



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

## Notice of Decision

Decision Date: February 28, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000011450

[REDACTED]

Dear [REDACTED]

On January 10, 2017, you and your spouse appeared by telephone at a hearing on your appeal of NY State of Health's 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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: February 28, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000011450

[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 and your spouse were not eligible to purchase a qualified health plan outside of the open enrollment period for 2016 effective September 1, 2016?

## Procedural History

On May 25, 2016, NYSOH received your and your spouse's updated application for health insurance in account [REDACTED].

On May 26, 2016, an eligibility determination notice was issued stating you and your spouse newly eligible to receive advance premium tax credits up to \$553.00 per month as well as cost sharing reductions. The notice stated you both qualified to select a health plan outside of the open enrollment period for 2016. You were asked to select a health plan no later than July 24, 2016. ([REDACTED]).

On July 9, 2016, your spouse was deleted from your account [REDACTED].

On July 10, 2016, NYSOH issued an eligibility determination notice stating you were newly eligible to purchase a qualified health plan at full cost, effective August 1, 2016. The notice stated you qualified to select a health plan outside of the open enrollment period for 2016. The notice asked that you select a health plan no later than September 7, 2016. ([REDACTED]).

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On July 16, 2016, a new account ( [REDACTED] ) was created by an NYSOH representative. On July 19, 2016, NYSOH received your and your spouse's updated application in account [REDACTED].

On July 20, 2016, NYSOH issued an eligibility determination notice stating you were eligible to purchase a qualified health plan at full cost effective September 1, 2016. The notice further stated your spouse was conditionally eligible to purchase a qualified health plan at full cost. You were asked to provide documentation confirming his Citizenship Status and Social Security Number by October 17, 2016. The notice stated you could still get coverage for 2016 if you qualify for a special enrollment period. ( [REDACTED] ).

On August 15, 2016, you spoke to NYSOH's Account Review Unit and appealed a determination that you were not eligible to enroll in a health plan outside of the open enrollment period. ( [REDACTED] ).

On August 16, 2016, NYSOH issued an eligibility determination notice stating you and your spouse were eligible to purchase a qualified health plan at full cost effective September 1, 2016. The notice stated you and your spouse did not qualify to select a health plan outside of the open enrollment period for 2016. ( [REDACTED] ).

On November 3, 2016, your account [REDACTED] was inactivated by an NYSOH representative.

On January 10, 2017, 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) Prior to July 2016 all of the eligibility and enrollment determinations involving you and your spouse were located in account [REDACTED].
- 2) On July 10, 2016, NYSOH issued an eligibility determination in [REDACTED] stating that you qualified for a special enrollment period and that you needed to select a health plan no later than September 7, 2016.
- 3) No plan enrollments were submitted in [REDACTED] prior to September 7, 2016.

- 4) On July 16, 2016, a new account was created by an NYSOH representative ( [REDACTED] ).
- 5) On August 15, 2016, you attempted to enroll you and your spouse into a qualified health plan in [REDACTED].
- 6) On August 16, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse did not qualify to select a health plan outside of the open enrollment period for 2016 in [REDACTED].
- 7) You testified you are concerned about receiving a tax penalty for being without coverage for 2016.
- 8) You testified you are not seeking to be enrolled in a qualified health plan for 2016, and that you are already enrolled in a plan for 2017 coverage.
- 9) Your application states you reside in [REDACTED] County.

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:

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- (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)).

## Legal Analysis

The issue under review is whether NYSOH properly denied you and your spouse a special enrollment period, effective September 1, 2016.

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.

Prior to July 2016 all of the eligibility and enrollment determinations involving you and your spouse were located in account [REDACTED].

On July 10, 2016, NYSOH issued an eligibility determination in [REDACTED] stating that you qualified for a special enrollment period and that you needed to select a health plan no later than September 7, 2016. No plan enrollments were submitted in [REDACTED] prior to September 7, 2016.

However, on July 16, 2016, a new account was created by an NYSOH representative ([REDACTED]). On August 15, 2016, you attempted to enroll you and your spouse into a qualified health plan in [REDACTED] but were denied because NYSOH stated that you were outside of the open enrollment period.

Since you were granted a special enrollment period to enroll into a plan until September 7, 2016, NYSOH should have honored that when you attempted to enroll into coverage on August 15, 2016 in [REDACTED]. Further, once a family member is found to be eligible for a special enrollment period, all members of the family should be granted one as well. Therefore, your spouse should have also been granted a special enrollment period until September 7, 2016.

Therefore, NYSOH's August 16, 2016 eligibility determination notice stating you and your spouse 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 until 60 days from the date of this decision.

The record indicates that NYSOH's failure to grant you a special enrollment period resulted in you being without insurance coverage for part of the 2016

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coverage year. During the hearing, you testified that you are concerned about receiving a tax penalty as a result of being without coverage.

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**

The August 16, 2016 eligibility determination notice is MODIFIED to reflect that you and your spouse are eligible for a special enrollment period until 60 days from the date of this decision if you choose.

**Effective Date of this Decision:** February 28, 2017

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

You and your spouse qualify for a special enrollment period.

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 Disagree with this Decision (Appeal Rights)**

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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:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

The August 16, 2016 eligibility determination notice is MODIFIED to reflect that you and your spouse are eligible for a special enrollment period until 60 days from the date of this decision if you choose.

You and your spouse qualify for a special enrollment period.

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.

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## **Legal Authority**

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

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

