



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

Notice of Decision

Decision Date: January 17, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000011613

[REDACTED]

On January 10, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's June 4, 2016 eligibility determination notice, June 4, 2016 disenrollment notice, and a denial of a special enrollment.

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 NY State of Health 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:

Did NY State of Health properly determine that your eligibility for financial assistance and enrollment in a qualified health plan ended effective June 30, 2016?

Did NY State of Health properly determine that you did not qualify to select a health plan outside of the open enrollment period for 2016?

Procedural History

On February 17, 2016, NY State of Health (NYSOH) issued a notice of eligibility determination stating that you were conditionally eligible to receive advance premium tax credits and cost sharing reductions, effective April 1, 2016. The notice further requested that you provide documentation confirming your citizenship status before May 16, 2016.

Also on February 17, 2016, NYSOH issued a notice confirming your enrollment in your qualified health plan.

On June 4, 2016, NYSOH issued an eligibility determination notice stating that you were not eligible for Medicaid, Child Health Plus, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance. You also could not enroll in a qualified health plan at full cost because you had not confirmed your citizenship status within the required timeframe. Your eligibility for coverage ended effective June 30, 2016.

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Also on June 4, 2016, NYSOH issued a disenrollment notice stating that your coverage with your qualified health plan was terminated, effective June 30, 2016, as you were no longer eligible to enroll in health insurance through NYSOH.

On August 22, 2016, you updated your application for health insurance and provided your naturalization certificate number and alien identification number. That day, a preliminary eligibility determination was prepared with regard to that application, stating that you were eligible to receive advance premium tax credits, effective October 1, 2016. You also attempted to reenroll into a qualified health plan but were unable to.

Also on August 22, 2016, you spoke with NYSOH's Account Review Unit and requested an appeal insofar as you were not permitted to enroll in a qualified health plan outside of the open enrollment period for 2016.

On August 23, 2016, NYSOH issued an eligibility determination notice based on the information contained in the August 22, 2016 application, stating that you were eligible to receive advance premium tax credits, effective October 1, 2016. This notice further stated that you could still get coverage for 2016 if you qualify for a Special Enrollment Period.

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 reflects that on February 16, 2016, you submitted your initial application for 2016 health insurance coverage.
- 2) You testified, and the record reflects, that you receive all of your notices from NYSOH via regular mail.
- 3) You testified that you did not receive any notices stating that your eligibility was only conditional and that you needed to provide documentation of your citizenship status.
- 4) No notices that were sent to the address listed on your NYSOH account have been returned as undeliverable.
- 5) You testified that you did not know that you needed to submit documentation of your citizenship status until you received a call from

either NYSOH or your qualified health plan advising you not to make any additional payments to your qualified health plan, as your enrollment in your plan had ended.

- 6) The record reflects that on August 22, 2016, you provided NYSOH with your certificate of naturalization number and your alien identification number, and that day an updated application for health insurance was submitted on your behalf.
- 7) You testified that you are seeking reinstatement in your qualified health plan.
- 8) You testified that you reside with your three sons and your fiancé.
- 9) You testified that there have been no changes in your immediate household such as a birth, death, marriage, or permanent move.
- 10) You testified that you are scheduled to be married on January 21, 2017, but as of the date of the hearing, this had not yet taken place.

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 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)).

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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)).

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.
- (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”

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(45 CFR § 155.420(e)).

Legal Analysis

The first issue under review is whether NYSOH properly determined that you were no longer eligible to enroll in a qualified health plan through NYSOH, effective June 30, 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.

In the eligibility determination issued on February 17, 2016, you were advised that your eligibility was only conditional, and that you needed to confirm your citizenship status before May 16, 2016.

The record reflects that NYSOH did not receive the requested citizenship documentation before the deadline.

Therefore, NYSOH properly notified you of an inconsistency in your account and you did not submit the requested citizenship documentation before the deadline.

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 June 30, 2016, because you did not provide the information requested by NYSOH.

Therefore, NYSOH's June 4, 2016 eligibility determination notice and June 4, 2016 disenrollment notice are correct and are **AFFIRMED**.

The second issue under review is whether NYSOH properly denied you a special enrollment period, effective October 1, 2016.

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On August 22, 2016, you spoke with NYSOH's Account Review Unit and requested a special enrollment to select a new health plan. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period. It does contain an August 23, 2016 notice in which NYSOH acknowledges receipt of an appeal request and identifies the issue 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 23, 2016 notice, which acknowledges the appeal on the issue of special enrollment denial, permits an inference that NYSOH did deny your special enrollment request.

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 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 after being disenrolled from your plan, you submitted a complete application on August 22, 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.

Generally, the loss of health insurance coverage is considered a triggering event. However, as noted above you were terminated from your qualified health plan effective June 30, 2016, for failure to submit documentation of your citizenship status.

NYSOH considers the failure to submit necessary documents to determine your eligibility 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.

Therefore, NYSOH's determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is **AFFIRMED**.

This decision does not affect your eligibility to enroll during open enrollment for a plan for the benefit year beginning on January 1, 2017, which open enrollment period began on November 1, 2016, and will extend through January 31, 2017.

Decision

The June 4, 2016 notice of eligibility determination is AFFIRMED.

The June 4, 2016 disenrollment notice is AFFIRMED.

NYSOH's determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

Effective Date of this Decision: January 17, 2017

How this Decision Affects Your Eligibility

NYSOH properly found you not eligible to enroll in a qualified health plan because you did not submit proof of your citizenship status.

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

This decision does not affect your eligibility to enroll during open enrollment for a plan for the benefit year beginning on January 1, 2017, which open enrollment period began on November 1, 2016, and will extend through January 31, 2017.

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 after 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)).

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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 June 4, 2016 notice of eligibility determination is AFFIRMED.

The June 4, 2016 disenrollment notice is AFFIRMED.

NYSOH properly found you not eligible to enroll in a qualified health plan because you did not submit proof of your citizenship status.

NYSOH's determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is AFFIRMED.

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

This decision does not affect your eligibility to enroll during open enrollment for a plan for the benefit year beginning on January 1, 2017, which open enrollment period began on November 1, 2016, and will extend through January 31, 2017.

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:

