



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

Notice of Decision

Decision Date: April 6, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012982

[REDACTED]

Dear [REDACTED],

On March 21, 2017, you appeared, along with your authorized representative, [REDACTED], by telephone at a hearing on your appeal of NY State of Health's October 31, 2016 cancellation 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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NY State of Health Account ID: [REDACTED]
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Issues

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

Did NY State of Health (NYSOH) properly terminate your qualified health plan for non-payment of premium effective, October 1, 2016?

Did NYSOH properly determine that you do not qualify to enroll in a qualified health plan (QHP) outside of the open enrollment period, effective October 1, 2016?

Procedural History

On October 13, 2016, NYSOH received your application for health insurance.

On October 14, 2016, NYSOH issued an eligibility determination notice stating that you were eligible to purchase a QHP at full cost, effective November 1, 2016. The notice also stated that you had until October 31, 2016 to select a plan for coverage for 2016.

Also on October 14, 2016, NYSOH issued an enrollment confirmation notice stating that you were enrolled in a Healthfirst gold-level QHP, with a plan start date of October 1, 2016. The notice stated that, if you had a monthly premium, you would receive an invoice from your health plan.

On October 31, 2016, NYSOH issued a cancellation notice stating that your enrollment in your QHP was terminated, effective October 1, 2016, because a premium payment had not been received by the health plan.

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On November 1, 2016, you spoke to NYSOH's Account Review Unit and appealed that cancellation notice, as well as NYSOH's verbal determination that you did not qualify to enroll in another health plan outside of the 2016 open enrollment period.

On March 21, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, your spouse, [REDACTED], appeared as your authorized representative, and provided sworn testimony on your behalf. 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) Your application for health insurance through NYSOH was filed on October 13, 2016.
- 2) Your authorized representative (AR) testified that you had previously had private coverage outside of NYSOH, but that this coverage was terminated effective September 1, 2016.
- 3) Your AR testified that she chose a Healthfirst plan for you, and chose an October 1, 2016 start date for your plan coverage.
- 4) Your AR testified that, after she selected a plan for you, the NYSOH website stated that she would receive further information regarding your enrollment and making your premium payment from your health plan.
- 5) Your AR testified that she waited to receive information from Healthfirst regarding how to pay the first month's premium.
- 6) Your AR testified that she did not even have an account number or ID number, or anything else that she could have used to make a payment.
- 7) Your AR testified that she then received an email stating that you did not have health coverage because your premium was not paid.
- 8) Your AR testified that she contacted your health plan and was informed that your coverage was cancelled because the October 2016 premium was not paid.
- 9) Your AR testified that she explained to the health plan that she never received any information regarding your plan, nor any invoice for payment, and the plan responded that there was nothing that could be done.

- 10) Your AR testified that she contacted NYSOH to try to re-enroll you into a plan, but was informed that she could not do so. She testified that she was told that she could file an appeal, and so she requested an appeal on your behalf.
- 11) Notes in NYSOH's system entered on November 1, 2016, (the day your appeal was filed) under Incident Number [REDACTED] state the following: "Appellant is appealing to have coverage reinstated via SEP [Special Enrollment Period]. Appellant's coverage was terminated due to non-payment effective 10/01/2016. Appellant states he didn't receive the premium notice."
- 12) Your AR testified that you do not have medical bills from the months in question, but that you are looking to be able to enroll in a QHP for the months of October, November, and December 2016 because you do not want to incur a tax penalty.
- 13) You testified that there have been no major changes in your household since your October 13, 2016 application.
- 14) Your NYSOH account reflects that you are currently enrolled in a full cost QHP, and that your enrollment in that plan began on January 1, 2017.

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

Applicable Law and Regulations

Appealable Issues

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 NYSOH 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)).

Enrollment in a Qualified Health Plan

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

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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)).

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 qualified health plan, 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 either:
 - (i) Loses minimum essential coverage.
 - (ii) Is enrolled in any non-calendar year group health plan or individual health insurance coverage, even if the qualified individual or his or her dependent has the option to renew such coverage.
 - (iii) Loses pregnancy-related coverage.
 - (iv) Loses medically needy coverage as described under section 1902(a)(10)(C) of the Social Security Act only once per calendar year.
- (2)(i) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care, or through a child support order or other court order.
 - (ii) the enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation as defined by State law in the State in which the divorce or legal separation occurs, or if the enrollee, or his or her dependent, dies.
- (3) The qualified individual, or his or her dependent, becomes newly eligible for enrollment in a qualified health plan because he or she gains citizenship, status as a national, or lawful present or is no longer incarcerated.
- (4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of NYSOH, its instrumentalities,

or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities.

(5) The enrollee or, his or her dependent adequately demonstrates to NYSOH that the qualified health plan in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;

(6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions.

(7) The qualified individual or enrollee, or his or her dependent, gains access to new qualified health plan as a result of a permanent move and either—

(i) Had minimum essential coverage for one or more days during the 60 days preceding the date of the permanent move, or

(ii) Was living outside of the United States or in a United States territory at the time of the permanent move;

(8) The qualified individual or dependent who gains or maintains status as an Indian may enroll in a qualified health plan or change from one plan to another, once per month.

