



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

## Notice of Decision

Decision Date: March 24, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000011539



Dear [REDACTED]

On March 1, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's June 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 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: March 24, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000011539



## Issues

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

Did NY State of Health (NYSOH) properly determine that your eligibility to enroll in a qualified health plan (QHP) and receive advance payments of the premium tax credit (APTC) were effective no earlier than August 1, 2016?

Are you eligible to enroll in 2017 coverage through NYSOH outside of the 2017 open enrollment period?

## Procedural History

On June 20, 2016, you applied for financial assistance with health insurance through NYSOH.

On June 21, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to enroll in coverage with NYSOH and receive \$0.00 per month in APTC, effective August 1, 2016.

Also on June 21, 2016, NYSOH issued a notice of enrollment confirmation confirming your children's enrollment in their Child Health Plus plan, and informing you that your coverage would not begin until you selected a health plan.

On August 18, 2016, you spoke to NYSOH's Account Review Unit and appealed the eligibility determination, insofar as it stated that your financial assistance eligibility began on August 1, 2016 and not June 1, 2016.

On March 1, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, you indicated that you are also appealing because you would like to enroll in coverage for 2017. 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 submitted an application to NYSOH for financial assistance on June 20, 2016.
- 2) You testified that you applied on this date because you had gone to the emergency room and found out that you [REDACTED].
- 3) You testified that the [REDACTED].
- 4) You testified that you have medical bills from the month of June 2016 from when you went to the emergency room, and you are looking to enroll in coverage to have these bills paid.
- 5) You testified that you thought that you enrolled in a QHP when you were on the phone with the NYSOH representative on June 20, 2016, and did not find out until August that you were not enrolled.
- 6) You testified that you received the notice stating that you were eligible for \$0.00 in APTC, but did not receive any notice telling you to select a plan. Additionally, you testified that you were under the impression that you had enrolled in a plan.
- 7) You testified that you are looking for retroactive coverage for June 2016 because that is the month in which you incurred medical bills.
- 8) You testified that you are not necessarily looking for coverage for the rest of 2016, as you did not have the benefit of coverage during that time period and therefore do not feel that it is fair to have to pay premiums for that time period.
- 9) You testified that, when you applied for health insurance on June 20, 2016, you did not have any health insurance coverage, and had not had coverage since approximately the end of 2014.

- 10) You testified that you did not know that you needed to update your application for coverage during the open enrollment period for 2017, as you thought that, if your eligibility began in June 2016, it would run until June 2017.
- 11) Your account reflects that you did not receive a renewal notice informing you to update your account to have your eligibility for financial assistance determined for 2017, because you were not enrolled in coverage in 2016.
- 12) You testified that no one told you that you would need to update your account during open enrollment if you wanted coverage going forward.
- 13) After the hearing, the Hearing Officer listened to recordings of three telephone calls that you had with three different representatives from NYSOH on June 20, 2016. The following findings of fact are taken from these recordings:
  - a. First phone call:
    - i. You informed the NYSOH representative that you had just found out that you [REDACTED], and that you wanted to find out your options, if any, for insurance coverage;
    - ii. You informed the NYSOH representative that you were hoping for coverage as of June 1, 2016;
    - iii. The NYSOH representative ran your eligibility and informed you that you were eligible to enroll in a QHP as of August 1, 2016;
    - iv. You informed the NYSOH representative that you wanted to find out what plans your hospital would accept, and would call back to select a plan;
  - b. Second phone call:
    - i. You reviewed several options for QHPs with the NYSOH representative;
    - ii. You decided that you wanted to enroll in a platinum plan with a higher premium so that you would not have such a high deductible;
    - iii. The NYSOH representative told you that you could have coverage beginning as early as June 1, 2016 because you qualified for an SEP due to [REDACTED];
    - iv. You informed the representative that you wanted to check back with the hospital regarding which plan they would accept, and that you would call back after you did so;
  - c. Third phone call:
    - i. You informed the NYSOH representative that the previous representative told you that there was an Affinity platinum

- health plan with a monthly premium of \$549.00, and that you wanted to enroll in this plan;
- ii. The NYSOH representative confirmed that you wanted this plan, and told you that she was going to “confirm and check out” your plan selection;
  - iii. You asked the NYSOH representative several times whether your coverage would begin as of June 1, 2016, and the representative told you that it would;
  - iv. The NYSOH representative confirmed that you were enrolled in the Affinity platinum plan, effective June 1, 2016.

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

## **Applicable Law and Regulations**

### Determination Outside of Open Enrollment

When a determination is issued as a result of a change in an applicant’s information, NYSOH must generally make that determination effective on the first day of the month following the date NYSOH is notified of the change (45 CFR § 155.330 (f)(1)(ii)). However, NYSOH may determine that its policy will be that any change made after the 15<sup>th</sup> of any month will not be effective until the first of the second following month (45 CFR § 155.330(f)(2)).

### Enrollment in a Qualified Health Plan

The effective date of coverage by a QHP 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)). 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)).

### Annual Open Enrollment

NYSOH must provide annual open enrollment periods during which time qualified individuals may enroll in a QHP and enrollees may change QHPs (45 CFR § 155.410(a)(1)).

For the benefit year beginning on January 1, 2017, the annual open enrollment period began on November 1, 2016, and extended through January 31, 2017 (45 CFR § 155.410(e)(2)).

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## Special Enrollment Periods

After each open enrollment period ends, NYSOH provides special enrollment periods (SEP's) to qualified individuals. During an SEP, a qualified individual may enroll in a QHP, and an enrollee may change their enrollment to another plan. This is generally permitted when certain triggering events occur, including the following:

- (1) 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

(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)).

## Special Enrollment Period for Pregnancy

In addition to the triggering events listed above, NY State permits an SEP for individuals who have been certified pregnant by a medical doctor. The start date for such coverage is the first date of the month in which the individual enrolls in coverage, unless the individual chooses to enroll the first day of the month following the date that pregnancy is certified (NY CLS Ins § 4328(b)(4)).

## **Legal Analysis**

The first issue under review is whether NYSOH properly determined that your eligibility for enrollment in a QHP, and your eligibility for APTC, was effective no earlier than August 1, 2016.

The record shows that June 20, 2016, you updated the information in your NYSOH account and filed an application for financial assistance. On June 21, 2016, NYSOH issued an enrollment confirmation notice stating that your eligibility for enrollment in a health plan and for APTC was effective August 1, 2016.

You testified that you applied for coverage because you went to the emergency room on [REDACTED] and found out that you [REDACTED]. You testified that you have outstanding medical bills from June 2016 that you are looking to have covered. You testified that you have not had health insurance coverage since approximately the end of 2014.

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When an individual updates their application after the 15th of any month, NYSOH will make the determination that results from the change effective the first day of the second following month.

Therefore, NYSOH's June 21, 2016 eligibility determination notice is AFFIRMED, insofar as your eligibility for APTC properly began on August 1, 2016.

Ordinarily, the date on which a QHP can take effect depends on the day a person selects the plan for enrollment. A plan that is after the fifteenth day of a month goes into effect on the first day of the second following month. However, under NY State law, when a [REDACTED] individual is granted an SEP to enroll in a QHP, that enrollment begins on the first date of the month in which the person enrolls in coverage.

The recordings of your telephone conversations with NYSOH show that you attempted to enroll in a health plan on June 20, 2016, and were in fact informed by the last representative that you spoke with that you had been successfully enrolled into an Affinity platinum health plan. Since you were eligible for an SEP based on [REDACTED] your enrollment, had it been properly completed, could have started on June 1, 2016, at your option.

Therefore, your case is RETURNED to NYSOH to facilitate your enrollment in a QHP at full cost, effective June 1, 2016, should you choose to enroll. You have sixty days from the date of this decision to enroll in a QHP for 2016 coverage.

The second issue under review is whether you are eligible for an SEP so that you can enroll in coverage for the 2017 coverage year, outside of the 2017 open enrollment period.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. The record indicates that you did not submit an application for health coverage during the open enrollment period.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a SEP 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.

A special enrollment period can be granted if a qualified individual's enrollment or non-enrollment into a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of NYSOH or its instrumentalities as evaluated and determined by the NYSOH.

Had NYSOH properly enrolled you into coverage on June 20, 2016, you would have received a renewal notice informing you that you needed to update your

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application for the 2017 insurance coverage year. However, NYSOH failed to properly complete your enrollment, so you did not receive a renewal notice, and did not update your application for 2017.

