



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

## Notice of Decision

Decision Date: January 17, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000011351

[REDACTED]

Dear [REDACTED],

On December 29, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's August 10, 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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: January 17, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000011351

[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 9, 2016 to enroll in health insurance for 2016 outside of the open enrollment period?

## Procedural History

On May 29, 2016, NYSOH received your application for health insurance.

On May 30, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to receive up to \$37.00 per month in advance premium tax credits, effective July 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 May 30, 2016 to select a plan.

Also on May 30, 2016, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in a silver-level qualified health plan (QHP) with a monthly premium of \$403.05, with an enrollment start date of April 1, 2016.

On July 23, 2016, NYSOH issued a cancellation notice stating that your enrollment in your QHP was terminated, effective April 1, 2016, because a premium payment had not been received by your health plan.

On August 9, 2016 you updated your application with NYSOH. That day, you attempted to reenroll into a qualified health plan but were unable.

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Also on August 9, 2016, you spoke to NYSOH's Account Review Unit and appealed insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On August 10, 2016 NYSOH issued a notice of eligibility determination stating that you were eligible to receive up to \$37.00 per month in advance premium tax credits, effective September 1, 2016. The notice also stated that you did not qualify to select a health plan outside of the 2016 open enrollment period.

On December 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) You submitted an application for 2016 health insurance coverage on May 29, 2016 and enrolled into a silver-level QHP.
- 2) You testified that you had health insurance through your father's plan but that it ended on March [REDACTED], 2016 because you turned 26 years old.
- 3) You were granted a special enrollment period to enroll into coverage that expired as of May 30, 2016.
- 4) You filed a complaint (# [REDACTED]) with NYSOH on June 13, 2016 contending that the NYSOH system defaulted the start date of your plan to April 1, 2016 and that you were seeking a June 1, 2016 start date to your QHP.
- 5) Complaint # [REDACTED] was closed on August 17, 2016 because you did not have active coverage to adjust.
- 6) You were disenrolled from your QHP because you did not pay the April 2016 premium.
- 7) You contacted NYSOH on August 9, 2016 to attempt to reenroll into a QHP.

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'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

(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)).

## Effective Date of Coverage

If a qualified individual is granted an SEP due to the loss of minimal 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 date of the month following the date that coverage was lost. If the new plan is 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 9, 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. The record indicates that you submitted a complete application on May 29, 2016. Therefore, you did not complete your application during the open enrollment period. However, in that application you indicated that your health insurance through your father's plan ended on March 31, 2016. Loss of minimum essential coverage, such as insurance through a family plan, 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 QHP. Accordingly, you were given a special enrollment period until May 30, 2016 to select a plan, which you did on May 29, 2016. On May 30, 2016, NYSOH issued an enrollment confirmation notice stating that your enrollment in your QHP was effective as of April 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 coverage was lost. In your case, if you had applied before March 31, 2016 – the last date of your health insurance coverage through your father's plan – your NYSOH plan could have started April 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 May 29, 2016, your plan should not have started any earlier than June 1, 2016.

Therefore, the credible evidence of record indicates that NYSOH erred in making your QHP enrollment effective April 1, 2016. As a result of this error, on July 13, 2016 you were then disenrolled from the QHP because a premium payment had not been received by your health plan for the month of April 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 updated your application on August 9, 2016 and attempted to enroll in a health plan but you were unsuccessful.

A special enrollment period can be granted if 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 April 1, 2016 was the direct result of NYSOH's error in granting you a retroactive enrollment date that you did not request, and was not proper under the law, you should have been eligible to select another health plan within 60 days of NYSOH's error; that is, the May 30, 2016 enrollment notice. In this case, you were outside of the 60 day window when you updated your application on August 9, 2016. However, you filed a complaint (# [REDACTED]) with NYSOH on June 13, 2016 contending that the NYSOH system defaulted the start date of your plan to April 1, 2016 and that you were seeking a June 1, 2016 start date to your QHP. Therefore, it is concluded that you attempted to rectify the error of your plan start date within 60 days of the May 30, 2016 enrollment notice.

As such, NYSOH's August 10, 2016 eligibility determination 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 a special enrollment period as of the date of your application. You may choose to enroll into a qualified health plan going back to June 1, 2016 because of NYSOH's initial error in the start date of your plan.

In the event that your concern at this point in time is your exposure to an IRS tax penalty for not having health insurance in 2016 for the requisite number of months, you may qualify for an exemption due to NYSOH's error.

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.

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.

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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 August 10, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a 2016 special enrollment period 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.

You may elect to enroll into a QHP effective June 1, 2016.

**Effective Date of this Decision:** January 17, 2017

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

NYSOH erred in the start date of your original QHP.

You may elect to enroll into a QHP effective June 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.

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)).

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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 10, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a 2016 special enrollment period 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.

NYSOH erred in the start date of your original QHP.

You may elect to enroll into a QHP effective June 1, 2016.

## **Legal Authority**

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

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

