



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

Notice of Decision

Decision Date: January 27, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000011548

[REDACTED]

Dear [REDACTED],

On January 10, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's August 11, 2016 eligibility determination and disenrollment notices, and August 19, 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 Date: January 27, 2017

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:

Did NY State of Health (NYSOH) properly determine that your eligibility for financial assistance and enrollment in a qualified health plan ended effective August 31, 2016?

Did NYSOH properly terminate your spouse's enrollment in her qualified health plan effective August 31, 2016?

Did NYSOH properly deny you and your spouse a special enrollment period?

Procedural History

On December 4, 2015, NYSOH issued a notice of eligibility determination stating that you were conditionally eligible and your spouse was eligible to receive advance premium tax credits up to \$396.00 per month as well as to receive cost-sharing reductions effective January 1, 2016. The determination was based on the condition you provide documentation confirming your immigration status before February 25, 2016.

On December 22, 2015, an enrollment confirmation notice was issued confirming you and your spouse's enrollment in a Silver level qualified health plan effective January 1, 2016.

On August 11, 2016, an eligibility redetermination notice was issued stating you did not qualify for Medicaid, the Essential Plan, to receive advance premium tax credits or cost sharing reductions, or to purchase a qualified health plan at full cost. The notice stated this was because NYSOH had not received information from federal data sources to confirm your immigration status. Your eligibility would end effective August 31, 2016.

Also on August 11, 2016, an eligibility determination notice was issued finding your spouse eligible to receive advance premium tax credits of up to \$28.00 per month as well as cost sharing reductions effective September 1, 2016. The notice stated she could still get coverage for 2016 if you qualified for a special enrollment period.

Also on August 11, 2016, a disenrollment notice was issued terminating your and your spouse's enrollment in a Silver level qualified health plan effective August 31, 2016.

On August 18, 2016, a preliminary eligibility determination was prepared stating that you and your spouse were eligible to receive advance premium tax credits of up to \$396.00 as well as cost-sharing reductions effective October 1, 2016. That day, you attempted to enroll into a qualified health plan but were unable to.

Also on August 18, 2016, you contacted NYSOH's Account Review Unit and appealed insofar as you and your spouse were unable to enroll in a qualified health plan outside of the open enrollment period for 2016.

On August 18, 2016, an eligibility determination notice was issued, based on the August 18, 2016 application, stating that you and your spouse were eligible to receive advance premium tax credits of up to \$396.00 per month as well as cost-sharing reductions effective October 1, 2016. The notice further stated you and your spouse did not qualify to select a health plan outside of the open enrollment period for 2016.

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 closed at the end of the proceeding.

Findings of Fact

A review of the record supports the following findings of fact:

- 1) You testified, and the record reflects, that you receive all of your notices from NYSOH by regular U.S. mail.

- 2) You testified your address has not changed since initially applying for health insurance with NYSOH.
- 3) You testified that you did not receive any notice asking you to provide documentation confirming your immigration status before February 25, 2016.
- 4) You testified you did not receive a regular mail notice stating you and your spouse' eligibility had ended August 31, 2016.
- 5) You testified you had found out your insurance had been terminated when you received a call from your health plan. You then updated your account on August 18, 2016.
- 6) The record reflects you provided a copy of your I-797 Notice of Action on November 27, 2015. The notice states that it does not grant any immigration status or benefit and the body of the notice is unreadable. The See Document: [REDACTED]
- 7) The record reflects you provided a copy of your I-766 Employment Authorization Card on October 31, 2016 with a valid issue date from [REDACTED] through [REDACTED] See Document: [REDACTED]
- 8) The record reflects your application states you are non-immigrant visa holder.
- 9) You testified that you and your spouse are concerned about receiving a tax penalty for being without health insurance for several months in 2016.

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

Applicable Law and Regulations

Citizenship and Immigration Status

To enroll in a qualified health plan through NY State of Health (NYSOH), an applicant must be a citizen or national of the United States, or a non-citizen who is lawfully present in the United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1)).

NYSOH must verify or obtain information in order to determine that an applicant is eligible for enrollment in a qualified health plan, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a),(c)).

If an applicant attests to citizenship, status as a national, or lawful presence, and NYSOH is unable to verify such attestation, NYSOH must provide the applicant with notice of the inconsistency. NYSOH must then provide the applicant with 90 days to provide satisfactory documentary evidence, from the date the notice of inconsistency is received by the applicant. Notice is considered received 5 days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the 5 day period. (45 CFR § 155.315(c)(3),(f)(2)(i)).

If NYSOH remains unable to verify the citizenship attestation after the 90-day period ends, it must determine the applicant's eligibility based on the information available (45 CFR § 155.315(f)(5)).

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'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

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 determined that you were no longer eligible to enroll in a qualified health plan through NYSOH, effective August 31, 2016 and disenrolled you, and your spouse, from your qualified health plan, effective August 31, 2016.

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH, and must confirm, among other things, that their citizenship status is satisfactory.

