



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

## Notice of Decision

Decision Date: December 1, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009797

[REDACTED]

Dear [REDACTED]

On November 23, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health's May 6, 2016 eligibility determination notices, May 6, 2016 disenrollment notice, and the May 21, 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 NY State of Health 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: December 1, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009797



## Issues

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

Did NY State of Health properly determine that your eligibility for financial assistance and your, your spouse's, and your oldest child's enrollment in a qualified health plan ended effective May 31, 2016?

Did NY State of Health properly determine that you, your spouse, and your oldest child do not qualify to select a health plan outside of the open enrollment period for 2016?

## Procedural History

On February 1, 2016, NY State of Health (NYSOH) issued a notice of eligibility determination stating that you were conditionally eligible to receive and, your spouse and your oldest child were eligible to receive, advance premium tax credits and cost sharing reductions, effective March 1, 2016. The notice further requested that you provide documentation confirming your citizenship status before April 30, 2016.

On February 1, 2016 NYSOH issued a notice confirming your, your spouse's, and your oldest child's enrollment in qualified health plan, effective March 1, 2016.

On May 6, 2016, NYSOH issued an eligibility determination notice stating that you were not 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

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enroll in a qualified health plan at full cost because you had not confirmed your citizenship status within the required timeframe. Your eligibility for coverage ended effective May 31, 2016.

Also on May 6, 2016, NYSOH issued a disenrollment notice advising that you, your spouse, and your oldest child were terminated from your qualified health plan as you were no longer eligible to enroll in health insurance through NYSOH, effective May 31, 2016.

Additionally, on May 6, 2016, NYSOH issued a notice of eligibility determination stating that your spouse and your oldest child were eligible to receive advance premium tax credits and cost sharing reductions, effective June 1, 2016. This same notice indicated that your spouse and your oldest child could enroll in coverage for 2016 if they qualified to select a plan outside of open enrollment.

On May 20, 2016 you updated your application for health insurance. That day, a preliminary eligibility determination was prepared stating that you, your spouse, and your oldest child were eligible to receive an advance premium tax credit of up to \$795.00 per month as well as cost sharing reductions, effective July 1, 2016. You, your spouse, and your oldest child were unable to enroll in a plan.

Also on May 20, 2016, you spoke to NYSOH's Account Review Unit and appealed that preliminary determination insofar as you, your spouse, and your oldest child were unable to enroll in a qualified health plan.

On May 21, 2016, NYSOH issued a notice of eligibility determination that stated that you, your spouse, and your oldest child were eligible to receive an advance premium tax credit of up to \$765.00 as well as cost sharing reductions if you enrolled in a silver level qualified health plan, effective July 1, 2016. It further stated that you, your spouse, and your oldest child did not qualify to select a health plan outside of the open enrollment period for 2016 because you did not meet the requirements for a special enrollment period.

On June 8, 2016, NYSOH issued a notice of eligibility determination stating that you, your spouse and your oldest child were eligible to receive, advance premium tax credits and cost sharing reductions, effective July 1, 2016. You, your spouse, and your oldest child also qualified for a special enrollment period.

Also on June 8, 2016 NYSOH issued a notice confirming your, your spouse's, and your oldest child's enrollment in qualified health plan, effective June 1, 2016.

On November 23, 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) The record indicates that you submitted your initial application for 2016 health insurance coverage on January 31, 2016.
- 2) You testified, and the record reflects, that you receive all of your notices from NYSOH via regular mail.
- 3) You testified that you did receive a notice stating that you needed to provide documentation of your citizenship status. However, you also testified that you were not sure specifically which notice this was nor when you received the notice.
- 4) No notices that were sent to the address listed on your NYSOH account have been returned as undeliverable.
- 5) You testified that you became aware that you, your spouse, and your oldest child were disenrolled from your plan when you received the disenrollment letter.
- 6) The record reflects that on May 20, 2016 NYSOH received documentation of your citizenship status.
- 7) You testified that you are seeking to be able to enroll in a plan for the months that you, your spouse, and your oldest child were not enrolled in a qualified health plan.
- 8) You testified that there are four people in your household and all four are seeking coverage through NYSOH.
- 9) You testified that you will claim both your children as dependents on your 2016 tax return and claimed both your children as dependents on your 2015 tax return.
- 10) You testified that there have been no changes in your household since you applied for health insurance, such as a birth, death, marriage, adoption, or permanent move.
- 11) The enrollment history tab in your NYSOH account indicates that you, your spouse and your child were reenrolled into coverage as of June 1, 2016
- 12) You testified that you and your spouse were not covered in the month of June, 2016.

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)).

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

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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 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

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- (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)).

However, a loss of health insurance 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 NYSOH properly determined that you were no longer eligible to enroll in a qualified health plan through NYSOH, effective May 31, 2016 and disenrolled you, your spouse, and your oldest son from your qualified health plan, effective May 31, 2016.

