



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

Notice of Decision

Decision Date: February 3, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000013309

[REDACTED]

Dear [REDACTED],

On December 19, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's September 18, 2016 eligibility redetermination and disenrollment notices, and the November 16, 2016 eligibility redetermination and enrollment confirmation 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 3, 2017

NY State of Health Account ID: [REDACTED]
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[REDACTED]

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 for the Essential Plan ended effective October 31, 2016?

Did NYSOH properly determine that your eligibility for and enrollment in the Essential Plan was next effective December 1, 2016?

Procedural History

On November 24, 2015, NYSOH issued a notice of eligibility determination stating that you were eligible to enroll in the Essential Plan for a limited time, effective January 1, 2016. The notice directed you to provide documentation confirming your income before February 21, 2016.

On December 19, 2015, NYSOH issued a notice confirming your enrollment in Essential Plan 1 Plus Vision and Dental, with Empire BlueCross BlueShield at a \$46.45 monthly premium, effective January 1, 2016.

On September 18, 2016, NYSOH issued an eligibility redetermination notice stating that, effective November 1, 2016, you were newly eligible to receive advance premium tax credits (APTC) of \$137.00 per month to help pay for the cost of health insurance. The notice further stated that you qualified to select a health plan outside the open enrollment period for 2016 and needed to confirm your plan selection no later than November 16, 2016.

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Also on September 18, 2016, NYSOH issued a disenrollment notice stating that your enrollment in Essential Plan 1 Plus Vision and Dental with Empire BlueCross BlueShield would end effective October 31, 2016, because you were no longer eligible to remain in your plan.

On November 14, 2016, you updated your application for financial assistance.

On November 15, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to enroll in the Essential Plan, with a premium of \$20.00 per month, effective January 1, 2017.

Also on November 15, 2016, NYSOH issued a notice of enrollment confirmation, based on your plan selection on November 14, 2016, stating that you were enrolled in Essential Plan 1 with Empire BlueCross BlueShield for a premium of \$20.00 per month, effective January 1, 2017. That notice also stated you were enrolled in Empire Dental Family Value through Empire BlueCross BlueShield, with a monthly premium of \$22.33 and an enrollment start date of January 1, 2017.

On November 16, 2016, NYSOH issued a notice of eligibility determination, based on your November 15, 2016 application, stating that you were eligible to enroll in the Essential Plan, with a premium of \$20.00 per month, effective January 1, 2017.

Also on November 16, 2016, NYSOH issued a notice confirming your enrollment in Essential Plan 1 Plus Vision and Dental, with Empire BlueCross BlueShield, at a \$47.49 monthly premium, effective January 1, 2017.

Also on November 16, 2016, you spoke to NYSOH's Account Review Unit and appealed the termination of your Essential Plan for the months of November 2016 and December 2016.

On November 23, 2016, NYSOH issued a notice confirming your November 15, 2016 request to end your enrollment with Essential Plan 1 and with Empire Dental Family Value. The notice stated that your coverage in these plans would end on January 1, 2017.

On December 7, 2016, NYSOH issued a notice confirming your enrollment in Essential Plan 1 Plus Vision and Dental, with Empire BlueCross BlueShield, at a \$47.49 monthly premium, effective December 1, 2016.

On December 19, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open up to January 2, 2017, to allow you to submit supporting documents. On December 20, 2016 you uploaded to your NYSOH account a copy of your 2015

Form 1040 U.S. Individual Income Tax Return. At that time, this document was made part of the record as Appellant's Exhibit # 1 and the record was closed.

Findings of Fact

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

- 1) You testified, and your application indicates, that you receive all of your notices from NYSOH via regular mail.
- 2) You testified that you do not recall receiving the November 24, 2015 eligibility notice that stated your eligibility was only conditional and that you needed to provide documentation of your income. You testified that had you received that notice you would have responded.
- 3) You testified that you do share a mailbox with another person but that has not been an issue of receiving your mail.
- 4) No notices, applicable to this appeal, that were sent to the address listed on your NYSOH account have been returned as undeliverable.
- 5) Your NYSOH account indicates that, on September 17, 2016, your application was run by the system and you were found no longer eligible for the Essential Plan as of November 1, 2016.
- 6) You testified that you did not know your insurance was cancelled until you went to a pharmacy in November 2016 and were told you did not have insurance. You then contacted NYSOH and was informed you needed to update your account.
- 7) You updated the income information in your NYSOH account on November 14, 2016.
- 8) You testified that, when you spoke to the NYSOH representative on November 14, 2016, you were told they did not know why you were disenrolled but that you should update your account for the next enrollment period.
- 9) You testified that you had to go to the hospital emergency room on November 15, 2016 and you were again informed you did not have health insurance.
- 10) On December 7, 2016, NYSOH modified the start date of your Essential Plan 1 Plus Vision and Dental with Empire BlueCross

BlueShield from January 1, 2017 to December 1, 2016 based on your plan selection of November 14, 2016. (see Incident # [REDACTED])

- 11) You testified that you have outstanding costs for medical services received in the month of November 2016.
- 12) You testified that you are seeking enrollment in your Essential Plan as of November 1, 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 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)).

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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)).

Legal Analysis

The first issue under review is whether NYSOH properly determined that your eligibility for 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 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 November 24, 2015, you were advised that you were eligible for the Essential Plan for a limited time, and that you needed to confirm your household's income before February 21, 2016.

You testified that you do not recall receiving any notice from NYSOH telling you that you needed to provide income documentation to confirm your eligibility. You testified, and your NYSOH account confirms, that you elected to receive notifications by regular mail. However, there is no evidence in the record that any of the notices, applicable to this appeal, that were sent to your mailing address were returned as undeliverable. As such, the applicable notices are deemed to have been sent and received.

Therefore, NYSOH properly notified you of an inconsistency in your account and that documentation was needed to confirm the income you listed in the account and provided you 90 days to resolve the inconsistency.

If NYSOH remains unable to verify the attestation of the applicant, NYSOH must redetermine an individual's eligibility based on the information available from the data sources unless the applicant demonstrates that they are unable to provide the required documentation.

As the September 18, 2016 eligibility redetermination notice states, you were redetermined eligible to receive APTC, effective November 1, 2016, based on the data available at the time. Since this eligibility constitutes minimum essential coverage, you were also disqualified from remaining eligible for the Essential Plan, as stated in the September 18, 2016 disenrollment notice.

Accordingly, your eligibility for the Essential Plan terminated as of October 31, 2016 because you did not submit documentation and did not adequately demonstrate that you could not provide documentation to confirm your income.

Therefore, the September 18, 2016 eligibility redetermination and disenrollment notices are AFFIRMED.

The second issue is whether NYSOH properly determined that your eligibility for and enrollment in the Essential Plan was effective December 1, 2016.

On this issue it should be noted that on December 7, 2016, after your appeal was filed, NYSOH issued an enrollment confirmation notice stating your Essential Plan 1 Plus Vision and Dental with Empire BlueCross BlueShield start date was effective December 1, 2016 (see Incident # [REDACTED]). This was corrective action taken by NYSOH because, as you credibly testified and your account confirms, you updated your NYSOH application and selected an Essential Plan for enrollment on November 14, 2016.

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.

Since on November 14, 2016, you selected an Essential Plan, your enrollment would properly take effect on the first day of the month following November 2016; that is, on December 1, 2016.

Therefore, the November 15, 2016 and the November 16, 2016 eligibility determination notices are MODIFIED to state that you were eligible to enroll in the Essential Plan, effective December 1, 2016.

The November 16, 2016 enrollment confirmation notice is MODIFIED to state that your enrollment in the Essential Plan was effective December 1, 2016.

The December 7, 2016 enrollment notice stating that your enrollment in an Essential Plan, effective December 1, 2016 is correct and must be AFFIRMED.

Decision

The September 18, 2016 eligibility re determination and disenrollment notices are AFFIRMED.

The November 15, 2016 and the November 16, 2016 eligibility determination notices are MODIFIED to state that you were eligible to enroll in the Essential Plan, effective December 1, 2016.

The November 16, 2016 enrollment confirmation notice is MODIFIED to state that your enrollment in an Essential Plan was effective December 1, 2016.

The December 7, 2016 enrollment notice stating that your enrollment in an Essential Plan, effective December 1, 2016 is correct and must be AFFIRMED.

Effective Date of this Decision: February 3, 2017

How this Decision Affects Your Eligibility

NYSOH properly found you not eligible to enroll in the Essential Plan and disenrolled you from your Essential Plan, both effective October 31, 2016, because you did not provide documentation of your household's income such that NYSOH redetermined your eligibility based on available data and found you newly eligible for APTC.

NYSOH properly found that your re-enrollment in the Essential Plan was effective December 1, 2016.

You did not have health insurance coverage through NYSOH during the month of November 2016.

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 eligibility re determination and disenrollment notices are **AFFIRMED**.

The November 15, 2016 and the November 16, 2016 eligibility determination notices are MODIFIED to state that you were eligible to enroll in the Essential Plan, effective December 1, 2016.

The November 16, 2016 enrollment confirmation notice is MODIFIED to state that your enrollment in an Essential Plan was effective December 1, 2016.

The December 7, 2016 enrollment notice stating that your enrollment in an Essential Plan, effective December 1, 2016 is correct and must be AFFIRMED.

NYSOH properly found you not eligible to enroll in the Essential Plan and disenrolled you from your Essential Plan, both effective October 31, 2016, because you did not provide documentation of your household's income such that NYSOH redetermined your eligibility based on available data and found you newly eligible for APTC.

NYSOH properly found that your re-enrollment in the Essential Plan was effective December 1, 2016.

You did not have health insurance coverage through NYSOH during the month of November 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