If NYSOH cannot verify an individual's citizenship status, it must provide the individual with notice of the inconsistency. NYSOH must then provide the individual with a period of 90 days from the date notice is received to resolve the inconsistency. For purposes of verifying citizenship, notice is considered received 5 days after the date on the notice.

NYSOH issued an eligibility determination notice on December 4, 2015, finding you conditionally eligible to receive advance premium tax credits up to \$396.00 per month as well as to receive cost-sharing reductions effective January 1, 2016. The determination was based on the condition you provide documentation confirming your immigration status before February 25, 2016.

You testified that you did not receive any notice from NYSOH telling you that you needed to provide citizenship documentation to confirm your eligibility. You testified, and your NYSOH account confirms, that you elected to receive notifications by regular mail. However, there is no evidence in the record that any of the notices that were sent to your mailing address were returned as undeliverable.

It is noted that on November 27, 2015, you provided a copy of your I-797 Notice of Action. However, this notice does not grant any immigration status or benefit and the body of the notice is unreadable. Therefore, it is concluded that you did not submit satisfactory documentation in order to resolve an inconsistency on your account.

If NYSOH remains unable to verify the inconsistency after the 90-day period ends, then it must determine the applicant's eligibility based on the information available in the data sources.

Since the requested citizenship documentation was not received within the 90-day period, NYSOH was required to redetermine your eligibility without verification of your citizenship status. As a result, NYSOH properly determined that you could not enroll in a qualified health plan through NY State of Health

effective August 31, 2016 because you did not provide the information requested by NYSOH.

Therefore, NYSOH's August 11, 2016 eligibility determination finding you ineligible to remain enrolled in health coverage through NYSOH is AFFIRMED.

As you were no longer eligible to enroll in a qualified health plan effective August 31, 2016, and were enrolled in a couple plan with your spouse, NYSOH properly disenrolled you, and your spouse, from your couple qualified health plan effective August 31, 2016.

Therefore, the August 11, 2016 disenrollment notice finding you, and your spouse, were disenrolled from your qualified health plan effective August 31, 2016 is AFFIRMED.

The second issue under review is whether NYSOH properly denied you, and your spouse 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.

As you, and your spouse, were properly disenrolled from your qualified health plan, effective August 31, 2016, you, and your spouse would need to qualify for a special enrollment period to reenroll in a qualified health plan.

When a qualified individual loses coverage considered to be minimum essential coverage, that individual may be entitled to a special enrollment period in which to reenroll. After your coverage was terminated, your spouse continued to be eligible. Their loss of coverage is not considered to be voluntary on her part, because there were no outstanding requirements for her to remain eligible.

Once your spouse's coverage ended, she should have been granted a special enrollment period in which to sign up for new coverage.

Since NYSOH considers your failure to provide proof of citizenship as a voluntary action causing the termination of your coverage, you individually would not be entitled to a special enrolment period in which to enroll in new coverage, barring other circumstances. However, currently, once a family member is found to be eligible for a special enrollment period, all members of the family will be granted one as well.

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).

As such, NYSOH erred in denying you, and your spouse, a special enrollment period. Therefore, NYSOH's August 19, 2016 eligibility determination that 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, and your spouse are eligible for a special enrollment period until 60 days from the date of this decision to reenroll into a qualified health plan for the 2016 coverage year effective October 1, 2016

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 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.

Your case is RETURNED to NYSOH to assist you and your spouse in reenrolling into a health plan for coverage with an effective date of October 1, 2016, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate coverage.

Decision

The August 11, 2016, eligibility determination is AFFIRMED.

The August 11, 2016, disenrollment notice is AFFIRMED.

The August 19, 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 to reenroll into a qualified health plan for the 2016 coverage year effective October 1, 2016

Your case is RETURNED to NYSOH to assist you and your spouse in reenrolling into a health plan for coverage with an effective date of October 1, 2016, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate coverage.

Effective Date of this Decision: January 27, 2017

How this Decision Affects Your Eligibility

NYSOH properly disenrolled you and your spouse from your couple qualified health plan effective August 31, 2016.

NYSOH erred in not providing you and your spouse a special enrollment period effective October 1, 2016.

Your case is being sent back to NYSOH to assist you in reenrolling into a health plan for coverage as of October 1, 2016, if you so choose.

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

Summary

The August 11, 2016, eligibility determination is AFFIRMED.

The August 11, 2016, disenrollment notice is AFFIRMED.

NYSOH properly disenrolled you and your spouse from your couple qualified health plan effective August 31, 2016.

The August 19, 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 to reenroll into a qualified health plan for the 2016 coverage year effective October 1, 2016

NYSOH erred in not providing you and your spouse a special enrollment period effective October 1, 2016.

Your case is RETURNED to NYSOH to assist you and your spouse in reenrolling into a health plan for coverage with an effective date of October 1, 2016, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate coverage.

Your case is being sent back to NYSOH to assist you in reenrolling into a health plan for coverage as of October 1, 2016, if you so choose.

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:

