



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

## Notice of Decision

Decision Date: February 23, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000010506

[REDACTED]

Dear [REDACTED],

On January 6, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's June 18, 2016 eligibility redetermination and disenrollment notices.

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.

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## Decision

Decision Date: February 23, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000010506



## Issue

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

Did NY State of Health properly determine that you were no longer eligible to enroll in a qualified health plan through NYSOH, effective June 30, 2016.

## Procedural History

On January 20, 2016, NY State of Health (NYSOH) issued an eligibility redetermination notice stating that you were eligible to enroll in the Essential Plan for a limited time, effective March 1, 2016. The notice further requested that you provide documentation confirming your immigration status before April 18, 2016.

Also on January 20, 2016, NYSOH issued a notice confirming your enrollment in Essential Plan 1 Plus Vision and Dental with a March 1, 2016 start date.

On February 3, 2016, NYSOH issued a notice acknowledging receipt of the documentation you submitted to resolve the inconsistency in your account, but stated that the documentation provided was insufficient. It requested that you provide additional documentation on proof of immigration. The notice referred you to an attachment titled, "Request for Additional Information – Documentation List" to identify what type(s) of documents that could be used to confirm the information on your application.

On March 4, 2016, NYSOH again issued a notice acknowledging receipt of the documentation you submitted to resolve the inconsistency in your account, but

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stated that the documentation provided was insufficient. It requested that you provide additional documentation on proof of immigration. The notice referred you to an attachment titled, "Request for Additional Information – Documentation List" to identify what type(s) of documents that could be used to confirm the information on your application.

On June 18, 2016, NYSOH issued an eligibility redetermination notice stating that you were not eligible for Medicaid, Child Health Plus, the Essential Plan 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. This was because you had not provided proof of your immigration status within the required timeframe. Your eligibility for coverage ended effective June 30, 2016.

Also on June 18, 2016, NYSOH issued a disenrollment notice stating that your coverage in Essential Plan 1 Plus Vision and Dental would end effective June 30, 2016.

On June 24, 2016, you spoke to NYSOH's Account Review Unit and appealed the eligibility redetermination insofar as it ended your eligibility to enroll in a qualified health plan, effective June 30, 2016.

On August 3, 2016, NYSOH issued an eligibility redetermination notice stating that, effective July 1, 2016, you were eligible for the Essential Plan for a limited time on the basis that you were granted Aid to Continue until a decision could be made on your appeal.

On January 6, 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. However, you submitted a document on February 13, 2017, which the Hearing Officer accepted into the record in the interest of justice since the Decision was still pending. The record is now closed.

## **Findings of Fact**

A review of the record supports the following findings of fact:

- 1) You are seeking insurance for yourself.
- 2) According to your NYSOH account and your testimony, you receive all of your notices from NYSOH by regular mail.
- 3) According to your NYSOH account, there are no notices that were sent to the address listed on your account that have been returned as undeliverable.

- 4) According to your NYSOH account and your testimony, you will be filing taxes with a filing status of single and claiming no dependents on your tax return.
- 5) The application submitted on January 19, 2016, which requested financial assistance, listed annual household income of \$19,500.00. You testified this was correct.
- 6) According to your NYSOH account your citizenship/immigration status is non-immigrant visa holder.
- 7) According to your NYSOH account, your I-94 Record of Arrival and Departure shows it was valid from "12/2/2007 until 04/25/2009." You are listed in Class E2 (see Document [REDACTED]). You testified this was correct.
- 8) According to your NYSOH account and your testimony, you submitted a New York State driver's license that was issued on 04/14/2014 and expired on 09/28/2016 (see Document [REDACTED]).
- 9) On September 21, 2016, you uploaded to your account a copy of a letter you sent to a New York U.S. Senator in which you stated you lost your immigration status as an E-2 visa holder in 2010 (see Document [REDACTED]). You testified this was correct.
- 10) According to your NYSOH account, on November 23, 2016, a Form G-845, Document Verification Request, was received from U.S. Citizenship and Immigration Services with notation as follows:

"DHS RECORDS DO NOT SHOW ANY CURRENT IMMIGRATION STATUS FOR THIS APPLICANT. APPLICANT CURRENTLY HAS NO IMMIGRATION STATUS"

(see Document [REDACTED]).
- 11) According to your NYSOH account, you hold Foreign Passport # [REDACTED], issued by Albania with an expiration date of 03/30/2016.
- 12) You testified that you consider your immigration status as "Open" and that many people are supporting you in your request to remain in the United States.
- 13) You testified that you pay taxes, you are underprivileged, and you believe this is a human rights violation to have your financial assistance for health insurance terminated.

