



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

Notice of Decision

Decision Date: February 27, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012172

[REDACTED]

Dear [REDACTED]

On January 18, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 6, 2016 disenrollment notice and the denial of your spouse's request for a special enrollment period.

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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Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Was your spouse's enrollment in their qualified health plan (QHP) properly terminated effective July 31, 2016, because of nonpayment of premiums?

Did NY State of Health (NYSOH) properly determine that your spouse did not qualify for a special enrollment period (SEP)?

Procedural History

On June 9, 2016, NYSOH issued an eligibility determination notice stating, in relevant part, that your spouse was eligible to purchase a QHP at full cost through NYSOH, effective as of July 1, 2016.

Also on June 9, 2016, NYSOH issued an enrollment notice confirming that as of June 8, 2016, your spouse was enrolled in a Fidelis Care QHP with a plan enrollment start date of July 1, 2016.

On September 6, 2016, NYSOH issued a disenrollment notice stating that your spouse's insurance with Fidelis Care had been terminated effective July 31, 2016, because a premium payment had not been received by Fidelis Care. The notice directed you to contact your plan directly if you believe that you made your premium payment.

On September 23, 2016, NYSOH issued a notice confirming that on September 22, 2016, you requested a telephone hearing to review your spouse's "Denial of Special Enrollment Period (SEP)."

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On January 18, 2017, you, your spouse and authorized representative 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 proceeding.

Findings of Fact

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

- 1) According to your NYSOH account, your spouse enrolled in a Fidelis QHP on June 8, 2016, with a plan enrollment state of July 1, 2016.
- 2) You testified that you paid for the first two months of premiums to Fidelis Care.
- 3) You testified that your spouse found out that the QHP had been cancelled when attempting to get prescriptions at the pharmacy in June or July 2016.
- 4) You testified that your spouse contacted Fidelis Care and was told that the premium payments were received late.
- 5) You testified that you had to pay approximately \$150.00 to \$300.00 in out-of-pocket medical expenses because your spouse did not have medical coverage.
- 6) You testified that you were seeking a special enrollment period to reinstate your spouse's medical coverage.

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

Applicable Law and Regulations

Appealable Issues

An applicant has the right to appeal: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure by the Exchange to provide timely notice of an eligibility determination and (5) a denial of a request to vacate dismissal made by the NY State of Health Appeals Unit (45 CFR § 155.505).

Enrollment in a Qualified Health Plan

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The 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)).

De Novo Review

NYSOH 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).

Special Enrollment Periods

After each open enrollment period ends, the 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

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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

- (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)).

Special Enrollment Period – Voluntary Termination

A special enrollment period is granted when including a qualified individual or his or her dependent loses certain health insurance coverage.

However, a loss of 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" (45 CFR § 155.420(e)).

Legal Analysis

The first issue under review is whether your spouse's enrollment in their QHP was properly cancelled because of non-payment of premiums.

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On September 6, 2016, NYSOH issued a disenrollment notice stating that your coverage in your QHP was terminated effective July 31, 2016 because a health insurance premium payment had not been received by Fidelis Care.

The New York State of Health Appeals Unit only has the authority to review issues related to the following: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) a determination of eligibility for an enrollment period (4) an eligibility determination for an exemption, (5) a failure by the Exchange to provide timely notice of an eligibility determination and (6) a denial of a request to vacate dismissal made by the New York State of Health Appeals Unit.

Since the Appeals Unit is not given the authority to review termination of enrollment due to non-payment of premiums, we cannot reach the merits as to whether or not you were properly terminated from your health plan for non-payment of premiums. Therefore, your appeal of the September 6, 2016 disenrollment notice for nonpayment of premiums is DISMISSED as a non-appealable issue.

The second issue under review is whether NYSOH properly denied your spouse a special enrollment period.

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 failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination.

The September 23, 2016 notice confirming that you requested a telephone hearing to review your spouse's "Denial of Special Enrollment Period (SEP)" 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.

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 through NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

The reflect reflects that on September 6, 2016, NYSOH issued a disenrollment notice stating that your spouse's insurance with Fidelis Care was cancelled

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effective July 31, 2016, because a premium payment had not been received in the proper timeframe.

Generally, the loss of health insurance coverage is considered a triggering event. Here, your enrollment was terminated effective July 31, 2016, because the health plan did not receive the health insurance premiums in a timely manner. NYSOH considers the failure to pay premiums 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.

The credible evidence of record indicates that no other triggering events has occurred that would qualify you and your spouse for a special enrollment period.

Therefore, NYSOH properly denied your spouse a special enrollment period.

Decision

Your appeal of the September 6, 2016 disenrollment notice is **DISMISSED**.

NYSOH properly denied your spouse a special enrollment period.

Effective Date of this Decision: February 27, 2017

How this Decision Affects Your Eligibility

Your spouse did not qualify for a special enrollment period to enroll in a qualified health plan.

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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- By fax: 1-855-900-5557

Summary

Your appeal of the September 6, 2016 disenrollment notice is DISMISSED.

NYSOH properly denied your spouse a special enrollment period.

Your spouse did not qualify for a special enrollment period to enroll in a qualified health plan.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

