



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

## Notice of Decision

Decision Date: March 21, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000013069

[REDACTED]

Dear [REDACTED],

On February 14, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 18, 2016 eligibility determination 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 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: March 21, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000013069



## Issue

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

Did NY State of Health (NYSOH) properly determine your eligibility for and enrollment in the Essential Plan ended, effective October 31, 2016?

## Procedural History

On December 11, 2015, NYSOH issued a notice of eligibility determination stating you were eligible to enroll in the Essential Plan for a limited time, effective January 1, 2016. The notice further directed you to provide documentation confirming your income before March 9, 2016 or you might lose your eligibility for health insurance or financial assistance.

Also on December 11, 2015, NYSOH issued a notice confirming your enrollment in an Essential Plan, effective January 1, 2016.

NYSOH did not receive documentation confirming your income by the March 9, 2016 deadline.

On September 17, 2016, NYSOH systematically redetermined your eligibility.

On September 18, 2016, NYSOH issued an eligibility determination notice stating you were newly eligible to purchase a qualified health plan at full cost, effective November 1, 2016. The further notice stated you were not eligible to enroll in the Essential Plan because NYSOH did not receive the income documentation needed to verify the income listed in your application.

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Also on September 18, 2016, NYSOH issued a disenrollment notice stating your enrollment in the Essential Plan would end as of October 31, 2016, because you were no longer eligible to remain in your plan.

On November 3, 2016, you updated your application for financial assistance. That day, a preliminary eligibility determination was prepared stating you were eligible to enroll in the Essential Plan and you selected a plan for enrollment.

Also on November 3, 2016 you spoke to NYSOH's Account Review Unit and appealed the termination of your Essential Plan for the month of November 2016.

On November 4, 2016, NYSOH issued an eligibility determination notice, based on your November 3, 2016 updated application, stating you were eligible to enroll in the Essential Plan, effective December 1, 2016.

Also on November 4, 2016, NYSOH issue a notice of enrollment confirmation, based on your plan selection on November 3, 2016, stating you were enrolled in an Essential Plan effective December 1, 2016.

On February 14, 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.

## **Findings of Fact**

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

- 1) You testified, and your NYSOH account confirms, you initially elected to receive all of your notices from NYSOH by electronic mail.
- 2) You testified you do not recall receiving any electronic alerts notifying you of any notice in your NYSOH account stating your eligibility was only conditional and you needed to provide documentation of your income.
- 3) Your account confirms the electronic notice in your NYSOH inbox dated December 11, 2015 has never been read.
- 4) You testified you recently updated your communication preference with NYSOH to receive all notices by regular mail after you discovered you had not received some of the notices.
- 5) Your NYSOH account indicates your eligibility was systematically redetermined on September 17, 2016 and you were found no longer eligible for the Essential Plan as of October 31, 2016.

- 6) You testified you did not know NYSOH requested documentation of your income until your health plan contacted you in November 2016 to advise you that your plan had been terminated.
- 7) You testified you updated your information with your health plan at this time and your health plan then re-enrolled you into the same Essential Plan with NYSOH.
- 8) This new enrollment was effective December 1, 2016.
- 9) You testified, and your account confirms, you had a gap in health coverage for the month of November 2016.
- 10) You testified that you are seeking reinstatement of your Essential Plan for the month of November 2016.

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

## **Applicable Law and Regulations**

### Verification of Eligibility for the Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

NYSOH must verify the eligibility of an applicant for the Essential Plan consistent with the standards set in 45 CFR § 155.315 and § 155.320 (New York's Basic Health Plan Blueprint, pgs. 16-17, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>; 42 CFR § 600.345(a)(2)).

An applicant is required to attest to their household's projected annual income. (45 CFR § 155.320(c)(3)(ii)(B)). For all individuals whose household income is needed, NYSOH must request tax return data from the Secretary of the Treasury

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and data regarding Social Security benefits from the Commissioner of Social Security in order to confirm that the information the applicant is attesting to is accurate (45 CFR § 155.320(c)(1)(i); 45 CFR § 155.320(c)(3)(ii)(A)).

If income data is unavailable, or if an applicant's attestation is not reasonably compatible with the income data NYSOH obtains, NYSOH must request additional information from the applicant in order to resolve the inconsistency (45 CFR §155.320 (c)(3)(iii), (iv)).

