



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

## Notice of Decision

Decision Date: January 25, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000011451

[REDACTED]

Dear [REDACTED],

On January 9, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's August 12, 2016 disenrollment notice and failure to find that you qualified for a special enrollment period thereafter.

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

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

Does NY State of Health (NYSOH) have the authority to review your disenrollment from your qualified health plan for non-payment of premiums?

Did NYSOH properly determine that you did not qualify for a special enrollment period?

## Procedural History

On November 30, 2015, NYSOH receive an application for health insurance.

On December 5, 2015, NYSOH issued an eligibility determination notice based on the information contained in the November 30, 2015 application. The notice stated that you were eligible to purchase a qualified health plan (QHP) at full cost, effective January 1, 2016.

On January 5, 2016, NYSOH issued an enrollment notice confirming your selection of a QHP as of November 30, 2015. The notice stated that your QHP coverage would begin effective February 1, 2016.

On August 12, 2016, NYSOH issued a disenrollment notice stating that your QHP coverage had been terminated effective June 30, 2016 for non-payment of premiums.

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On August 15, 2016, you spoke to NYSOH's Account Review Unit and appealed the disenrollment notice insofar as you were terminated from your QHP coverage effective June 30, 2016 and was not eligible to enroll in a health plan outside of the open enrollment period during 2016.

On January 9, 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) You testified that you have timely paid the monthly premium due to your QHP insurance carrier during 2016.
- 2) You testified that you did not realize that you had been disenrolled until you had received the August 12, 2016 disenrollment notice.
- 3) You testified that you believed something was amiss when you stopped receiving billing statements from your QHP insurance carrier.
- 4) You testified that you attempted to reenroll in your QHP plan after having been disenrolled, but were prevented from doing so since you were told that you did not qualify for a special enrollment period.
- 5) You testified that since the 2016 plan year had already ended, you were no longer seeking to reinstate your QHP coverage, but rather to seek an exemption from the penalty that may be assessed for not having health insurance for the period between July 1, 2016 and December 31, 2016.

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

## **Applicable Law and Regulations**

### Valid Appeal Requests

An applicant has the right to appeal to the Appeals Unit of NYSOH: (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

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determination; and (5) the denial of a request for a special enrollment period (45 CFR § 155.505, 45 CFR § 155.420(d), 155.305).

### 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 has the authority to review your disenrollment from your qualified health plan for non-payment of premiums.

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On August 12, 2016, NYSOH issued a disenrollment notice stating that your coverage in your qualified health plan is terminated effective June 30, 2016 because of non-payment of premiums.

You testified that you have timely paid the monthly premium due to your QHP insurance carrier during 2016. You testified that you stopped receiving billing statements from your QHP, which led you to believe something was amiss. You testified that you did not realize that you QHP coverage had been terminated until you received the August 12, 2016 NYSOH disenrollment notice.

The NYSOH 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) the denial of a request for a special enrollment period.

Since the NYSOH 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 QHP for non-payment of premiums. Therefore, your appeal of the August 12, 2016 disenrollment notice is DISMISSED as a non-appealable issue.

The second issue under review is whether you were properly denied a special 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 November 30, 2015. 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.

Generally, the loss of health insurance coverage is considered a triggering event. Here, your enrollment was terminated effective June 30, 2016 because you did not pay your premiums to your QHP insurance carrier 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 NYSOH Appeals Unit does not have the authority to decide whether or not your premiums were in fact made on time.

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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 for a special enrollment period.

Therefore, NYSOH acted properly in finding that you did not qualify for a special enrollment period.

## **Decision**

Your appeal of the August 12, 2016 disenrollment notice is **DISMISSED** as a non-appealable issue.

NYSOH acted properly in finding that you did not qualify for a special enrollment period.

**Effective Date of this Decision:** January 25, 2017

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

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

## **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**

Your appeal of the August 12, 2016 disenrollment notice is **DISMISSED** as a non-appealable issue.

NYSOH acted properly in finding that you did not qualify for a special enrollment period.

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

### **Legal Authority**

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

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

