



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

Notice of Decision

Decision Date: March 2, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000011452

[REDACTED]

Dear [REDACTED]

On January 10, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's August 15, 2016 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.

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

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NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000011452



Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NY State of Health (NYSOH) properly deny you the ability to enroll in a qualified health plan outside of the open enrollment period for 2016 on August 15, 2016?

Procedural History

On January 6, 2016, NYSOH received your application for health insurance.

On January 7, 2016, NYSOH issued a notice of eligibility determination stating that you were newly eligible to receive an advance premium tax credit of up to \$155.00 per month effective February 1, 2016. The notice advised you to select a health plan.

On August 15, 2016, you contacted NYSOH to enroll into a qualified health plan but were unable to select one.

Also on August 15, 2016, you spoke to NYSOH's Account Review Unit and appealed the verbal denial that you were not eligible to enroll in a health plan outside of the open enrollment period.

On August 16, 2016, NYSOH issued a notice confirming your appeal of a denial of a Special Enrollment Period.

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).

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) The record indicates that you submitted your initial application for 2016 health insurance coverage on January 6, 2016.
- 2) No enrollment was submitted on that date.
- 3) You testified you were told by a NYSOH representative when you called on January 6, 2016 that you had until May 2016 to enroll in a health plan.
- 4) NYSOH was unable to produce the recording of the telephone conversation that occurred on January 6, 2016.
- 5) There is no indication in the record that you contacted NYSOH again prior to August 15, 2016 at which time you attempted to enroll into a health plan.

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:
 - (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)).

De Novo Review

The NYSOH 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).

Legal Analysis

On August 15, 2016 you contacted NYSOH, and requested a special enrollment to select a new health plan but were denied. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period. It does contain an August 16, 2016, notice in which the NYSOH acknowledges receipt of an appeal request and identifies one of the issues on appeal as “Denial of Special Enrollment Period (SEP).”

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods 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 NYSOH’s 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 16, 2016, notice which acknowledges the appeal on the issue of special enrollment period denial, permits an inference that NYSOH did deny your special enrollment request.

Since the Appeals Unit review of determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued.

Therefore, the issue under review is whether NYSOH 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 January 6, 2016. However, you did not pick a plan at that time.

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 next contacted NYSOH on August 15, 2016 in order to enroll in a plan, you filed an incident in which you stated you were told by a NYSOH representative during your call on January 6, 2016 that you had until May to enroll in a health plan. You testified this was the reason you did not enroll in a qualified health plan.

A request was made by the Hearing Officer to review the call you placed to NYSOH on January 6, 2016, but NYSOH was unable to produce or locate the call recording in question.

A special enrollment period can be granted if a qualified individual's enrollment or non-enrollment into a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of NYSOH or its instrumentalities as evaluated and determined by the NYSOH.

You testified that you relied on statements made by an NYSOH representative that you had until May 2016 to select a health plan. Generally, this statement would be considered an error on NYSOH's part which led to your non-enrollment in a health plan. However, you did not contact NYSOH to select a plan until August 15, 2016 which is well outside of the May 2016 timeframe you were given by an NYSOH representative. Therefore, your non-enrollment in a plan was a result of your inaction.

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's August 15, 2016 denial of a special enrollment period was proper and is AFFIRMED.

Decision

The August 15, 2016 denial of a special enrollment period is AFFIRMED.

Effective Date of this Decision: March 2, 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 your enrollment for the 2017 coverage year.

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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- By fax: 1-855-900-5557

Summary

The August 15, 2016 denial of a special enrollment period is AFFIRMED.

You do not qualify for a Special Enrollment Period at this time.

This decision has no effect on your enrollment for the 2017 coverage year.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

