



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

## Notice of Decision

Decision Date: November 2, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009328

[REDACTED]

Dear [REDACTED]

On October 28, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's November 24, 2015 enrollment confirmation 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 2, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009328

[REDACTED]

## Issues

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

Was your appeal of NY State of Health's (NYSOH) November 24, 2015 enrollment confirmation notice timely?

Did NYSOH properly determine that your enrollment in your Medicaid Managed Care plan was effective January 1, 2016?

## Procedural History

On December 5, 2014, NYSOH issued a notice of eligibility determination stating that you were eligible for Medicaid effective November 1, 2014.

On September 12, 2015, NYSOH issued a renewal notice, stating that it was time to renew your health insurance for the upcoming coverage year. That notice stated that, based on information from Federal and State sources, NYSOH could not make a decision about whether you would qualify for financial help paying for your health coverage, and that you needed to update your account by October 15, 2015 or you might lose the financial assistance you were currently receiving.

No updates were made to your account by October 15, 2015.

On October 17, 2015, NYSOH issued an eligibility determination notice stating that you were not qualified to enroll through NYSOH. This was because you had not responded to the renewal notice and had not completed your renewal within the required time frame. Your eligibility ended effective October 31, 2015.

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On November 23, 2015, NYSOH received your updated application for health insurance.

On November 24, 2015, NYSOH issued an eligibility redetermination notice stating that you were eligible for Medicaid, and that your coverage for Fee-For-Service Medicaid would be effective November 1, 2015.

On November 24, 2015, an enrollment confirmation notice was issued that stated that you had selected a Medicaid Managed Care plan, and that the effective date of that plan was January 1, 2016.

On May 2, 2016, you spoke to NYSOH's Account Review Unit and appealed the enrollment notice insofar as it began your Medicaid Managed Care plan on January 1, 2016, and not November 1, 2015.

On October 28, 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) You testified that you believe you receive all of your notices from NYSOH via regular mail.
- 2) You testified that you have never changed the preferences as to how you receive the notices from NYSOH.
- 3) You also testified that the only notice you have ever received from NYSOH was the notice for the October 28, 2016 hearing.
- 4) Your NYSOH account shows that you have elected to receive your notices via electronic mail.
- 5) You credibly testified that you did not receive any electronic alerts regarding any notice in your NYSOH account telling you that you needed to update your application in order to renew your eligibility. You also credibly testified that you did not receive any renewal notice by regular mail.
- 6) You testified that you did not know that you needed to update your account until on or around November 17, 2015. You explained that on

or around November 17, 2015 you went to the pharmacy to fill a prescription and were advised by the pharmacy that your Medicaid Managed Care plan had ended.

- 7) The record reflects that on November 23, 2015, NYSOH received your updated application for health insurance.
- 8) The record also reflects that on November 23, 2015, you selected and enrolled into a Medicaid Managed Care plan.
- 9) You testified that in November of 2015 you were undergoing a course of physical therapy, and have outstanding bills for those physical therapy visits.
- 10) You testified that you did not know that your Fee-For-Service Medicaid did not cover your November 2015 physical therapy bills, as you did not receive a bill for those services until late April 2016.
- 11) You also testified that you contacted your Medicaid Managed Care plan around this time and were advised that you would need to contact NYSOH and file an appeal.
- 12) You testified, and the record reflects, that you filed an appeal with NYSOH on May 2, 2016.
- 13) You testified that you are seeking reinstatement in your Medicaid Managed Care plan as of November 1, 2015.

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

## **Applicable Law and Regulations**

### Valid Appeal Requests

An applicant has the right to appeal to NYSOH's Appeals Unit: (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 45 CFR § 155.505; and (5) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

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Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH (45 CFR §155.520(b)(2); 18 NYCRR 358-3.5(b)(1)).

However, where an appeal request is untimely, the appeal request may be considered valid if the applicant or enrollee sufficiently demonstrates within a reasonable timeframe as determined by NYSOH that failure to timely submit the appeal was due to exceptional circumstances and should not preclude the appeal (45 CFR §155.520(d)(2)(i)(D)).

### Medicaid Renewal

In general, NYSOH must review Medicaid eligibility once every 12 months or “whenever it receives information about a change in a beneficiary’s circumstances that may affect eligibility” (42 CFR § 435.916(a)(1), (d)). NYSOH must make its “redetermination of eligibility without requiring information from the individual if able to do so based on reliable information contained in the individual’s account or other more current information available to the agency, including but not limited to information accessed through any data bases accessed by the agency” (42 CFR § 435.916(a)(2)).

NYSOH must provide an individual with the annual redetermination notice, including the projected eligibility for coverage and financial assistance, and must require the qualified individual to report any changes within 30 days (45 CFR § 155.335(c), (e)). Once the 30-day period has lapsed, NYSOH must issue a redetermination as provided by the notice, with consideration given to any updates that may have been provided by the individual (45 CFR §155.335(h)).

An individual is eligible for fee-for-service Medicaid effective on the first day of the month if an individual was eligible any time during that month (42 CFR § 435.915(b); Medicaid Eligibility Changes under the Affordable Care Act (ACA) of 2010,13 ADM-03(III)(F)).

