



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: AP000000012920

[REDACTED]

Dear [REDACTED]

On January 25, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's October 25, 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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: February 27, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012920

[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 were enrolled in your new health plan effective July 1, 2016 and, thereafter, did not qualify for a special enrollment period within which to re-enroll in coverage as of October 25, 2016?

## Procedural History

On April 27, 2016, NYSOH issued an eligibility redetermination notice, based on your April 26, 2016 updated application, stating that you were newly eligible to receive advance payments of the premium tax credit (APTC) and cost-sharing reductions, effective June 1, 2016. That notice also stated you qualified for a special enrollment period and had until July 30, 2016 to select a health plan and confirm your enrollment in that plan.

On July 12, 2016, NYSOH issued an enrollment notice confirming your July 11, 2016 selection of a silver-level qualified health plan (QHP) with an effective start date of July 1, 2016.

On August 5, 2016, NYSOH issued a cancellation notice stating that your coverage in the QHP you were enrolled in terminated as of July 1, 2016, due to nonpayment of premium.

On October 5, 2016, an incident was filed ([REDACTED]) with NYSOH to see if you were eligible for reinstatement because you had paid your premium for July 2016 and August 2016 on August 4, 2016.

On October 25, 2016, NYSOH issued an eligibility redetermination notice stating in part that you did not qualify to select a health plan outside of the open enrollment period for 2016.

On October 28, 2016, you spoke with NYSOH's Account Review Unit and appealed being denied a special enrollment period insofar as your request for reinstatement had not been addressed and you wanted to secure health insurance for yourself.

On January 25, 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, your Medicaid eligibility and enrollment in a Medicaid Managed Care plan ended May 31, 2016.
- 2) According to your NYSOH account and your testimony, you updated your NYSOH account and application on April 26, 2016 for the upcoming policy period. You were redetermined eligible for APTC as of June 1, 2016, and were granted a special enrollment period until July 30, 2016 to confirm your health plan selection and enrollment.
- 3) According to your NYSOH account, you selected a QHP on July 11, 2016.
- 4) You testified that you received a billing invoice from your health plan on or about July 21, 2016 for coverage that began as of July 1, 2016.
- 5) You testified that the invoice stated your payment for July 2016 was due by August 2<sup>nd</sup> or 3<sup>rd</sup>, 2016. You did not question the start date of coverage at the time.
- 6) You testified that you paid your July 2016 and August 2016 premiums on August 4, 2016 online by credit card.
- 7) According to NYSOH, on August 3, 2016, your health plan sent a formal cancellation to NYSOH due to nonpayment of premium.

- 8) According to your NYSOH account, on August 5, 2016, NYSOH issued a cancellation notice.
- 9) You testified that you contacted your QHP in September 2016 because you had not yet received your insurance identification cards.
- 10) You testified you learned during that telephone call that your health insurance coverage had been terminated as of July 1, 2016 for nonpayment of premium.
- 11) According to your NYSOH account and your testimony, on October 5, 2016, you contacted NYSOH and reported that your QHP told you to call NYSOH to get retroactive reinstatement. An incident was created on your behalf and your case was referred to the Department of Health for resolution.
- 12) According to your NYSOH account, on December 14, 2016, reinstatement into your health plan was submitted by NYSOH and would take 2 to 3 weeks for the change to appear.
- 13) You testified you were never informed that this had occurred.
- 14) According to your NYSOH account, under your Enrollment History, it shows your coverage was reinstated as of July 1, 2016 through December 31, 2016. The next entry indicates your coverage through reinstatement was then terminated as of July 1, 2016.
- 15) There is no record of why your coverage was reinstated, why you were not notified of being reinstated, or why the reinstatement was then cancelled.
- 16) You testified that you did not incur any medical expenses since July 1, 2016 or for the rest of 2016.
- 17) You testified that your main concern now is being exposed to an IRS tax penalty for not having health coverage for the requisite number of months in 2016.

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 permitted when a triggering event occurs, such as when:

- (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...
- (2) 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)).

### Effective Date of Coverage

If a qualified individual is granted an SEP due to the loss of minimum essential coverage, and selects a new plan on or before the last date of that coverage,

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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))

(45 CFR § 155.420(d)).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined that your enrollment in a qualified health plan, as well as the application of APTC, was effective July 1, 2016.

The record shows that on April 26, 2016, you updated the information in your NYSOH account and on May 31, 2016, your health insurance coverage with your Medicaid Managed Care plan ended. On July 11, 2016, during the special enrollment period you were granted as stated in the April 27, 2016 eligibility redetermination notice, you submitted your health plan selection and enrolled in a QHP. On July 12, 2016, NYSOH issued an enrollment confirmation notice stating that your enrollment in the QHP you selected was effective July 1, 2016 and that APTC would be applied to your monthly premium as of that date.

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 coverage was lost. In your case, if you had selected a QHP before May 31, 2016 – the last date of your health insurance coverage through your Medicaid Managed Care plan – your NYSOH health plan could have started on June 1, 2016.

However, if an individual selects a plan after the day on which he or she loses essential coverage, NYSOH can make the start date of the plan on the first day of the month following the date of plan selection. Since you selected a plan on July 11, 2016, your plan should not have started any earlier than August 1, 2016.

Therefore, the credible evidence of record indicates that NYSOH erred in making your QHP enrollment effective July 1, 2016. As a result of this error, on August 5, 2016, you were then disenrolled from the QHP you had just selected on July 11, 2016, because a premium payment had not been timely received by your health plan for the month of July 2016.

The record reflects that an incident was filed on October 5, 2016, to see if your QHP would allow you to be reinstated, which appears was not acted upon when you re-applied for health insurance on October 24, 2016.

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When you contacted NYSOH on October 24, 2016 to re-enroll into a QHP, 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 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 July 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, and which resulted in you being disenrolled for late payment of premium, you should have been eligible to select another health plan within sixty days of NYSOH's error.

As such, NYSOH's October 25, 2016 eligibility redetermination notice stating that you do not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you were eligible for a special enrollment period as of the July 12, 2016 enrollment confirmation notice. You may choose to enroll into a qualified health plan going back to August 1, 2016 because of NYSOH's initial error in the start date of your plan. However, since we are now in 2017 and you testified that you did not have any medical expenses while you were without health coverage in 2016, it would be unfair and unjust to expect you to pay premiums retroactively to August 1, 2016, especially since you did not have access to health insurance since then.

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 October 25, 2016 eligibility redetermination notice is MODIFIED to reflect that you were eligible for a special enrollment period as of the July 12, 2016 enrollment confirmation notice. You have 60 days from the date of this Decision to choose to enroll into a QHP going back to August 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 27, 2017

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

NYSOH erred in the start date of your original QHP.

You qualified for a special enrollment period as of July 12, 2016.

You have 60 days from the date of this Decision to elect to reenroll into QHP effective August 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

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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 October 25, 2016 eligibility redetermination notice is MODIFIED to reflect that you were eligible for a special enrollment period as of the July 12, 2016 enrollment confirmation notice. You have 60 days from the date of this Decision to choose to enroll into a QHP going back to August 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 start date of your original QHP.

You qualified for a special enrollment period as of July 12, 2016.

You have 60 days from the date of this Decision to elect to reenroll into QHP effective August 1, 2016.

### **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:**

