



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

## Notice of Decision

Decision Date: February 15, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000011405

[REDACTED]

[REDACTED]

Dear [REDACTED],

On January 3, 2017, your authorized representative, [REDACTED], appeared by telephone on your behalf at a hearing on your appeal of NY State of Health's August 11, 2016 verbal 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 the Account ID at the top of this notice.

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).

**Legal Authority**

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

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## Decision

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NY State of Health Account ID: [REDACTED]  
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[REDACTED]

[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, as of August 11, 2016, you did not qualify to enroll in a health plan outside the open enrollment period?

## Procedural History

According to your NYSOH account, based on your January 22, 2016 application, you were determined eligible to receive advance premium tax credits (APTC) and cost sharing reductions (CSR), effective March 1, 2016, and were enrolled in a gold-level qualified health plan as of that date.

On August 5, 2016, NYSOH issued a disenrollment notice stating that your coverage in your gold-level QHP was terminated, effective June 30, 2016, because premium payments had not been received by the QHP. The notice further stated that you must pay your premium responsibility within the required timeframe in order to maintain coverage.

On August 11, 2016, you updated your application and NYSOH preliminarily determined that you did not qualify for a special enrollment period within which to enroll in a health plan outside of the open enrollment period.

Also on August 11, 2016, you spoke with NYSOH's Account Review Unit and appealed that preliminary redetermination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On August 12, 2016, NYSOH issued an acknowledgement letter confirming your request for a telephone hearing to review the denial of a special enrollment period.

Also on August 12, 2016, NYSOH issued an eligibility redetermination notice, based on your August 11, 2016 updated application, stating that you were eligible to receive APTC and CSR, effective September 1, 2016. The notice also stated that you qualify to select a health plan outside of the open enrollment period for 2016 and to sign into your account, review your plan options, and confirm your selection no later than October 10, 2016.

On January 3, 2017, your authorized representative had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open up to 15 days for your authorized representative to submit proof that you were a victim of identity theft. As of January 19, 2016, no documentation was received at the Appeals Unit and none were viewable in your NYSOH account. As such, the record was closed and this Decision is based on the record as developed at the time of the hearing.

## **Findings of Fact**

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

- 1) According to your NYSOH account, your coverage in your QHP was terminated due to nonpayment of premium, effective June 30, 2016.
- 2) Your authorized representative testified that you could not make your premium payment in July 2016 because the account number on your debit card had been stolen while you were working in California and you had no funds to pay your premium or July 2016.
- 3) Your authorized representative further testified that your QHP was notified and allegedly said they were willing to reinstate your coverage because you were a victim of identity theft and only missed one payment.

- 4) Your authorized representative testified that on August 11, 2016, you contacted NYSOH to re-enroll and were verbally denied a special enrollment period.
- 5) The August 12, 2016 appeal acknowledgement letter confirms you were denied a special enrollment period.
- 6) The August 12, 2016 eligibility redetermination notice states that you were granted a special enrollment period and had until October 10, 2016 to select and confirm your enrollment in a QHP.
- 7) According to a billing incident, the QHP told NYSOH that it billed you for the July 2016 monthly premium on June 3, 2016 and sent a reminder notice on July 6, 2016, and there were no calls to Member Services Department advising that you were having issues making payment. As such, the QHP was unwilling to reinstate you.
- 8) Your authorized representative testified during the hearing that you are concerned about incurring a tax penalty as a result of being without coverage.

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

## **Applicable Law and Regulations**

### De Novo Review

The Marketplace 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).

### 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.

(45 CFR § 155.420(d)(1)).

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 issue under review is whether NYSOH properly denied you a special enrollment period, effective August 11, 2016, because you did not experience a qualifying life event, which is also known as a “triggering event.”

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NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on January 22, 2016. Therefore, you did 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.

The record reflects that, as a result of nonpayment of premiums for the month of July 2016, your QHP notified NYSOH that your coverage ended June 30, 2016. As a result, on August 5, 2016, NYSOH sent you a disenrollment notice confirming that your coverage in your QHP ended as of June 30, 2016.

On August 11, 2016, you spoke with NYSOH's Account Review Unit and requested review on the basis that you were denied a special enrollment period and had extenuating circumstances since you were a victim of identity theft. Your authorized representative testified and the notices of record confirm that you were denied a special enrollment period, despite an eligibility redetermination notice, dated August 1, 2016, stating the contrary. As such, the record supports that NYSOH acknowledged receipt of an appeal request and identifies the issue on appeal as "Denial of Special Enrollment (SEP)."

Here, the contradictory evidence as to whether or not you qualified for a special enrollment period does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the August 12, 2016, which acknowledges the appeal on the issue of denial of a special enrollment period, and the testimony of your authorized representative, permit an inference that NYSOH did deny your request for a special enrollment period.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued denying your request for a special enrollment period. Therefore, the issue under review is refined to whether you were properly denied a special enrollment period to allow you to re-enroll in a health plan outside the open enrollment period.

In certain circumstances, a special enrollment period is granted to individuals so that they may enroll in a qualified health plan outside of the open enrollment period if the individual experiences a triggering event. Loss of insurance coverage may be considered a triggering event for purposes of being granted a

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special enrollment period. However, loss of insurance coverage as a result of failing to pay insurance premiums on a timely basis is considered a voluntary termination of coverage and not a triggering event such that this event does not support approval of a special enrollment period.

According to the record, your authorized representative was directed to submit proof that you were a victim of identity theft at the time your July 2016 premium was due, which proof was not provided for the Appeals Unit to verify. Further, your authorized representative testified that your QHP agreed to re-instate your coverage; whereas, the billing incident indicates the QHP told NYSOH that it was unwilling to reinstate you after having sent you a June 3, 2016 premium invoice and a July 6, 2016 reminder notice, and having no record of you calling to advise of your inability to pay timely pay your July 2016 premium. Absent documentary proof to support that you were a victim of identity theft and your QHP agreeing to re-instate your coverage, it is concluded that your nonpayment of premium constitutes a voluntary termination of coverage and your QHP was unwilling to re-instate coverage in your QHP.

Therefore, since your insurance coverage ended for non-payment of premiums, a non-qualifying event, you are not entitled to a special enrollment period under 45 CFR § 155.420(d)(1).

No evidence has been offered, or argument made, to support granting of a special enrollment period under the remaining provisions of CFR § 155.420(d).

Since the credible evidence of record confirms that you were ineligible for a special enrollment period, by this Decision, NYSOH's August 11, 2016 denial of a special enrollment period is AFFIRMED.

The record indicates that NYSOH's denial of your request for a special enrollment period, as affirmed herein, resulted in you being without insurance coverage for part of the 2016 coverage year. During the hearing, your authorized representative testified that you are concerned about receiving a tax penalty as a result of being without coverage for part of 2016.

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 (emphasis added).

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**

By this Decision, NYSOH’s August 11, 2016 denial of a special enrollment period to allow you to enroll in a health plan outside the open enrollment period is **AFFIRMED**.

**Effective Date of this Decision:** February 15, 2017

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

You did not qualify for a special enrollment period in 2016 as of August 11, 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)).

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

### **Summary**

By this Decision, NYSOH's August 11, 2016 denial of a special enrollment period to allow you to enroll in a health plan outside the open enrollment period is **AFFIRMED**.

You did not qualify for a special enrollment period in 2016 as of August 11, 2016.

### **Legal Authority**

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

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

[REDACTED]

[REDACTED]