



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

Notice of Decision

Decision Date: February 02, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012179

[REDACTED]

Dear [REDACTED],

On January 20, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 16, 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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Decision

Decision Date: February 02, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012179

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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 for a special enrollment period as of September 15, 2016 to enroll in a health plan for 2016 outside of the open enrollment period?

Procedural History

On August 14, 2016, NYSOH received your initial application for health insurance.

On August 15, 2016, NYSOH issued a notice of eligibility determination that stated you were eligible to enroll in a full cost qualified health plan (QHP), effective September 1, 2016. The notice also stated that you qualified to select a health plan outside of the 2016 open enrollment period, and that you had until September 24, 2016 to select a plan

On August 16, 2016, NYSOH issued an enrollment confirmation notice that stated you were enrolled in a full cost QHP, effective August 1, 2016.

On September 3, 2016, NYSOH issued a cancellation notice stating that your QHP was cancelled, effective August 1, 2016, because you did not make your premium payments to your health plan for coverage to start as of August 1, 2016.

On September 15, 2016, NYSOH received your updated application for health insurance.

On September 16, 2016, NYSOH issued a notice of eligibility determination that stated you were eligible to enroll in a full cost QHP, effective October 1, 2016. That notice also stated the you do not qualify to select a health plan outside of the open enrollment period for 2016.

On September 20, 2016, NYSOH received your updated application for health insurance.

On September 21, 2016, NYSOH issued a notice of eligibility determination that stated you were eligible to enroll in a full cost QHP, effective November 1, 2016. That notice also stated the you do not qualify to select a health plan outside of the open enrollment period for 2016.

On September 22, 2016, you spoke to NYSOH's Account Review Unit and requested an appeal of that eligibility determination insofar as you were denied a special enrollment period.

On January 20, 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) According to your NYSOH account, you submitted your initial application for 2016 health insurance coverage on August 14, 2016.
- 2) You testified that you had health insurance through your employer, but that you left your job and lost health coverage in August 2016. You were hired right away at your new job, but your eligibility for employee coverage did not begin until three months later.
- 3) According to your NYSOH account, on August 15, 2016 and August 16, 2016, NYSOH issued two conflicting notices, based on your August 14, 2016 application. Your eligibility determination notice stated that you are eligible to enroll in a full cost QHP, effective September 1, 2016. The enrollment confirmation notice stated that you are enrolled in a full cost QHP, effective August 1, 2016.
- 4) You testified that you were not aware of the August 1, 2016 start date of your QHP and did not receive an invoice with this information. You are

seeking to have your health insurance coverage become effective September 1, 2016.

- 5) You testified that you called NYSOH and a representative told you that with the notices and letters you received, it should be enough for the QHP to reinstate your coverage.
- 6) You testified that you called the QHP and were advised there was nothing they could do and that you should reapply for health coverage.
- 7) You testified that, when you reapplied for coverage through NYSOH, you were told that you do not qualify for a special enrollment period. You further testified that you were told by the NYSOH representative that the only thing you could do was to file an appeal and have a formal hearing.
- 8) You testified that you need to be reinstated in your health coverage for the month of September 2016 because you were in an accident that month and have medical bills.

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 certain triggering events occur, including the following:

- 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.
- 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.

(45 CFR § 155.420(d)(1) and (4)).

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)).

When a person is granted a special enrollment period after an involuntary loss of minimum essential coverage, and plan selection is made after that triggering event, the Exchange must ensure that coverage is effective in accordance with paragraph (b)(1) of this section or on the first day of the following month, at the option of the Exchange (45 CFR §155.420 (b)(2)(iv)).

Effective Date of Coverage

If a qualified individual is granted a special enrollment period due to the loss of minimum essential coverage, and selects a new plan on or before the last date of that coverage, NYSOH must ensure that the new plan is effective on the first day of the month following the date that coverage was lost. If the new plan is not selected prior to the date the previous coverage ends, then the new plan may be made effective on the first date of the month following plan selection. (45 CFR § 155.420(b))

Legal Analysis

The issue under review is whether NYSOH properly determined that you did not qualify for a special enrollment period as of September 15, 2016, in order to enroll in health insurance for 2016 outside the open 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.

You filed your initial application with NYSOH on August 14, 2016, which is outside the annual open enrollment period. However, in that application you indicated that your health insurance through your former employer was likely to end in August 2016. Loss of minimum essential coverage, such as health insurance through an employer, 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 QHP. Accordingly, from the loss of employer insurance in August 2016, you were given a special enrollment period until September 24, 2016 to select a plan, which you did on August 14, 2016. On August 16, 2016, however, NYSOH issued an enrollment confirmation notice stating that your enrollment in the QHP you selected was effective August 1, 2016.

When an individual loses minimum essential coverage and is found eligible for a special enrollment period, if they select a plan before their prior coverage ends, the plan can be effective on the first day of the month following the month when essential coverage was lost. In your case, since you applied before August 31, 2016 – the most likely last date of your health insurance coverage through your employer – your NYSOH health plan should have started on September 1, 2016.

Therefore, the credible evidence of record indicates that NYSOH erred in making your QHP enrollment effective August 1, 2016. As a result of this error, on September 3, 2016, you were then dis-enrolled from the QHP you had just selected 19 days before because a premium payment had not been received by your health plan for the month of August 2016.

You then contacted NYSOH on September 15, 2016 to reenroll into a QHP, but you were denied because you did not qualify for a special enrollment period.

A special enrollment period can be granted if a qualified individual's enrollment or non-enrollment into a QHP is unintentional, inadvertent, or erroneous and is the

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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.

Since your disenrollment from your QHP as of August 1, 2016 was the direct result of NYSOH's error in granting you a retroactive enrollment date that you did not request, and that was not proper under the law, you should have been eligible to select another health plan within sixty days of NYSOH's error. When you updated your application on September 15, 2016 and attempted to enroll you were technically within a new sixty-day window.

As such, NYSOH's September 16, 2016 eligibility determination notice that is silent as to whether or not you 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 14, 2016 initial application. At your election, you may choose to enroll into a QHP going back to September 1, 2016 because of NYSOH's initial error in the start date of your plan.

The record also 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. After the hearing, the Hearing Officer adduced that you might be exposed to a tax penalty as a result of being without coverage for part of this year.

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.

If you choose to proceed, 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.

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Decision

The September 16, 2016 eligibility determination notice is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your August 14, 2016 application. You may choose to enroll into a QHP going back to September 1, 2016 because of NYSOH's initial error in the start date of your plan.

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 02, 2017

How this Decision Affects Your Eligibility

NYSOH erred in the August 1, 2016 start date of your original QHP.

You qualified for a special enrollment period as of the August 14, 2016 application for health insurance.

You may elect to reenroll into QHP effective September 1, 2016.

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 September 16, 2016 eligibility determination notice is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your August 14, 2016 application. You may choose to enroll into a QHP going back to September 1, 2016 because of NYSOH's initial error in the start date of your plan.

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

NYSOH erred in the August 1, 2016 start date of your original QHP.

You qualified for a special enrollment period as of the August 14, 2016 application for health insurance.

You may elect to reenroll into QHP effective September 1, 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided to:

