



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: AP000000011462

[REDACTED]

Dear [REDACTED],

On January 13, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's June 16, 2016 eligibility redetermination 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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NY State of Health Account ID: [REDACTED]
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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 did not qualify for a special enrollment period, as of June 16, 2016, to enroll in health insurance for 2016 outside of the open enrollment period?

Procedural History

On April 27, 2016, NYSOH issued an eligibility redetermination notice stating in part that your spouse was eligible to receive advance payments of the premium tax credit (APTC), effective June 1, 2016. The notice further stated that your spouse qualified to select a health plan outside the open enrollment period and had until May 30, 2016 to confirm a health plan selection.

On May 6, 2016, NYSOH issued an enrollment notice confirming that your spouse was enrolled in a bronze-level qualified health plan (QHP) as of April 1, 2016.

On June 10, 2016, NYSOH issued a disenrollment notice stating that your spouse's coverage in his QHP was terminated, effective April 30, 2016, because a premium payment had not been received by your health plan.

On June 16, 2016, NYSOH issued an eligibility redetermination notice stating in part that your spouse was eligible for APTC, effective July 1, 2016, but the amount was \$0.00 monthly. The section on "Qualifying for a Special Enrollment Period" was blank.

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On August 15, 2016, you updated your application with NYSOH. That day, you attempted to reenroll your spouse into a qualified health plan but were unable due to being outside the open enrollment period and not having a qualifying life event.

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

On January 13, 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 submitted an application for 2016 health insurance coverage for your spouse on April 26, 2016 and enrolled him into a bronze-level QHP.
- 2) You testified that your spouse had health insurance through his former employer but that it likely ended in April 2016.
- 3) Your spouse was granted a special enrollment period to enroll into coverage that expired as of May 30, 2016.
- 4) According to your NYSOH account, your spouse's QHP was selected and confirmed on May 5, 2016.
- 5) You testified that you expected his enrollment to start as of June 2016, and understood that he would be without health insurance coverage in May 2016.
- 6) Your spouse was disenrolled from his QHP because you did not pay the April 2016 premium.
- 7) You contacted NYSOH on August 15, 2016 to attempt to re-enroll your spouse into a QHP, but were not able to.
- 8) You testified that your main concern now is that you and your spouse will be exposed to an IRS tax penalty for not having health insurance for him for the requisite number of months in 2016.

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.

- (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

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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

(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)).

Effective Date of Coverage

If a qualified individual is granted an SEP due to the loss of minimal essential coverage, and selects a new plan on or before the last date of that coverage, NYSOH must ensure that the new plan is effective on the first date of the month following the date that coverage was lost. If the new plan is selected prior to the date the previous coverage ends, then the new plan may be made effective on the first date of the month following plan selection (45 CFR § 155.420(b)).

Legal Analysis

The issue under review is whether NYSOH properly determined that your spouse did not qualify for a special enrollment period as of August 15, 2016, to enroll in health insurance for 2016 outside the open enrollment period.

On August 15, 2016, you spoke with Marketplace's Account Review Unit and requested review on the basis that you were unable to enroll your spouse in a health plan outside the open enrollment period. The record does not contain a notice of eligibility determination or redetermination on this issue. It does contain an August 16, 2016 letter in which NYSOH acknowledges receipt of an appeal request and identifies the issue on appeal as "Eligibility determination" and "Denial of Special Enrollment Period (SEP)."

Here, the lack of a notice of eligibility determination on the issue of denial of a special enrollment period during August 2016 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 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 denial of a special enrollment period permits 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. Therefore, the issue under review is whether your spouse was properly denied a special enrollment period as of August 15, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on April 26, 2016 on your spouse's behalf. Therefore, you did not complete his application during the open enrollment period. However, in that application you indicated that your spouse's health insurance through his former employer had ended, likely as of April 30, 2016. Loss of minimum essential coverage, such as insurance through a former employer, is considered a triggering life event.

When a triggering life event occurs, the qualified individual has 60 days from the date of that event to select a QHP. In your case, your spouse was given a special enrollment period until May 30, 2016 to select a plan and the record demonstrates that a QHP was selected on May 5, 2016. On May 6, 2016, NYSOH issued an enrollment confirmation notice stating that your spouse's enrollment in his QHP was effective as of April 1, 2016.

When an individual loses minimum essential coverage and is found eligible for a special enrollment period, if they select a plan before their prior coverage ends, the plan can be effective on the first day of the month following the month when coverage was lost. In your case, if you had applied before April 30, 2016 – the last date of your health insurance coverage through your father's plan – your NYSOH plan could have started May 1, 2016.

However, if an individual selects a plan after the day on which he or she loses essential coverage, NYSOH can make the start date of the plan on the first day of the month following the date of plan selection. Since you selected a plan on May 5, 2016 for your spouse, his plan coverage should not have started any earlier than June 1, 2016.

Therefore, the credible evidence of record indicates that NYSOH erred in making your spouse's QHP enrollment effective April 1, 2016. As a result of this error, on June 10, 2016 your spouse was then disenrolled from his QHP because a premium payment had not been received by his health plan for the month of May 2016.

You updated your spouse's application on August 15, 2016 and attempted to enroll him in a health plan but you were unsuccessful.

A special enrollment period can be granted if a qualified individual's enrollment or non-enrollment into a QHP 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. Since your spouse's disenrollment from his QHP as of April 30, 2016 was the direct result of NYSOH's error in granting him a retroactive enrollment date that you did not request, and was not proper under the law, your spouse should have been eligible to select another health plan within 60 days of NYSOH's error; that is, the May 6, 2016 enrollment notice. In this case, you were outside of the 60-day window when you updated your spouse's application on August 15, 2016. However, on June 15, 2016, you attempted to re-enroll your spouse in coverage but were unsuccessful. Therefore, it is concluded that you attempted to rectify the error of your plan start date within 60 days of the May 30, 2016 enrollment notice.

As such and by this Decision, NYSOH's June 16, 2016 eligibility redetermination notice is MODIFIED to reflect that your spouse was eligible for a special enrollment period as of the date of his application. He may choose to enroll into a qualified health plan going back to June 1, 2016 because of NYSOH's initial error in the start date of his plan.

Since your concern at this point in time is your and your spouse's exposure to an IRS tax penalty for not having health insurance in 2016 for the requisite number of months, you may qualify for an exemption due to NYSOH's error.

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 July 16, 2016 eligibility redetermination notice is MODIFIED to reflect that your spouse is eligible for a 2016 special enrollment period until 60 days from the date of this Decision for coverage as of June 1, 2016, if he so chooses.

Your case is RETURNED to NYSOH to assist you or your spouse in enrolling him into a plan for 2016 health coverage as of June 1, 2016, if he so elects.

Effective Date of this Decision: February 28, 2017

How this Decision Affects Your Eligibility

NYSOH erred in the start date of your spouse's original QHP.

He may elect to enroll into a QHP effective June 1, 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 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 July 16, 2016 eligibility redetermination notice is MODIFIED to reflect that your spouse is eligible for a 2016 special enrollment period until 60 days from the date of this Decision for coverage as of June 1, 2016, if he so chooses.

Your case is RETURNED to NYSOH to assist you or your spouse in enrolling him into a plan for 2016 health coverage as of June 1, 2016, if he so elects.

NYSOH erred in the start date of your spouse's original QHP.

He may elect to enroll into a QHP effective June 1, 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

