



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

Notice of Decision

Decision Date: December 21, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000011282

[REDACTED]

Dear [REDACTED],

On November 29, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's August 5, 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: December 21, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000011282

[REDACTED]

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 for a special enrollment period as of August 4, 2016 to enroll in health insurance for 2016 outside of the open enrollment period?

Procedural History

On June 16, 2016, NYSOH received your initial application for health insurance.

On June 17, 2016, NYSOH issued a notice of eligibility determination that stated you were eligible to enroll in a full cost qualified health plan (QHP), effective August 1, 2016. The notice also stated that you qualified to select a health plan outside of the 2016 open enrollment period, and that you had until June 29, 2016 to select a plan

Also on June 17, 2016, NYSOH issued an enrollment confirmation notice that stated you were enrolled in a full cost QHP, effective May 1, 2016.

On July 21, 2016, NYSOH issued a cancellation notice stating that your QHP was cancelled, effective May 1, 2016, because you did not make your premium payments to your health plan for coverage to start as of May 1, 2016.

On August 4, 2016, NYSOH received your updated application for health insurance.

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Also on August 4, 2016, NYSOH prepared a preliminary eligibility determination finding you eligible to purchase a full cost QHP, effective September 1, 2016. You also attempted to enroll in a QHP that day but were denied a special enrollment period to enroll in a health plan outside the open enrollment period.

Also on August 4, 2016, you spoke to NYSOH's Account Review Unit and requested an appeal of that eligibility determination insofar as you were denied a special enrollment period.

On August 5, 2016, NYSOH issued a notice of eligibility determination that stated you were eligible to enroll in a full cost QHP, effective September 1, 2016. The section entitled "Qualifying for a Special Enrollment Period" on that notice was blank.

On November 29, 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) The record indicates that you submitted your initial application for 2016 health insurance coverage on June 16, 2016 with the assistance of a broker.
- 2) You testified that you had health insurance through your employer, but that you left your job in April 2016.
- 3) You testified that you think your health coverage through your former employer ended April 30, 2016.
- 4) According to your NYSOH account, your health insurance through your former employer ended April 30, 2016.
- 5) You testified that broker enroll you in a QHP with coverage to begin effective July 1, 2016.
- 6) On June 17, 2016, NYSOH issued two conflicting notices, based on your June 16, 2016 application. Your eligibility determination notice stated that you are eligible to enroll in a full cost QHP, effective August 1, 2016. The enrollment confirmation notice stated that you are enrolled in a full cost QHP, effective May 1, 2016.

- 7) You testified that you were not aware of the May 1, 2016 start date of your QHP and did not receive an invoice with this information.
- 8) You testified that you called NYSOH and a representative told you that the May 1, 2016 cancellation date was an “agent error,” but when you tried to enroll in new health coverage you were unable to because you did not qualify for a special enrollment period. You further testified that you were told by the NYSOH representative that the only thing you could do was to file an appeal and have a formal hearing.
- 9) You testified that, when you contacted your QHP provider to rectify the situation, the representative from the health plan advised you that since you had already contacted NYSOH and have a pending appeal, they could not put you back into your coverage.
- 10) You testified that you want a special enrollment period so that you can enroll in a health plan, and thought that you could not enroll in coverage again until the pending appeal was resolved.

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 certain triggering events occur, including the following:

- 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.
- 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.

(45 CFR § 155.420(d)(1) and (4)).

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)).

When a person is granted a special enrollment period after an involuntary loss of minimum essential coverage, and plan selection is made after that triggering event, the Exchange must ensure that coverage is effective in accordance with paragraph (b)(1) of this section or on the first day of the following month, at the option of the Exchange (45 CFR §155.420 (b)(2)(iv)).

Effective Date of Coverage

If a qualified individual is granted an SEP due to the loss of minimum essential coverage, and selects a new plan on or before the last date of that coverage, NYSOH must ensure that the new plan is effective on the first day of the month following the date that coverage was lost. If the new plan is not selected prior to the date the previous coverage ends, then the new plan may be made effective on the first date of the month following plan selection. (45 CFR § 155.420(b))

Legal Analysis

The issue under review is whether NYSOH properly determined that you did not qualify for a special enrollment period as of August 4, 2016 to enroll in health insurance for 2016 outside the open enrollment period.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016.

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.

