that your QHP coverage would end effective March 31, 2016.

On June 27, 2016, NYSOH received a further update to your application for health insurance. This application reflected that you were again seeking health insurance through NYSOH, and that you attested to a loss of essential health

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coverage as of June 10, 2016 as your reasoning on why you should have qualified for a special enrollment period.

On June 28, 2016, NYSOH issued an eligibility determination notice based on the information contained in the June 27, 2016 application. The notice stated that you were eligible to receive an advance premium tax credits (APTC) of up to \$214.00 per month and, if you selected a silver-level plan, eligible for cost-sharing reductions (CSR), effective August 1, 2016. However, the notice further stated that you must have a qualifying event in order to select a plan outside of the open enrollment period.

On June 29, 2016, NYSOH received a further update to your application for health insurance. You attested in this application to a loss of essential health coverage as of June 10, 2016 as your reasoning on why you should have qualified for a special enrollment period.

On June 30, 2016, NYSOH issued an eligibility determination notice based on the information contained in the June 29, 2016 application. The notice stated that you were eligible to receive an APTC of up to \$214.00 per month and, if you selected a silver-level plan, eligible for CSR, effective August 1, 2016. However, the notice further stated that you do not qualify to select a health plan outside of the open enrollment period for 2016.

On July 27, 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 December 19, 2016, you and your Authorized Representative, [REDACTED] had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and remained open as the Hearing Officer directed you to provide as additional evidence to corroborate your testimony: a letter issued by Excellus Blue Cross Blue Shield (Excellus BCBS) confirming your loss of coverage. The record was to be closed 15 days after the hearing date, or upon the receipt of the above referenced documents, whichever occurred earlier.

On December 27, 2016, you provided to NYSOH Appeals Unit (1) a letter issued by Excellus BCBS, dated as June 16, 2016, confirming that [REDACTED] insurance coverage would terminate as of June 9, 2016, and (2) a May 2016 Excellus BCBS claim report reflecting that you were listed as a dependent under [REDACTED] insurance policy.

Accordingly, the record was closed on December 27, 2016.

Findings of Fact

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

- 1) You testified that you wanted your girlfriend, [REDACTED], to act as your Authorized Representative during the hearing.
- 2) Your Authorized Representative stated that you terminated your health insurance through NYSOH as of March 31, 2016 due to acquiring health insurance under her employer sponsored health insurance plan.
- 3) The record indicates that you submitted a revised applications for 2016 health insurance coverage on June 27, 2016 and June 29, 2016. In each case, you attested to having lost your health insurance coverage as of June 10, 2016.
- 4) Your Authorized Representative stated that as a result of her having changed jobs on June 9, 2016, your health insurance coverage was terminated as of June 9, 2016 since you were listed as a dependent under her account.
- 5) On December 27, 2016, you provided (1) a letter issued by Excellus BCBS, dated as June 16, 2016, confirming that [REDACTED] insurance coverage would terminate as of June 9, 2016, and (2) a May 2016 Excellus BCBS claim report reflecting that you were listed as a dependent under [REDACTED] insurance policy.
- 6) Your Authorized Representative stated during the hearing that you are now only concerned about incurring a tax penalty as a result of being without coverage for a portion of the year during 2016.

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)).

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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.

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, effective August 1, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on December 20, 2015. Therefore, you did complete your application during the open enrollment period.

The record indicates that you terminated your health coverage as a result of acquiring health insurance coverage outside of NYSOH, through [REDACTED] employer-sponsored health insurance policy.

The record further indicates that you attempted to reenroll in a health insurance plan through NYSOH on June 27, 2016 and June 29, 2016, but were prevented from doing so, because NYSOH determined you were not having qualified for a special enrollment period.

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.

Your Authorized Representative testified, and the record reasonably reflects, that your previous insurance coverage ended on June 9, 2016 which is considered a triggering life event.

When a triggering life event occurs, the qualified individual has 60 days from the date of that event to select a qualified health plan.

Sixty days from June 9, 2016 was August 8, 2016; therefore, you were qualified to select or change your qualified health plan outside of the open enrollment period until August 8, 2016.

The credible evidence of record indicates that you lost your health insurance on June 9, 2016. While you attempted to select a plan on June 27, 2016 and June 29, 2016, which was prior to the August 8, 2016 deadline in which to select a QHP, you were erroneously prevented from doing so.

Therefore, NYSOH's June 30, 2016 eligibility determination notice that you did not qualify to select a health plan outside of the open enrollment period for 2016 was issued in error.

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. Had you been properly permitted to enroll in a plan, you would have done so.

The Appeals Unit of NYSOH finds that your being without insurance for the remainder of 2016 is due to NYSOH's error.

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

NYSOH's June 30, 2016 eligibility determination notice that you do not qualify to select a health plan outside of the open enrollment period for 2016 was issued in error.

However, since this decision is already being issued within the open enrollment period for 2017, and you have already enrolled in coverage for the upcoming year, modifying the June 30, 2016 determination is of no further use to you.

Your eligibility therefore will not be changed.

Effective Date of this Decision: January 18, 2017

How this Decision Affects Your Eligibility

Your eligibility has not changed.

However, you are encouraged to follow up with HHS to claim an exemption based on NYSOH's error in not permitting you to reenroll in a QHP beginning August 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.

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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:
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- By fax: 1-855-900-5557

Summary

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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:

