



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: AP000000011447

[REDACTED]

[REDACTED]

On December 27, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's August 13, 2016 cancellation notice and the August 16, 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: AP000000011447

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## Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did NY State of Health (NYSOH) properly terminate your enrollment in your qualified health plan effective August 1, 2016 because of non-payment of premiums?

Did NYSOH properly determine that you were not eligible to select a health plan outside of the open enrollment period?

## Procedural History

On June 15, 2016, NYSOH received your application for health insurance.

On June 20, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to receive up to \$177.00 per month in advance premium tax credits and eligible to receive cost-sharing reductions if you enrolled in a silver level qualified health plan, effective July 1, 2016. The notice further stated that you qualified to select a health plan outside of the open enrollment period for 2016.

On June 21, 2016, NYSOH issued an enrollment confirmation notice confirming your selection of a health plan on June 20, 2016. The notice stated that your enrollment in a catastrophic qualified health plan would start August 1, 2016.

On August 13, 2016, NYSOH issued a cancellation notice stating that your coverage in your catastrophic qualified health plan was terminated effective August 1, 2016 for failure to pay premiums.

On August 15, 2016, you updated your application for health insurance. That day, you attempted to select a qualified health plan but were unable.

Also on August 15, 2016, you spoke to NYSOH's Account Review Unit and appealed insofar as you were unable to enroll in a health plan outside of the open enrollment period.

On August 16, 2016, NYSOH issued a notice of eligibility determination based on the application submitted on August 15, 2016 stating that you were conditionally eligible to receive up to \$177.00 per month in advance premium tax credits and conditionally eligible to receive cost-sharing reductions if you enrolled in a silver level qualified health plan, effective September 1, 2016. The notice further stated that you did not qualify to select a health plan outside of the open enrollment period for 2016.

On December 27, 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 testified that you lost health insurance coverage through COBRA effective March 31, 2016.
- 2) You submitted an application for 2016 health insurance coverage on June 15, 2016.
- 3) You testified that you were able to enroll yourself in a catastrophic level qualified health plan.
- 4) You testified, and the record reflects, that your coverage in your qualified health plan was terminated August 1, 2016 for non-payment of premiums.
- 5) You testified that you were homeless in the month of July and did not get a billing statement from your health plan.
- 6) You testified that you did not pay your August 2016 premium to your health plan.

- 7) You testified that there have been no changes in your immediate household such as a birth, death, marriage, or permanent move.
- 8) You testified that you are concerned that you will receive a tax penalty from the IRS for being without health insurance coverage for part of 2016.

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

## **Applicable Law and Regulations**

### Appealable Issues

An applicant has the right to appeal: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination and (5) a denial of a request to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

### 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 gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care; or
  - (3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status; or
  - (4) 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
  - (5) The enrollee or dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee; or
  - (6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or has a change in eligibility for cost-sharing reductions; or
  - (7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move; or
  - (8) The qualified individual is an Indian, as defined by section 4 of the Indian Health Care Improvement Act, and may enroll in a QHP or change from one QHP to another one time per month; or
  - (9) The qualified individual or enrollee, or their dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide;

(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)).

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 first issue under review is whether NYSOH properly terminated your enrollment in your qualified health plan effective August 1, 2016 because of non-payment of premiums.

The record indicates that you were enrolled into your qualified health plan effective August 1, 2016. You testified that you were homeless in the month of July and did not get a billing statement from your health plan. As a result, you did not pay your August 2016 premium to your health plan.

On August 13, 2016 NYSOH issued a cancellation notice stating that your coverage with your qualified health plan had been terminated effective August 1, 2016 because a premium payment was not received by your plan within the required time frame.

The New York State of Health Appeals Unit only has the authority to review issues related to the following: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination and (5) a denial of a request to vacate dismissal made by the New York State of Health Appeals Unit.

Since the Appeals Unit is not given the authority to review termination of enrollment due to non-payment of premiums, we cannot reach the merits as to whether or not you were properly terminated from your health plan for non-

payment of premiums. Therefore, your appeal of the August 13, 2016 cancellation notice is DISMISSED as a non-appealable issue.

The second issue under review is whether NYSOH properly denied you a special 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 testified that you lost health insurance coverage through COBRA effective March 31, 2016. Generally, the loss of health insurance coverage is considered a triggering event. On June 20, 2016, NYSOH issued a notice of eligibility determination granting you the ability to select a health plan outside of the open enrollment period for 2016, which you did that same day.

However, as noted above you were terminated from that qualified health plan effective August 1, 2016 for failure to make a premium payment.

Here, your coverage was terminated effective August 1, 2016 because you did not pay your premiums to your health plan on time. NYSOH considers the failure to pay premiums a voluntary action causing the termination of your coverage; therefore, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis. As discussed above, the Appeals Unit does not have the authority to decide whether or not your premiums were in fact made on time.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2016, no other triggering events have occurred that would qualify you or your spouse for a special enrollment period.

Therefore, the August 16, 2016 notice of eligibility determination is AFFIRMED because NYSOH properly denied your request for a special enrollment period.

## **Decision**

Your appeal of the August 13, 2016 cancellation notice is DISMISSED.

The August 16, 2016 notice of eligibility determination is AFFIRMED.

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



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

You do not qualify for a special enrollment period at this time.

This decision has no effect on any subsequent enrollments that have occurred through NYSOH.

## **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 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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P.O. Box 11729  
Albany, NY 12211
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## **Summary**

Your appeal of the August 13, 2016 cancellation notice is DISMISSED.

The August 16, 2016 notice of eligibility determination is AFFIRMED.

You do not qualify for a special enrollment period at this time.

This decision has no effect on any subsequent enrollments that have occurred through NYSOH.

## **Legal Authority**

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

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