- 14) According to your NYSOH account, on February 13, 2016, you submitted for consideration a note from your treating physician. dated 02/13/2017. stating in part that stopping your insurance coverage would be detrimental to your chronic health conditions.
- 15) According to your NYSOH account, you were granted Aid to Continue pending the outcome of this appeal. You were reinstated into your Essential Plan effective July 1, 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)).

### Termination of a Qualified Health Plan; Exchange Initiated

The NYSOH may initiate termination of an enrollee's coverage in a qualified health plan and must permit a qualified health plan issuer to terminate such coverage: (1) When the enrollee is no longer eligible for coverage in a qualified health plan through the NYSOH; or (2) The enrollee's coverage is cancelled due to non-payment of premiums (45 CFR § 155.430(b)(2)(i)).

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## Legal Analysis

The issue under review is whether NYSOH properly determined that you were no longer eligible to enroll in a qualified health plan through NYSOH, effective June 30, 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/immigration status is satisfactory.

If NYSOH cannot verify an individual's citizenship/immigration 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 / immigration, notice is considered received 5 days after the date on the notice.

In the eligibility determination issued on January 20, 2016, you were advised that your eligibility was only conditional, and that you needed to confirm your citizenship/immigration status before April 18, 2016.

The record reflects that NYSOH did not receive satisfactory citizenship/immigration documentation before the deadline.

In fact, the documentation you submitted demonstrates that you have no legal immigration status with the U.S. Citizenship and Immigration Services as stated in Form G-845, Document Verification Request, which was uploaded to your NYSOH account on November 23, 2016.

The record further reflects that all documents related to your immigration status are presently expired, including your I-94 record and NYS driver's license.

Therefore, NYSOH properly notified you of an inconsistency in your account and you did not submit satisfactory citizenship/immigration 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 satisfactory citizenship/immigration documentation was not received within the 90-day period, NYSOH was required to redetermine your eligibility without verification of your citizenship or immigration status of lawful presence. As a result, NYSOH properly determined that you could not enroll in a qualified health plan through NY State of Health, effective June 30, 2016, because you did not provide satisfactory information as requested and required by NYSOH.

Therefore, NYSOH's June 18, 2016, eligibility determination is correct and is **AFFIRMED**.

The record indicates that you were granted Aid to Continue pending the outcome of your appeal. As a result, you were re-enrolled in your Essential Plan effective July 1, 2016 and coverage has continued pending the outcome of your appeal. Your case is **RETURNED** to the NYSOH to redetermine your eligibility in light of this decision and to notify you accordingly.

## **Decision**

The June 18, 2016 eligibility redetermination notice is **AFFIRMED**.

Your case is **RETURNED** to the NYSOH to redetermine your eligibility in light of this decision and to notify you accordingly.

**Effective Date of this Decision:** February 23, 2017

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

NYSOH properly found you ineligible to enroll in a qualified health plan because you did not submit satisfactory proof of your citizenship or immigration status of lawful presence.

Your case is being sent back to the NYSOH to redetermine your eligibility based on your current immigration status. NYSOH will notify you of its findings in due course.

## **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

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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 June 18, 2016 eligibility redetermination notice is **AFFIRMED**.

Your case is **RETURNED** to the NYSOH to redetermine your eligibility in light of this decision and to notify you accordingly.

NYSOH properly found you ineligible to enroll in a qualified health plan because you did not submit satisfactory proof of your citizenship or immigration status of lawful presence.

Your case is being sent back to the NYSOH to redetermine your eligibility based on your current immigration status. NYSOH will notify you of its findings in due course.

## **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:**