You filed your initial application with NYSOH on June 16, 2016, which is outside the annual open enrollment period. However, in that application you indicated that your health insurance through your former employer likely ended as of April 30, 2016. Loss of minimum essential coverage, such as health insurance through an employer, is considered a triggering life event.

When a triggering life event occurs, the qualified individual has sixty days from the date of that event to select a QHP. Accordingly, from the loss of employer insurance on April 30, 2016, you were given a special enrollment period until June 29, 2016 to select a plan, which you did on June 16, 2016. On June 17, 2016, NYSOH Issued an enrollment confirmation notice stating that your enrollment in the QHP you selected was effective May 1, 2016.

When an individual loses minimum essential coverage and is found eligible for a special enrollment period, if they select a plan before their prior coverage ends, the plan can be effective on the first day of the month following the month when essential coverage was lost. In your case, if you had applied before April 30, 2016 – the most likely last date of your health insurance coverage through your employer – your NYSOH health plan could have started on May 1, 2016.

However, if an individual selects a plan after the day on which he or she loses essential coverage, NYSOH can make the start date of the plan on the first day of the month following the date of plan selection. Since you selected a plan on June 16, 2016, your plan should not have started any earlier than August 1, 2016.

Therefore, the credible evidence of record indicates that NYSOH erred in making your QHP enrollment effective May 1, 2016. As a result of this error, on July 21, 2016, you were then disenrolled from the QHP you had just selected 35 days prior because a premium payment had not been received by your health plan for the month of May 2016.

You then contacted NYSOH on August 4, 2016 to reenroll into a QHP, but you were denied because you did not qualify for a special enrollment period.

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

Since your disenrollment from your QHP as of May 1, 2016 was the direct result of NYSOH's error in granting you a retroactive enrollment date that you did not request, and that was not proper under the law, you should have been eligible to select another health plan within sixty days of NYSOH's error. When you updated your application on August 4, 2016 and attempted to enroll you were technically within a new sixty day window.

As such, NYSOH's August 5, 2016 eligibility determination notice that is silent as to whether or not you qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your June 16, 2016 initial application. At your election, you may choose to enroll into a qualified health plan going back to August 1, 2016 because of NYSOH's initial error in the start date of your plan.

The record also 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. After the hearing, the Hearing Officer adduced that you might be exposed to a tax penalty as a result of being without coverage for part of this year.

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 didn't have health coverage while you were waiting for an appeal decision about coverage eligibility or savings **and** your appeal was eventually successful.

If you choose to proceed, 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

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return. If HHS does not approve your exemption, you will need to file an amended return later.

Open enrollment for 2017 is currently underway and you indicated that you would like to re-enroll in a QHP through NYSOH but need some assistance in your QHP selection. You can contact NYSOH for a list of local certified assistance counselors or navigators, who can assist you through the application process and help you choose a QHP in the upcoming year. You may also apply for financial assistance for the 2017 insurance year by contacting NYSOH at 1-855-355-5777 or by going online to www.nystateofhealth.ny.gov. For a January 1, 2017 start date of health coverage, you will need to update your NYSOH application and select and confirm a health plan by December 15, 2016.

Decision

The August 5, 2016 eligibility determination notice is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your June 16, 2016 application. You may choose to enroll into a QHP going back to August 1, 2016 because of NYSOH's initial error in the start date of your plan.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage if you so choose.

Effective Date of this Decision: December 21, 2016

How this Decision Affects Your Eligibility

NYSOH erred in the start date of your original QHP.

You qualified for a special enrollment period as of the August 4, 2016 application for health insurance.

You may elect to reenroll into QHP effective 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.

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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

The August 5, 2016 eligibility determination notice is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your June 16, 2016 application. You may choose to enroll into a QHP going back to August 1, 2016 because of NYSOH's initial error in the start date of your plan.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage if you so choose.

NYSOH erred in the start date of your original QHP.

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You qualified for a special enrollment period as of the August 4, 2016 application for health insurance.

You may elect to reenroll into QHP effective August 1, 2016.

You can contact NYSOH for a list of local certified assistance counselors or navigators, who can assist you through the application process and help you choose a QHP in the upcoming year. You may also apply for financial assistance for the 2017 insurance year by contacting NYSOH at 1-855-355-5777 or by going online to www.nystateofhealth.ny.gov. For a January 1, 2017 start date of health coverage, you will need to update your NYSOH application and select and confirm a health plan by December 15, 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

