



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: AP000000011710

[REDACTED]

Dear [REDACTED],

On January 13, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's July 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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## Decision

Decision Date: February 28, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000011710

[REDACTED]

## 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 to enroll in a health plan outside the open enrollment period as of June 16, 2016?

## Procedural History

According to your NYSOH account you were determined conditionally eligible to enroll in a qualified health plan (QHP) at full cost, effective May 1, 2016, and were enrolled in a silver-level QHP as of that date.

On July 8, 2016, NYSOH issued a disenrollment notice stating that your coverage in your silver-level QHP ended May 31, 2016, because your health plan did not receive a premium payment from you.

On July 16, 2016, NYSOH issued an eligibility redetermination notice stating in part that you did not qualify for a special enrollment period to enroll in a health plan outside the open enrollment period.

On August 26, 2016, you contacted NYSOH's Account Review Unit and appealed not being able to enroll in a health plan through a special enrollment period.

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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 testified that the QHP you selected did not have doctors in your area and that you would have to travel over 25 miles to be seen.
- 2) You testified that you had medical conditions that required specialized care that you could not get through your QHP.
- 3) You testified that you wanted to switch to another health plan, but were told by your certified application counselor that you had to wait until the year ended to enroll in a different plan.
- 4) You testified that several NYSOH representatives informed you that the only way to get out of your QHP was to not pay the monthly premium.
- 5) You testified that you relied on this information and did not pay your June 2016 premium and your coverage was cancelled.
- 6) You testified that, because you were denied a special enrollment period, you had to pay for medical care out of pocket.
- 7) You testified during the hearing that your main concern now is being exposed to a tax penalty as a result of being without coverage.

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)).

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## 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...
- (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

(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)).

## **Legal Analysis**

The issue under review is whether NYSOH properly denied you a special enrollment period as of July 16, 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted an initial completed application on April 15, 2016 and were determined eligible for a QHP at full cost, effective May 1, 2016, and were enrolled in a QHP as of that date.

The record further reflects that you were disenrolled for nonpayment of premium, effective May 31, 2016, and were denied a special enrollment period thereafter to enroll in a health plan again.

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After 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.

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.

The credible evidence of record indicates that you relied upon misrepresentations made by several NYSOH representatives that you should stop making premium payments so that your QHP would cancel you for nonpayment and you would then be able to enroll in a different health plan. As a result of this misinformation, you did not make the June 2016 premium payment and were cancelled for nonpayment of premium as of May 31, 2016. However, you were not able to enroll in a different health plan because you were outside the open enrollment period as NYSOH perceived your cancellation to be a voluntary act such that you did not qualify for a special enrollment period because you did not experience a triggering life event. Based on the record as developed at the hearing and your credible testimony, however, it is reasonable to conclude that you relied upon NYSOH misrepresentations, which in turn resulted in you not being able to enroll in coverage for part of 2016.

Therefore, NYSOH's July 16, 2016 eligibility redetermination notice stating that you did not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this Decision for health insurance coverage as of August 1, 2016, if you so choose.

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.

## **Decision**

The July 16, 2016 eligibility redetermination notice is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this Decision, for health insurance coverage as of August 1, 2016.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage if you so choose.

**Effective Date of this Decision:** February 28, 2017

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

You qualify for a special enrollment period.

You have 60 days from the date of this Decision to enroll into a plan as of August 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

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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 you are eligible for a special enrollment period until 60 days from the date of this Decision, for health insurance coverage as of August 1, 2016.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage if you so choose.

You qualify for a special enrollment period.

You have 60 days from the date of this Decision to enroll into a plan as of August 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:**