NYSOH must provide the applicant with notice of the inconsistency in their account and 90 days to provide satisfactory documentary evidence to resolve the inconsistency (45 CFR § 155.315 (f)(2)). If NYSOH remains unable to verify the attestation of the applicant, NYSOH must redetermine the applicant's eligibility based on the information available from the data sources unless the applicant demonstrates that they are unable to provide the required documentation (45 CFR § 155.315(f)(2), (g)).

Upon making an eligibility redetermination, NYSOH must notify the applicant and implement any updates in eligibility to the Essential Plan effective the first day of the following month for changes received by NYSOH from the first to the fifteenth of any month (45 CFR § 155.420(b)(1)(i); see *also* 42 CFR § 600.320(c)). For updates 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 § 155.420(b)(1)(ii); see *also* 42 CFR § 600.320(c)).

### Electronic Notices

Applicants may choose to receive notices and information from NYSOH either by electronic alerts or by regular mail. If the applicant elects to receive electronic notices, NYSOH must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant's account (42 CFR § 600.330(e); 42 CFR § 435.918(b)(4)).

Additionally, if an electronic alert regarding a notice in an individual's NYSOH account fails, NYSOH must send out the notice by regular mail within three days of the failed alert (42 CFR § 435.918(b)(5)).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined your eligibility for and enrollment in the Essential Plan ended effective October 31, 2016.

An individual requesting financial assistance to help pay for the cost of coverage provided through NYSOH is required to attest to his or her household's projected

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annual income. For individuals seeking enrollment in the Essential Plan, NYSOH must request income data from federal data sources in order to verify an individual's income attestation.

If NYSOH cannot verify an individual's attestation, it must provide the individual with notice of the inconsistency and provide a period of 90 days from the date notice is received to resolve the inconsistency.

In the eligibility determination issued on December 11, 2015, you were advised you were eligible for the Essential Plan for a limited time only, and that you needed to confirm your household's income before March 9, 2016.

Your account confirms, NYSOH did not receive the requested income documentation before the deadline.

However, you testified that at the time this notice was issued, you elected to receive alerts regarding notices from NYSOH electronically. You credibly testified you do not recall receiving an electronic alert regarding this eligibility determination notice, which advised you your eligibility was only conditional and that you needed to submit documentation to confirm your income. Your account corroborates this testimony, as the electronic notice in your NYSOH inbox dated December 11, 2015 has never been marked as read. Additionally, there is no evidence in your account documenting that any email alert was sent to you regarding the need to submit documentation, nor is there any evidence the notice was sent to you by regular mail.

Therefore, it is concluded NYSOH did not give you the proper notice that you needed to submit documentation of your income in order to confirm your eligibility for the Essential Plan.

Since you were not made aware of and did not receive proper notice there was an inconsistency in your NYSOH account, the September 18, 2016 eligibility determination stating you were no longer eligible for the Essential Plan because you failed to submit documentation is **RESCINDED**.

Similarly, the September 18, 2016 disenrollment notice stating your Essential Plan was terminated, effective October 31, 2015, because you were no longer eligible to remain enrolled in the plan is also **RESCINDED**.

Your case is **RETURNED** to NYSOH to reinstate your coverage in your Essential Plan as of November 1, 2016.

## **Decision**

The September 18, 2016 eligibility determination notice is **RESCINDED**.

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The September 18, 2016 notice of disenrollment is RESCINDED.

Your case is RETURNED to NYSOH to reinstate your coverage in your Essential Plan as of November 1, 2016.

**Effective Date of this Decision:** March 21, 2017

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

NYSOH erred in terminating your Essential Plan, effective October 31, 2016, without the proper notice.

Your case is being sent back to NYSOH to reinstate your coverage in your Essential Plan as of November 1, 2106.

### **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
- By mail at:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The September 18, 2016 notice of eligibility determination is RESCINDED.

The September 18, 2016 notice of disenrollment is RESCINDED.

NYSOH erred in terminating your Essential Plan, effective October 31, 2016, without the proper notice.

Your case is RETURNED to NYSOH to reinstate your coverage in your Essential Plan as of November 1, 2016.

## **Legal Authority**

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

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