Medicaid Managed Care (MMC) plan enrollments received on or before the fifteenth day of the month are effective the first day of the following month. Enrollments received after the fifteenth day of the month are effective the first day of the second following month (Medicaid Managed Care Model Contract (Appendix H(6)(b)(ii) & (iii), effective 3/1/2014 – 2/28/2019; NY Social Services Law § 364-j(1)(c); 18 NYCRR § 360-10.3(h); Medicaid Eligibility Changes under the Affordable Care Act (ACA) of 2010,13 ADM-03(III)(F)).

### Electronic Notices

Applicants may choose to receive notices and information from NYSOH either by electronic alerts or by regular mail. If the applicant elects to receive electronic

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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)).

Additionally, if an electronic alert regarding a notice in an individual's NYSOH account fails, NYSOH must send out the notice by regular mail within three days of the failed alert (42 CFR § 435.918(b)(5)).

## **Legal Analysis**

The first issue under review is whether your appeal of the NYSOH's November 24, 2015 enrollment confirmation notice was timely.

The record reflects that you first contacted NYSOH to file an appeal regarding the start date of your Medicaid Managed Care plan on May 2, 2016.

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH.

For an appeal to have been valid on the issue of the effective date of your Medicaid Managed Care plan as stated in the November 24, 2015 enrollment confirmation notice, an appeal should have been filed by January 23, 2016. The record reflects that you filed your appeal on May 2, 2016, which is beyond the 60-day deadline.

Although your appeal was untimely on its face, the record reflects that you elected to receive alerts regarding notices from NYSOH electronically. Furthermore, you credibly testified that you did not receive the November 24, 2015 enrollment confirmation notice. As you did not receive the enrollment confirmation notice, there is no indication that you were ever made aware of your appeal rights.

You further testified that you received a bill in late April 2016 for services received in November 2015. You testified that when you received this bill, you learned about the implication of not having a Medicaid Managed Care plan for the months of November 2015 and December 2015, and that the provider you had received treatment from in November of 2015 did not accept Fee-For-Service Medicaid. The receipt of this bill prompted you to contact your Medicaid Managed Care plan, who directed you to contact NYSOH and file an appeal.

As you were not properly provided with the November 24, 2015 enrollment confirmation notice nor were you properly made aware of your appeal rights, and you contacted NYSOH shortly after learning that your treatment in November of 2015 was not covered by your Fee-For-Service Medicaid, your failure to timely

submit the appeal was due to exceptional circumstances and should not preclude the appeal.

The second issue under review is whether NYSOH properly determined that your enrollment in your Medicaid Managed Care plan was effective January 1, 2016.

You were originally found eligible for Medicaid effective November 1, 2014.

Generally, NYSOH must redetermine a qualified individual's eligibility for Medicaid once every 12 months without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more current information available to the agency. NYSOH's September 12, 2015 renewal notice stated that there was not enough information to determine whether you were eligible to continue your financial assistance for health insurance, and that you needed to supply additional information by October 15, 2015, or your financial assistance might end.

Because there was no timely response to this notice, you were terminated from your Medicaid Managed Care plan effective October 31, 2015.

Although you testified that you receive your notices from NYSOH via regular mail, you credibly testified that the only notice you have ever received from NYSOH via regular mail was the notice of the October 28, 2016. However, your NYSOH account shows that the electronic notice preference has been selected and you credibly testified that you did not receive any electronic alert regarding the notice that directed you to update the information in your NYSOH account. There is no evidence in your account showing that any email alert was sent to you regarding the need to renew your application, that any such electronic notice failed, or that the notice was later sent to you by regular mail.

Therefore, it is concluded that NYSOH did not give you the required notice that you needed to update your account.

You first renewed your eligibility for financial assistance through NYSOH for the upcoming coverage year on November 23, 2015, and therefore we must assume that the information you provided at that time is the information that would have been used had you been timely informed of the need to update your account, as stated in the renewal notice.

Had the information been submitted at that time, your enrollment in your Medicaid Managed Care plan would have begun on November 1, 2015.

Therefore, the November 24, 2015 enrollment confirmation notice is MODIFIED to state that your enrollment in your Medicaid Managed Care plan was effective November 1, 2015.



## **Decision**

The November 24, 2015 enrollment confirmation notice is MODIFIED to state that your enrollment in your Medicaid Managed Care plan was effective November 1, 2015.

Your case is RETURNED to NYSOH to facilitate correcting your enrollment in your Medicaid Managed Care plan to the appropriate date.

**Effective Date of this Decision:** November 2, 2016

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

Your enrollment in your Medicaid Managed Care plan should have been effective as of November 1, 2015.

Your case is being sent back to NYSOH to reinstate you in your Medicaid Managed care plan as of November 1, 2015.

## **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.

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## **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**

The November 24, 2015 enrollment confirmation notice is MODIFIED to state that your enrollment in your Medicaid Managed Care plan was effective November 1, 2015.

Your enrollment in your Medicaid Managed Care plan should have been effective as of November 1, 2015.

Your case is being sent back to NYSOH to reinstate you in your Medicaid Managed care plan as of November 1, 2015.

## **Legal Authority**

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

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

