



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

Notice of Decision

Decision Date: December 22, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012003

[REDACTED]

Dear [REDACTED],

On December 15, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's September 15, 2016 eligibility determination.

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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
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Decision

Decision Date: December 22, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012003

[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 select a health plan outside of the open enrollment period for 2016?

Procedural History

On August 22, 2016, NYSOH received your paper application for health insurance.

On September 13, 2016, NYSOH issued a notice with your correct name and address, but an incorrect account number and health identification number, which stated that because you already have an account through NYSOH, NYSOH needed to review the information provided on your application with you before they could update your account with the information and determine your eligibility.

On September 14, 2016 you contacted NYSOH and submitted an application for health insurance.

Also on September 14, 2016, NYSOH prepared a preliminary eligibility determination based on that application, which stated that you were not eligible for financial assistance, but, you could purchase a qualified health plan through NYSOH at full cost. However, you could not select a plan for enrollment at that time.

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On September 14, 2016, you also spoke to NYSOH's Account Review Unit and appealed that preliminary eligibility determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On September 15, 2016, NYSOH issued a notice of eligibility determination that stated that you were eligible to purchase a qualified health plan at full cost through NYSOH. It further stated that you do not qualify to select a health plan outside of the open enrollment period for 2016.

On December 15, 2016, 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 NYSOH received your initial paper application for 2016 health insurance coverage on August 22, 2016.
- 2) You testified that you retired effective June 17, 2016 and your employer sponsored health insurance ended effective June 30, 2016.
- 3) You testified that you became eligible for Medicare, effective December 1, 2016, however you were without coverage from July 1, 2016 to November 30, 2016.
- 4) You testified that there have been no other changes in your immediate household such as a birth, death, marriage, or permanent move.
- 5) You testified that you submitted one paper application directly to NYSOH.
- 6) On August 22, 2016, NYSOH received a paper application for health insurance from you. The signature on the application is dated August 3, 2016.
- 7) On October 25, 2016, you submitted a letter from the Social Security Administration advising that your Medicare Part A and Medicare Part B coverage would begin on December 1, 2016.
- 8) You testified during the hearing that you are concerned about incurring 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)).

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,

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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)).

Legal Analysis

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

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete paper application on August 22, 2016. Therefore, you did not complete your application during the open enrollment period.

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.

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You testified that your previous insurance coverage ended on June 30, 2016 which is considered a triggering life event.

When a triggering life event occurs, the qualified individual has sixty days from the date of that event to select a qualified health plan.

Sixty days from June 30, 2016 was August 29, 2016; therefore, you would have qualified to select a qualified health plan outside of the open enrollment period until August 29, 2016.

The credible evidence of record indicates that your application for health insurance was submitted on August 22, 2016, prior to the expiration of the special enrollment period you should have been granted. Due to error on the part of NYSOH your paper application was not properly processed, within the sixty-day period from your loss of employer sponsored health insurance.

Therefore, NYSOH's September 15, 2016 eligibility determination that you do 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 as of the date of your August 22, 2016 application. You may choose to enroll into a qualified health plan as of that date because NYSOH failed to process your application, and had your application been processed that day, you would have been eligible for a special enrollment period due to your loss of employer sponsored health insurance.

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.

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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 September 14, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a special enrollment period as of your August 22, 2016 application. You may choose to enroll into a qualified health plan as of August 22, 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: December 22, 2016

How this Decision Affects Your Eligibility

You qualify for a special enrollment period.

You qualified for a special enrollment period as of the date of your August 22, 2016 application.

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)).

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

Summary

The September 14, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a special enrollment period as of your August 22, 2016 application. You may choose to enroll into a qualified health plan as of August 22, 2016.

You qualified for a special enrollment period as of the date of your August 22, 2016 application.

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

Legal Authority

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

A Copy of this Decision Has Been Provided To:

