



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

Notice of Decision

Decision Date: January 10, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000010323

[REDACTED]

[REDACTED]

On December 21, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's May 18, 2016 disenrollment notices and enrollment confirmation notice insofar as it affected your eligibility.

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.

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Issues

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

Is the Appeals Unit of NY State of Health able to review your eligibility for or enrollment in coverage for 2014 or 2015?

Did NY State of Health properly determine that your enrollment in an Essential Plan was effective July 1, 2016?

Procedural History

Our records show that NY State of Health (NYSOH) first received a completed application for health insurance from your household on November 18, 2015. You were found eligible for the Essential Plan, effective January 1, 2016. Your application was updated and your enrollment in various Essential Plans offered through NYSOH was changed multiple times over the course of the following weeks.

On December 9, 2015, NYSOH issued a notice of eligibility determination stating that you, [REDACTED] were eligible to enroll in the Essential Plan, effective January 1, 2016.

On March 30, 2016, NYSOH issued a notice confirming your enrollment in an Essential Plan, effective January 1, 2016.

You updated your account multiple times on May 17, 2016. In the first application, your income was listed as \$26,218.00. In the subsequent

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applications submitted that day, your household income was listed as \$22,064.00, \$34,650.00, and \$30,650.00.

In response to the first two applications submitted on May 17, 2016, NYSOH made preliminary determinations that you were eligible for Medicaid, effective May 1, 2016.

In response to the third and fourth applications submitted on May 17, 2016, NYSOH made preliminary determinations that you were eligible for the Essential Plan, with a \$20.00 monthly premium, effective July 1, 2016.

On May 18, 2016, NYSOH issued a notice of eligibility determination, based on the last application you submitted on May 17, 2016, stating that you were eligible to enroll in the Essential Plan, effective July 1, 2016.

However, because of the earlier misinformation you submitted to NYSOH, you were disenrolled from your Essential Plan effective May 31, 2016, because you had been found eligible for Medicaid and were no longer eligible for the Essential Plan. You were then reenrolled in the Essential Plan, but the reenrollment was not effective until July 1, 2016.

On June 17, 2016, you spoke to NYSOH's Account Review Unit and appealed the start date of your enrollment in the Essential Plan insofar as it did not begin on June 1, 2016.

On December 21, 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) At the hearing, you testified that you were objecting to the failure of NYSOH to process your applications for health insurance for the 2014 and 2015 calendar years, as well as the fact that you did not have coverage through the Essential Plan for May and June 2016. You also stated that you had not received the documentation you needed for tax purposes.
- 2) You testified that you applied for insurance for the upcoming year in October of 2013 over the phone, and that your call lasted 1.5 hours. Your "paperwork" was lost and you never heard anything. You stated that you called again in January 2014 regarding coverage for 2014, but were told you had to call back during the next open enrollment period, which would start in October 2015.

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- 3) You testified that you applied for insurance for the upcoming year in October of 2014 over the phone, and that once again you never heard anything. You stated that you called again in January 2015 regarding coverage for 2015, as you had for 2014, but were once again told you had to call back during the next open enrollment period.
- 4) At the hearing, you gave permission for the Hearing Officer to listen to calls you had made to NYSOH; the recordings of 37 calls were retrieved.
- 5) The first record NYSOH has of any communication from you occurred on February 13, 2014. On that date, you called NYSOH to apply for health insurance, at which time you clearly stated that you had not applied for insurance through NYSOH before. The representative from NYSOH created an account for you and took information necessary to complete an application. The completed application was not submitted, however, because you would not agree to a provision required by the application. The provision that you rejected was that you were required to agree that if you qualified for Medicaid, were placed in a nursing home, and were not expected to ever return home, a lien might be placed on your real property. In order to address your objection, the representative had to transfer you to another unit. Before your call was transferred, you were told and you acknowledged that your application had not yet been submitted.
- 6) After your call on February 13, 2014 was transferred to a different representative for NYSOH. During a lengthy phone call, you repeatedly complained about the possibility of a lien being placed against your real property, stating that you would not agree to the government having the right to take your home, and that your property would be going to your children, including your adult disabled daughter. You also could not decide whether one of your grown sons should have a separate NYSOH account, or if you should include him on the family account. You wanted to know what you would be eligible for, but you were told that your eligibility could only be officially stated after a formal application was submitted. After further discussion regarding your income and family circumstances, you declined to submit the application until you had spoken to your son and gathered all the necessary information. You were warned that if you wanted coverage in effect by March 1, you would have to complete the application by February 15. You ended the call without agreeing to submit the application.
- 7) There was no further activity on your account until November 18, 2015, when you were found eligible for the Essential Plan, with a \$20.00 monthly premium, effective January 1, 2016.

- 8) There is no record of any further calls from you to NYSOH until December 3, 2015, when you called regarding coverage for your son.
- 9) On December 11, 2015, NYSOH issued a notice, advising you that you needed to submit documentation regarding your income.
- 10) On May 17, 2016, you contacted NYSOH to update your application, and a recording of that very lengthy call was obtained by the Appeals Unit. During that call, you stated that you had enrolled the previous year, and that you needed a letter for your tax return. You claimed that you had started applying for insurance in 2013, but that the "paperwork" had been repeatedly lost. The representative on the phone with you very patiently and repeatedly tried to explain the status of your application. He explained that you needed to complete your income documentation. He repeatedly recommended that you obtain the exact numbers from your tax preparer, as he could only input income that you provided and was unable to do your tax calculations for you. Because part of your income was derived from rental properties, you gave him the gross rental income. You refused to call back with actual numbers provided to you by your tax preparer, you eventually provided deductions for the rental property, and your application was submitted with the only information you were willing to provide.
- 11) As a result of that first application on May 17, 2016, which was completed with information you provided, you were preliminarily found eligible for Medicaid. During the call you expressed your displeasure with this outcome, and stated the representative must have completed the application incorrectly. You argued that your doctors did not accept Medicaid, that you had been told you were not eligible for Medicaid, and that you did not want to pay for a full cost plan.
- 12) You then insisted that your application be resubmitted using an overall household income of \$30,635.00, without breaking down the income and deductions. You were advised that once you received a copy of your tax returns, you should submit them to NYSOH, along with copies of your Social Security award letters for your family. The representative again urged you to call your tax preparer for exact numbers.
- 13) No such documentation has ever been received by NYSOH to date.
- 14) You called NYSOH a second time on May 17, 2016, and the Appeals Unit has obtained a recording of that call. You again claimed to have been applying for coverage since 2013, and that you were repeatedly told to wait for the next open enrollment period. The representative noted that you had been found Medicaid eligible for June, and you denied this, saying you were never eligible for Medicaid. You then stated that a mistake had been made 10 or 12 minutes earlier, and that you wanted the coverage you had

before. You were now getting hit with tax penalties because your applications had never been completed.

15) There has been no corroborating evidence of your income after your 2014 tax return.

16) In response to the last application submitted on May 17, 2016, you were found eligible to enroll in the Essential Plan, effective July 1, 2016.

17) You testified that you wanted your enrollment in an Essential Plan to include May and June of 2016.

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

Applicable Law and Regulations

Enrollment Periods

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)).

For the benefit year beginning on January 1, 2014, the open enrollment period began on October 1, 2013 and extended through March 31, 2014 (45 CFR § 155.410(b)), and was extended to April 15, 2014 (<https://info.nystateofhealth.ny.gov/news/press-release-more-782000-new-yorkers-have-enrolled-ny-state-health>).

For the benefit year beginning on January 1, 2015, the annual open enrollment period began on November 15, 2014 and extended through February 15, 2015 (45 CFR § 155.410(e)); however, the open enrollment period was further extended to February 28, 2015 for individuals who took steps to apply for coverage on or before the February 15, 2015 deadline, but were unable to complete the enrollment process (Press Release: NY State of Health Implements 'Waiting in Line' Provision Ahead of February 15 Open Enrollment Deadline, <http://info.nystateofhealth.ny.gov/news/press-release-ny-state-health-implements-%E2%80%99waiting-line%E2%80%99-provision-ahead-february-15-open>).

Essential Plan Effective Date

For individuals seeking enrollment in an Essential Plan, New York State has elected to follow the same rules that NYSOH uses in determining effective dates for individuals seeking enrollment in qualified health plans (NY Social Services

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Law § 369-gg(4)(c); New York's Basic Health Plan Blueprint, p. 16, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

The effective date of coverage by an Essential Plan is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment, NYSOH must generally ensure that coverage is effective the first day of the following month for selections received by NYSOH from the first to the fifteenth of any month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(i); see also 42 CFR § 600.320). For selections received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(ii)).

Medicaid Effective Date

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, 13ADM-03(III)(F)).

Valid Appeal Requests

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

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

Legal Analysis

The first issue under review is whether the Appeals Unit of NYSOH is able to review your eligibility for or enrollment in coverage for the 2014 and 2015 coverage years.

The Appeals Unit finds that there is no credible evidence that you contacted NYSOH to apply for insurance in 2013. Your testimony that you were on the phone for 1.5 hours at that time is not corroborated by any evidence in NYSOH's

records, and during your February 13, 2014 call, you clearly stated that you had not applied for health insurance through NYSOH before.

Additionally, the Appeals Unit does not find it credible that you called in January 2014 and January 2015, and that both times you were told you had to call back during the next open enrollment period. It is not credible that in two successive Januarys you would have been erroneously told that you had missed the open enrollment period and you had to wait until the next open enrollment period, when the open enrollment period had not ended until well after January 31 for both years. The open enrollment period for 2014 coverage year did not end until April 15, 2014 and it did not end for 2015 until February 15, 2015.

Further, during your call to NYSOH on February 13, 2014, the representatives you spoke to told you that your application had not yet been submitted, and you acknowledged this before ending your conversation.

Your own testimony that you applied in 2013 cannot be considered reliable, given the numerous inconsistencies in your testimony, the lack of corroborating evidence, and the fact that your account was not even created until February 13, 2014.

NYSOH's records show that you never completed any application through NYSOH until November 18, 2015; the earliest possible date you could have been covered by any health insurance (other than Medicaid) through NYSOH was January 1, 2016.

Therefore, the Appeals Unit finds that your appeals regarding the failure of NYSOH to issue eligibility determinations regarding coverage for 2014 and 2015 are invalid because you never submitted any application that could have resulted in coverage for the 2014 or 2015 calendar years, apart from (potentially) Medicaid fee-for-service coverage for December 2015. Based on the income you provided in 2015, you were not eligible for Medicaid for December 2015.

Therefore, NYSOH properly found you eligible for coverage through NYSOH no earlier than January 1, 2016, and your appeal regarding coverage for 2014 and 2015 is DISMISSED.

The second issue is whether NYSOH properly determined that your re-enrollment in the Essential Plan was effective July 1, 2016, resulting in a gap of coverage under the Essential Plan for June 2016.

You testified, and NYSOH's records confirm, that your NYSOH application was updated on May 17, 2016 multiple times, providing multiple incomes. As a result, you were initially found eligible for Medicaid, based on the income numbers you provided.

You were disenrolled from your former coverage under the Essential Plan effective May 31, 2016. When your income was revised later on May 17, 2016, you were found eligible for the Essential Plan effective July 1, 2016.

Generally, the date on which enrollment in an Essential Plan can take effect depends on the day a person selects the plan for enrollment.

A plan that is selected from the first day to and including the fifteenth day of a month goes into effect on the first day of the following month. A plan that is selected from the sixteenth day of the month to the end of the month goes into effect on the first day of the second following month.

The May 18, 2016 enrollment confirmation notice accordingly stated that your enrollment in the Essential Plan was effective July 1, 2016, which was correct based on the date you updated your application.

However, your prior coverage in your Essential Plan should not have ended effective May 31, 2016. Generally, when an individual is disenrolled from coverage, such a disenrollment follows the same rule as enrollments. Having found you ineligible for the Essential Plan, your enrollment could have continued until the first day of the second following month; that is, June 30, 2016.

Therefore, the Appeals Unit finds that your former enrollment in your Essential Plan should not have ended until June 30, 2016, assuming all premiums have been paid, and your new enrollment became effective on July 1, 2016, without any gap in coverage.

Decision

NYSOH properly found you eligible for coverage through NYSOH no earlier than January 1, 2016, and your appeal regarding coverage for 2014 and 2015 is **DISMISSED**.

Your coverage under the Essential Plan should have been in effect for June 2016; you may be required to pay a premium for that additional month of coverage. Our records indicate that you were covered under the Essential Plan for May 2016.

This matter is RETURNED to NYSOH to process this change.

Effective Date of this Decision: January 10, 2017

How this Decision Affects Your Eligibility

The Appeals Unit will not review your eligibility for and enrollment in coverage for 2014 and 2015.

Your coverage under the Essential Plan should have remained in effect for June 2016.

This matter is returned to NYSOH to process this change.

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
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Summary

NYSOH properly found you eligible for coverage through NYSOH no earlier than January 1, 2016, and your appeal regarding coverage for 2014 and 2015 is DISMISSED.

Your coverage under the Essential Plan should have been in effect for June 2016; you may be required to pay a premium for that additional month of coverage. Our records indicate that you were covered under the Essential Plan for May 2016.

The Appeals Unit will not review your eligibility for and enrollment in coverage for 2014 and 2015.

Your coverage under the Essential Plan should have remained in effect for June 2016.

This matter is RETURNED to NYSOH to process this change.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

