



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: AP000000011366

[REDACTED]

[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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## Decision

Decision Date: January 17, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000011366

[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 were not eligible to select a qualified health plan outside of the open enrollment period as of August 9, 2016?

## Procedural History

On August 9, 2016, NYSOH received your application for health insurance. That day, you attempted to enroll in a qualified health plan but were unable.

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

On August 10, 2016, NYSOH issued a notice of eligibility determination that stated you were eligible to purchase a qualified health plan at full cost. It further stated that you do not qualify to select a health plan outside of the open enrollment period for 2016.

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 remained open until January 12, 2017 to allow you time to submit various documents. Documents were uploaded to your NYSOH account on January 5,

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2017. The documents were made part of the record as Appellant's Exhibit #1. The record is now closed.

## **Findings of Fact**

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

- 1) You submitted your initial application for 2016 health insurance coverage on August 9, 2016.
- 2) You testified that on October 15, 2015, you moved to [REDACTED] to work as a teacher.
- 3) You testified that you expected to remain in [REDACTED] for at least a year.
- 4) You testified that your employment in [REDACTED] ended earlier than you expected.
- 5) You testified that you moved back to New York State on June 15, 2016.
- 6) You uploaded a document on December 29, 2016 stating in part that you were seeking an exemption from being fined by the New York State tax authority and the federal government for not having health insurance in 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)).

### Special Enrollment Periods

After each open enrollment period ends, NYSOH provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified

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individual may enroll in a QHP, and an enrollee may change their enrollment to another plan if a triggering event occurs.

When a qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move and was living outside of the United States or United States territory at the time of the permanent move is considered to be a triggering event (45 CFR § 155.420(d)(7)(ii)).

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)).

### Exemptions

A shared responsibility payment may be imposed with respect to a non-exempt individual who does not maintain minimum essential coverage. However, an exemption may relieve an individual from the shared responsibility payment (45 CFR § 155.600(a)).

An exemption may be granted to an applicant for at least before, a month or months during which, and the month after, if it is determined the individual(s) experienced circumstances that prevented them from obtaining coverage under a qualified health plan (45 CFR § 155.605(g)(1)(iii)).

NYSOH may adopt an exemption eligibility determination made by United States Department of Health and Human Services (HHS) for an exemption application that is submitted before the start of open enrollment for 2016 (45 CFR § 155.625(b)).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined that you were not eligible to select a qualified health plan outside of the open enrollment period as of August 9, 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 August 9, 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 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.

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You testified that on October 15, 2015, you moved to [REDACTED] to work as a teacher and that you expected to remain in [REDACTED] for at least a year. However, your employment in [REDACTED] ended earlier than you expected. You testified that as a result of your employment ending you moved back to New York State on June 15, 2016.

A qualified individual gaining access to new qualified health plans as a result of a permanent move and who was living outside of the United States at the time of the permanent move, is considered to be a triggering 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.

60 days from June 15, 2016 was August 14, 2016; therefore, you would have qualified to select a qualified health plan outside of the open enrollment period until August 14, 2016.

The credible evidence of record indicates that you submitted an application on August 9, 2016. Since August 9, 2016 was within the 60 days of your triggering event, you should have been granted a special enrollment period to enroll into a qualified health plan.

Therefore, NYSOH's August 10, 2016 eligibility determination notice that stated you do not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you were eligible for a special enrollment period as of the date of your August 9, 2016 application. As such, you have until 60 days from the date of this decision to select and enroll in a health plan for 2016 as if you had done so on August 9, 2016, if you so choose.

You uploaded a document on December 29, 2016 stating in part that you were seeking an exemption from being fined by the New York State tax authority and the federal government due to an error by NYSOH. Please note that NYSOH Appeals Unit does not have the authority to decide whether or not you should face a tax penalty from the state or federal government. However, this appeal is being decided in your favor.

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.

**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 August 10, 2016 eligibility determination notice that stated you do not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you were eligible for a special enrollment period as of the date of your August 9, 2016 application.

As such, you have until 60 days from the date of this decision to select and enroll in a health plan for 2016 as if you had done so on August 9, 2016, if you so choose.

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:** January 17, 2017

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

You qualify for a special enrollment period.

You have 60 days from the date of this decision to enroll into a health plan for 2016 coverage as if you had done so on August 9, 2016. NYSOH will assist you should you choose to do so.

## **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

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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**

NYSOH's August 10, 2016 eligibility determination notice that stated you do not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you were eligible for a special enrollment period as of the date of your August 9, 2016 application.

As such, you have until 60 days from the date of this decision to select and enroll in a health plan for 2016 as if you had done so on August 9, 2016, if you so choose.

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

You qualify for a special enrollment period.

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You have 60 days from the date of this decision to enroll into a health plan for 2016 coverage as if you had done so on August 9, 2016. NYSOH will assist you should you choose to do so.

### **Legal Authority**

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

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