(9) The qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide;

(10) A qualified individual or enrollee—

(i) Is a victim of domestic abuse or spousal abandonment, including a dependent or unmarried victim within a household, is enrolled in minimum essential coverage and seeks to enroll in coverage separate from the perpetrator of the abuse or abandonment; or

(ii) Is a dependent of a victim of domestic abuse or spousal abandonment, on the same application as the victim, may enroll in coverage at the same time as the victim;

(11) A qualified individual or dependent—

(i) Applies for coverage through NYSOH during the annual open enrollment period or due to a qualifying event, is assessed as

potentially eligible for Medicaid or Child Health Plus and is determined ineligible for Medicaid or Child Health Plus either after open enrollment has ended or more than 60 days after the qualifying event; or

(ii) Applies for coverage at their Local Department of Social Services or Human Resources Administration during the annual open enrollment period, and is determined ineligible for Medicaid or Child Health Plus after open enrollment has ended;

(12) The qualified individual or enrollee, or his or her dependent, adequately demonstrates to NYSOH that a material error related to plan benefits, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a qualified health plan; or

(13) At the option of NYSOH, the qualified individual provides satisfactory documentary evidence to verify his or her eligibility for an insurance affordability program or enrollment following termination of enrollment due to a failure to verify such status within 90 days.

(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 qualified health plan (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” such as failure to comply with other requirements (45 CFR § 147.128(b))

(45 CFR § 155.420(e)).

Legal Analysis

The first issue under review is whether NYSOH properly terminated your enrollment in your QHP for non-payment of premium, effective October 1, 2016.

On October 13, 2016, you were enrolled into a QHP with a plan start date of October 1, 2016.

Your AR testified that she waited to receive any kind of information or invoice from your QHP so that she could make your first premium payment, but that she did not receive any paperwork, and did not even have an account number or ID number for you. She testified that she then received an email stating that your coverage was cancelled because no premium payment was made. She credibly testified that she called your QHP and told them that they had never sent her any invoice, but that they told her that it did not matter, and your coverage was terminated.

On October 31, 2016, NYSOH issued a notice stating that you were disenrolled from your health plan for non-payment of the premium, effective October 1, 2016.

NYSOH Appeals Unit only has the authority to review issues related to the following: (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 to provide timely notice of an eligibility determination and (5) a denial of a special enrollment period.

Since the Appeals Unit is not given the authority to review termination of enrollment due to non-payment of premiums, we cannot reach the merits as to whether you were properly terminated from your health plan for non-payment of premiums. Therefore, your appeal of the October 31, 2016 cancellation notice is DISMISSED as a non-appealable issue.

However, since your AR testified that no invoice was ever issued by your health plan, your case is RETURNED to Plan Management to investigate whether any invoice was ever issued by your health plan prior to the termination of your coverage.

The second issue under review is whether NYSOH properly determined that you did not qualify to enroll in a QHP for 2016 outside of the 2016 open enrollment period

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. On November 1, 2016, your AR verbally submitted a request for you to reenroll in a QHP for 2016, and this request was denied and processed as a request for an appeal.

Once the annual open enrollment period ends, a health plan enrollee must qualify for an SEP in order to enroll in or change to another health plan offered in NYSOH. To qualify for an SEP, a person must experience a triggering event.

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In the present case, there is not enough evidence in the record to establish any basis for an SEP at this time. You testified that there have been no changes to your household in 2017.

Although you did lose health coverage as a result of the October 31, 2016 disenrollment, the loss of health insurance coverage in this case cannot, on its face, be considered a triggering event for an SEP, because it was a result of non-payment of your premiums which NYSOH considers a voluntary action causing the termination of your coverage.

However – if NYSOH's Plan Management determines that you were not properly sent an invoice for your QHP prior to the October 31, 2016 disenrollment notice, then this error on the part of your health plan constitutes a basis for NYSOH to grant you an SEP.

Therefore, if NYSOH determines that you were not properly sent an invoice for your October 2016 premium payment, your case will be RETURNED to NYSOH to allow you to select a health plan for enrollment for 2016 coverage, effective October 1, 2016. Should this occur, you will be responsible for payment of all premiums from the start date of your plan through December 31, 2016.

Decision

Your appeal of the October 31, 2016 cancellation notice is DISMISSED as a non-appealable issue.

Your case is RETURNED to Plan Management to investigate whether your QHP sent you an invoice for your October 2016 premium payment, prior to the cancellation of your coverage for nonpayment.

Should Plan Management determine that your health plan did NOT properly issue an invoice, your case will be RETURNED to NYSOH to facilitate your enrollment in a QHP for 2016, with an enrollment start date as early as October 1, 2016.

Effective Date of this Decision: April 6, 2017

How this Decision Affects Your Eligibility

The cancellation of your QHP coverage for nonpayment of premiums is not an appealable issue within the NYSOH Appeals Unit's jurisdiction.

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).

However, your case is being sent back to determine whether your health plan properly issued an invoice for your October 2016 premium payment prior to cancelling your enrollment for nonpayment of premiums.

If it is determined that an invoice was not issued, NYSOH will contact you and assist you in enrolling in a QHP for 2016 coverage, with a start date as early as October 1, 2016. In that case, you will be responsible for all premiums from the start date of your plan through the end of 2016.

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 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).

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

Your appeal of the October 31, 2016 cancellation notice is DISMISSED as a non-appealable issue.

Your case is RETURNED to Plan Management to investigate whether your QHP sent you an invoice for your October 2016 premium payment, prior to the cancellation of your coverage for nonpayment.

Should Plan Management determine that your health plan did NOT properly issue an invoice, your case will be RETURNED to NYSOH to facilitate your enrollment in a QHP for 2016, with an enrollment start date as early as October 1, 2016.

The cancellation of your QHP coverage for nonpayment of premiums is not an appealable issue within the NYSOH Appeals Unit's jurisdiction.

However, your case is being sent back to determine whether your health plan properly issued an invoice for your October 2016 premium payment prior to cancelling your enrollment for nonpayment of premiums.

If it is determined that an invoice was not issued, NYSOH will contact you and assist you in enrolling in a QHP for 2016 coverage, with a start date as early as October 1, 2016. In that case, you will be responsible for all premiums from the start date of your plan through the end of 2016.

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:



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 okyerE 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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