



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

## Notice of Decision

Decision Date: November 25, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007831

[REDACTED]

Dear [REDACTED]

On November 17, 2016, you and your spouse appeared by telephone at a hearing on your appeal of NY State of Health's February 9, 2016 eligibility determination 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: November 25, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007831



## 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 and your spouse's eligibility for financial assistance and enrollment in a qualified health ended effective February 29, 2016?

## Procedural History

On November 6, 2015, NYSOH issued a notice of eligibility determination based on your November 5, 2015 application stating that you and your spouse were conditionally eligible to purchase a qualified health plan at full cost effective January 1, 2016. The notice further directed you to provide documentation confirming you and your spouse's citizenship status before February 3, 2016, or your eligibility for coverage or financial assistance might end.

On November 10, 2015, NYSOH issued a notice confirming you and your spouse's enrollment in Silver level qualified health plan January 1, 2016.

On February 9, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were no longer eligible for Medicaid, Child Health Plus, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance. You also could not enroll in a qualified health plan at full cost because you had not confirmed your citizenship status within the required timeframe. You and your spouse's eligibility for coverage ended effective February 29, 2016.

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On February 10, 2016, NYSOH received you and your spouse's citizenship documentation in the form of two U.S. Passports.

On February 11, 2016 an eligibility determination notice was issued finding you and your spouse conditionally eligible to purchase a qualified health plan at full cost effective January 1, 2016. The notice further directed you to provide documentation confirming you and your spouse's citizenship status before May 10, 2016. The notice further stated you did not qualify to select a health plan ousted of the open enrollment period.

On March 10, 2016, you spoke to NYSOH's Account Review Unit and appealed the eligibility determination insofar as it ended your financial assistance eligibility and enrollment in a qualified health plan on February 29, 2016, and determined you ineligible to select a new health plan outside of the open enrollment period.

Your appeal was initially scheduled for hearings on September 1, 2016, and again on October 14, 2016, but was dismissed for not appearing at those hearings.

Your dismissal notices were vacated on October 26, 2016, as a result of your submission of a good cause letter demonstrating a valid reason for missing your prior appeal hearings.

On November 17, 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 support the following findings of fact:

- 1) You testified, and the record reflects, that you receive all of your notices from NYSOH by electronic mail.
- 2) You testified that you did not receive any electronic alerts notifying you of any notice in your NYSOH account stating that your eligibility was only conditional and that you needed to provide documentation of your citizenship status.
- 3) You testified you were out of the country in November 2015 for your son's wedding and did not receive any alerts to go into your account and upload citizenship documentation.
- 4) You testified that you did not know that you needed to submit documentation of your citizenship status until you received the

February 9, 2016, notice stating your eligibility and enrollment was terminated effective February 29, 2016.

- 5) The record reflects that on February 10, 2016, NYSOH received documentation confirming you and your spouse's citizenship status. The documentation was in the form of two U.S. Passports.
- 6) Your citizenship documentation was verified on February 22, 2016.
- 7) You testified that you are seeking to be found eligible to re-enroll in a qualified health plan.
- 8) You testified during the hearing that you are concerned about incurring a tax penalty as a result of being without coverage.
- 9) You testified you have not moved since initially applying for health insurance for 2016.
- 10) You testified your household size has not changed since initially applying for health insurance for 2016.
- 11) You testified NYSOH did not make any representations that turned out to be untrue, or misleading about your health plan.
- 12) You reside in New York County.

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

## **Applicable Law and Regulations**

### Citizenship and Immigration Status

To enroll in a qualified health plan through NYSOH, an applicant must be a citizen or national of the United States, or a non-citizen who is lawfully present in the United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1)).

NYSOH must verify or obtain information in order to determine that an applicant is eligible for enrollment in a qualified health plan, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

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If an applicant attests to citizenship, status as a national, or lawful presence, and NYSOH is unable to verify such attestation, NYSOH must provide the applicant with notice of the inconsistency. NYSOH must then provide the applicant with 90 days to provide satisfactory documentary evidence, from the date the notice of inconsistency is received by the applicant. Notice is considered received 5 days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the 5 day period. (45 CFR § 155.315(c)(3), (f)(2)(i)).

If NYSOH remains unable to verify the citizenship attestation after the 90 day period ends, it must determine the applicant's eligibility based on the information available (45 CFR § 155.315(f)(5)).

### 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

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- (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, 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)).

### Electronic Notices

Applicants may choose to receive notices and information from NYSOH by either electronic or regular mail. If the applicant elects to receive electronic notices, NYSOH must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant's account (45 CFR §155.230(d); 42 CFR §435.918(b)(4)).

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## Legal Analysis

The issue under review is whether NYSOH properly determined that you and your spouse were no longer eligible to enroll in a qualified health plan through NYSOH, effective February 29, 2016.

NYSOH is required to determine whether individuals are eligible to enroll in coverage, and must confirm, among other things, that their citizenship status is satisfactory.

If NYSOH cannot verify an individual's citizenship status, it must provide the individual with notice of the inconsistency. NYSOH must then provide the individual with a period of 90 days from the date notice is received to resolve the inconsistency. For purposes of verifying citizenship, notice is considered received 5 days after the date on the notice.

In the eligibility determination issued on November 6, 2015, you were advised that your eligibility was only conditional, and that you needed to confirm your citizenship status before February 3, 2016.

The record reflects that NYSOH did not receive the requested citizenship documentation before the deadline stated in the November 6, 2015 notice.

However, you testified and the record reflects that you elected to receive alerts regarding notices from NYSOH electronically. You credibly testified that you did not receive an electronic alert regarding the eligibility determination notice, which directed you that your eligibility was only conditional and that you needed to submit documentation to confirm your citizenship status. There is also no evidence in your account documenting that any email alert was sent to you regarding the need to submit documentation.

Therefore, it is concluded that NYSOH did not give you the proper notice that you needed to submit documentation of your citizenship.

Since you were not made aware of and did not receive proper notice that there was an inconsistency in your NYSOH account, the February 9, 2016, eligibility determination stating that you are no longer eligible for enrollment in qualified health plan is **RESCINDED**.

Your case is **RETURNED** to NYSOH to assist you in reenrolling into a health plan for coverage with an effective date of March 1, 2016, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate coverage. You may also enroll and reapply for coverage within 60 days of this decision if you so choose, the effective date of any plan you choose will be determined by the date on which you choose it.

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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 February 9, 2016, notice of eligibility determination is RESCINDED.

Your case is RETURNED to NYSOH to assist you in reenrolling into a health plan for coverage with an effective date of March 1, 2016, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate coverage.

You may also enroll and reapply for coverage within 60 days of this decision if you so choose. The effective date of any plan you choose will be determined by the date on which you choose it.

**Effective Date of this Decision:** November 25, 2016

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

NYSOH erred in disenrolling you from qualified health plan effective February 29, 2016, without the proper notice.

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).

You may contact United States Department of Health and Human Services (HHS) to claim an exemption for 2016 as 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 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 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 February 9, 2016, notice of eligibility determination is **RESCINDED**.

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Your case is RETURNED to NYSOH to assist you in reenrolling into a health plan for coverage with an effective date of March 1, 2016, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate coverage.

You may also enroll and reapply for coverage within 60 days of this decision if you so choose. The effective date of any plan you choose will be determined by the date on which you choose it.

NYSOH erred in disenrolling you from qualified health plan effective February 29, 2016, without the proper notice.

You may contact United States Department of Health and Human Services (HHS) to claim an exemption for 2016 as 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.

## **Legal Authority**

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

**A Copy of this Decision Has Been Provided To:**