Therefore, your non-enrollment into a health plan for 2017 is the result of error on the part of NYSOH. As such, if you are found eligible to enroll in coverage through NYSOH, you should be granted an SEP.

Your case is RETURNED to NYSOH, and NYSOH is directed to immediately contact you and assist you in updating your application for health insurance for 2017. If you are found eligible to enroll in a QHP, you will have 60 days from the date of your eligibility to select a plan for enrollment.

## **Decision**

The June 21, 2016 eligibility determination notice is AFFIRMED.

You were eligible for an SEP as of June 1, 2016 based on [REDACTED].

Your case is RETURNED to NYSOH to facilitate your enrollment in a health plan for 2016, with a start date as early as June 1, 2016, should you choose to enroll.

Your case is RETURNED to NYSOH to assist you in updating your application for health insurance for 2017.

If you are found eligible to enroll in a QHP for 2017, you have sixty (60) days from the date of this decision to enroll in a plan for 2017 coverage.

**Effective Date of this Decision:** March 24, 2017

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

Your eligibility for APTC properly began as of August 1, 2016.

You should have been eligible to enroll in a QHP with a start date of June 1, 2016.

Your case is being sent back to NYSOH to facilitate your enrollment in a QHP as of June 1, 2016, should you choose to do so.

You must update your application to find out what coverage you may currently qualify for.

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NYSOH will contact you to assist you in updating your application for the 2017 coverage year. If you are found eligible to enroll in a QHP, you have 60 days from the date of that eligibility determination to enroll in a plan.

### **If You Disagree with this Decision (Appeal Rights)**

This Decision is final unless you submit an appeal request to the Federal Marketplace 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 Federal Marketplace. 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 have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:  
Health Insurance Marketplace  
Attn: Appeals  
465 Industrial Blvd.  
London, KY 40750-0061
- By fax: 1-877-369-0129

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:

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).

- 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 21, 2016 eligibility determination notice is AFFIRMED.

You were eligible for an SEP as of June 1, 2016 based on [REDACTED].

Your case is RETURNED to NYSOH to facilitate your enrollment in a health plan for 2016, with a start date as early as June 1, 2016, should you choose to enroll.

Your case is RETURNED to NYSOH to assist you in updating your application for health insurance for 2017.

If you are found eligible to enroll in a QHP for 2017, you have sixty (60) days from the date of the eligibility determination to enroll in a plan for 2017 coverage.

Your eligibility for APTC properly began as of August 1, 2016.

You should have been eligible to enroll in a QHP with a start date of June 1, 2016.

Your case is being sent back to NYSOH to facilitate your enrollment in a QHP as of June 1, 2016, should you choose to do so.

You must update your application to find out what coverage you may currently qualify for.

NYSOH will contact you to assist you in updating your application for the 2017 coverage year. If you are found eligible to enroll in a QHP, you have 60 days from the date of that eligibility determination to enroll in a plan.

## **Legal Authority**

We are issuing this determination in accordance with 45 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).

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



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## Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

### Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

### 中文 (Traditional Chinese)

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

### Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

### 中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您提供相应语种的口译服务。

### Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

### 한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

### Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

### العربية (Arabic)

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 1-855-355-5777. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجاناً.

### বাংলা (Bengali)

এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

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## **Français (French)**

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

## **हिंदी (Hindi)**

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

## **日本語 (Japanese)**

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

## **नेपाली (Nepali)**

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

## **Polski (Polish)**

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

## **Twi (Twi)**

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye&etumi ama wo obi a okyerε kasa a woka no ase ama wo kwa a wontua hwee.

## **(Urdu) اردو**

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم 1-855-355-5777 پر کال کریں۔ ہم آپ کو آپ کی مادری زبان میں ایک مفت مترجم فراہم کر سکتے ہیں۔

## **Tiếng Việt (Vietnamese)**

Đây là tài liệu quan trọng. Nếu quý vị cần trợ giúp để hiểu tài liệu này, vui lòng gọi 1-855-355-5777. Chúng tôi có thể cung cấp thông dịch viên miễn phí nói ngôn ngữ của quý vị.

## **אידיש (Yiddish)**

דאס איז א וויכטיגער דאקומענט. אויב איר דארפט הילף עס צו פארשטיין, ביטע רופט 1-855-355-5777. מיר קענען אייך געבן א דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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