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH, 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 February 1, 2016 you were advised that your eligibility was only conditional, and that you needed to confirm your citizenship status before April 30, 2016.



The record reflects that NYSOH did not receive the requested citizenship documentation before the deadline.

Therefore, NYSOH properly notified you of an inconsistency in your account and you did not submit the requested citizenship documentation before the deadline.

If NYSOH remains unable to verify the inconsistency after the 90 day period ends, then it must determine the applicant's eligibility based on the information available in the data sources.

Since the requested citizenship documentation was not received within the 90 day period, NYSOH was required to redetermine your eligibility without verification of your citizenship status. As a result, NYSOH properly determined that you could not enroll in a qualified health plan through NY State of Health effective May 31, 2016 because you did not provide the information requested by NYSOH.

Therefore, NYSOH's May 6, 2016 eligibility determination finding you ineligible to remain enrolled in health coverage through NYSOH and May 6, 2016 disenrollment notice are correct and are AFFIRMED.

As you were no longer eligible to enroll in a qualified health plan effective May 31, 2016, and were enrolled in a family plan with your spouse and oldest child, NYSOH properly disenrolled you, your spouse, and your oldest children from your family qualified health plan effective May 31, 2016.

Therefore, the May 6, 2016 disenrollment notice finding you, your spouse, and your oldest child were disenrolled from your qualified health plan effective May 31, 2016 is AFFIRMED.

The second issue under review is whether NYSOH properly denied you, your spouse, and your oldest child a special enrollment period, effective July 1, 2016.

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.

As you, your spouse, and your oldest child were properly disenrolled from your qualified health plan, effective May 1, 2016, you, your spouse, and your oldest child would need to qualify for a special enrollment period to reenroll in a qualified health plan.

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When a qualified individual loses coverage considered to be minimum essential coverage, that individual may be entitled to a special enrollment period in which to reenroll, pursuant to 45 CFR § 155.420(d)(1)(i). After your coverage was terminated, your spouse and oldest child continued to be eligible. Their loss of coverage is not considered to be voluntary on their part, because there were no outstanding requirements for them to remain eligible.

Once your spouse and your oldest child's coverage ended, they should have been granted a special enrollment period in which to sign up for new coverage.

Since NYSOH considers your failure to provide proof of citizenship as a voluntary action causing the termination of your coverage, you individually would not be entitled to a special enrollment period in which to enroll in new coverage, barring other circumstances. However, currently, once a family member is found to be eligible for a special enrollment period, all members of the family will be granted one as well.

As such, NYSOH erred in denying you, your spouse, and your oldest child a special enrollment period. Therefore, NYSOH's May 21, 2016 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you, your spouse, and your oldest child are eligible for a special enrollment period until 60 days from the date of this decision.

Generally we would return your case to NYSOH to assist you, your spouse, and your oldest child in reenrolling into a health plan with an effective date of June 1, 2016. However, it appears that NYSOH has already provided your household with a special enrollment period in a June 8, 2016 eligibility determination notice. The corresponding enrollment notice, as well as the enrollment history tab in your NYSOH account, states that your, your spouse's, and your oldest child's enrollment in a qualified health plan was effective June 1, 2016.

Therefore, we will RETURN your case to NYSOH to ensure your, your spouse's, and your son's enrollment in your qualified health plan as of June 1, 2016.

## **Decision**

The May 6, 2016 notice of eligibility determination finding you ineligible to remain enrolled in health coverage through NYSOH is AFFIRMED.

The May 6, 2016 disenrollment notice is AFFIRMED.

The May 21, 2016 notice of eligibility determination is MODIFIED to reflect that you, your spouse, and your oldest child are eligible for a special enrollment period until 60 days from the date of this decision.

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Your case is RETURNED to NYSOH to ensure your, your spouse's, and your son's enrollment in your qualified health plan as of June 1, 2016.

**Effective Date of this Decision:** December 1, 2016

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

NYSOH properly found you not eligible to enroll in a qualified health plan because you did not submit proof of your citizenship status.

NYSOH properly found you, your spouse, and your oldest child disenrolled from your qualified health plan.

You, your spouse, and your oldest child qualify for a special enrollment period.

This decision does not affect any subsequent eligibility determinations.

### **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 after 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 May 6, 2016 notice of eligibility determination finding you ineligible to remain enrolled in health coverage through NYSOH is **AFFIRMED**.

NYSOH properly found you not eligible to enroll in a qualified health plan because you did not submit proof of your citizenship status.

The May 6, 2016 disenrollment notice is **AFFIRMED**.

The May 21, 2016 notice of eligibility determination is **MODIFIED** to reflect that you, your spouse, and your oldest child are eligible for a special enrollment period until 60 days from the date of this decision.

Your case is **RETURNED** to NYSOH to ensure your, your spouse's, and your son's enrollment in your qualified health plan as of June 1, 2016.

You, your spouse, and your oldest child qualify for a special enrollment period.

This decision does not affect any subsequent eligibility determinations.

## **Legal Authority**

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

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

