

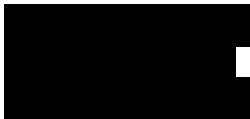


STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: April 26, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000013566



Dear [REDACTED]

On February 22, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's August 10, 2016 disenrollment notice and the August 17, 2016 eligibility determination.

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

Decision

Decision Date: April 26, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000013566



Issues

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

Does the Appeals Unit of NY State of Health (NYSOH) has the authority to review the cancellation of coverage for you and your spouse for non-payment of premiums, effective May 31, 2016?

Did NYSOH properly determine that you and your spouse did not qualify to enroll or change your enrollment in a qualified health plan (QHP) outside of the open enrollment period, as of August 16, 2016?

Procedural History

On December 8, 2015, NYSOH issued an enrollment confirmation notice stating that you and your spouse were enrolled in a bronze level plan through Excellus Blue Cross Blue Shield, effective January 1, 2016.

On June 7, 2016, you updated your account.

On June 8, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible to receive advance payments of the premium tax credit (APTC); however, you did not qualify to select or to change enrollment in a qualified health plan outside of open enrollment period.

On June 8, 2016, NYSOH issued an enrollment confirmation notice, reiterating that you and your spouse were enrolled in a bronze level plan through Excellus Blue Cross Blue Shield, effective January 1, 2016.

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On August 9, 2016, your insurer initiated the termination of your coverage.

On August 10, 2016, NYSOH issued a disenrollment notice, stating that your coverage through Excellus Blue Cross Blue Shield was terminated effective May 31, 2016 because premium payments had not been received.

On August 16, 2016, your application was resubmitted.

On August 17, 2016, NYSOH issued a notice of eligibility determination, stating that you and your spouse were eligible for APTC, but that you and your spouse did not qualify to select or to change enrollment in a qualified health plan outside of open enrollment period.

On November 28, 2016, you updated your application.

On November 29, 2016, NYSOH issued a notice of eligibility determination, stating that you and your spouse were eligible for APTC and cost-sharing reductions, effective January 1, 2017. You were subsequently reenrolled in your plan.

On February 22, 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 and your spouse were enrolled in a plan with Excellus Blue Cross Blue Shield, effective January 1, 2016. Prior to this date, you were enrolled in a different plan with a different insurer.
- 2) You testified that you started making payments by check, but later switched to automatic payments to cover the premiums for this coverage; however, you became aware that you had been disenrolled in coverage when you received a notice advising you of the disenrollment.
- 3) At no time, did you receive any notice from your insurer that your payments were not going through or that you were late in your payments; you found out when you received the disenrollment notice from the plan.
- 4) On June 7, 2016, you then attempted to reenroll you and your spouse in coverage through NYSOH, because you thought your coverage had been cancelled.

- 5) A review of your account with NYSOH indicates that no notice of cancellation of your coverage with Excellus Blue Cross Blue Shield was issued by NYSOH by that time, whether such cancellation was due to nonpayment of premiums or any other reason. Instead, when a notice of eligibility determination was issued, it stated that although you were not eligible for an SEP to change your plan, you and your spouse were still enrolled in the plan through Excellus Blue Cross Blue Shield as of January 1, 2016.
- 6) On August 9, 2016, your insurer initiated the cancellation of your coverage through NYSOH, and the disenrollment notice was issued by NYSOH the next day. When you received it, you tried to make the payments to the plan, but the insurer told you that you could not make back payments because it was over three months.
- 7) A representative from Excellus Blue Cross Blue Shield acknowledged that the company had been having a problem with payments, and that new positions had been created so that the problem did not happen again.
- 8) Notes in your account indicate that on August 31, 2016, a request for an SEP was denied at that time; however, no notice was issued by NYSOH following this denial.

You testified that you did not file an appeal prior to November 29, 2016, because you believed an appeal had already been filed until you learned from a NYSOH representative on that date that only an “issue” had been filed on your behalf.

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 an SEP (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)).

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 SEPs 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)).

Grace Period

“Insureds not receiving advanced premium tax credits who have paid the first month's premium have a 30-day grace period for payment of premiums for

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coverage inside and outside the NYSOH. If the premium is not paid in full during the grace period, the insurer may terminate the policy retroactively back to the last date premiums were paid”

(http://www.dfs.ny.gov/insurance/health/grace_period_guidance.htm).

Legal Analysis

The first issue under review is whether the Appeals Unit of NY State of Health (NYSOH) has the authority to review the cancellation of coverage for you and your spouse for non-payment of premiums, effective May 31, 2016.

You and your spouse were enrolled in a plan with Excellus Blue Cross Blue Shield, effective January 1, 2016. Although no notice was issued to you at the time, you were informed by your plan that you had been disenrolled from your coverage due to nonpayment of premium, and you tried to reenroll in coverage on June 7, 2016.

It was not until August 10, 2016, that NYSOH issued a notice stating that you and your spouse were disenrolled from your health plan for non-payment of the premium, effective May 31, 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 an SEP.

When coverage is cancelled due to an alleged failure to pay premiums, the Appeals Unit generally does not have the authority to review the merits as to whether you were properly terminated from your health plan for non-payment of premiums.

The real issue for NYSOH in the present case, however, is the total lack of any evidence in your account, as of June 7, 2016, that your coverage had been cancelled for any reason at all. Although you credibly testified that your plan refused to accept your payments before that date, there was no notification to NYSOH regarding any such cancellation at that time.

In fact, on June 8, 2016, NYSOH issued a notice confirming that you had been enrolled in your plan since January 1, 2016.

Moreover, when your plan did cancel your coverage in August 2016, the retroactive termination only went back to May 31, 2016. The only conclusion that

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can be drawn is that your plan conceded that you had paid premiums up to and including May 31, 2016. By advising you on or before June 7, 2016 that your coverage was cancelled due to the failure to pay premiums, your plan did not provide you the required 30-day grace period in which to pay any premiums owed.

Therefore, regardless of what was told to you by your plan on or before June 7, 2016, the Appeals Unit finds that there was no proper cancellation of your coverage as of June 7, 2016 and that your plan should have accepted any premium payments you attempted to make at that time.

The second issue under review is whether NYSOH properly determined that you and your spouse did not qualify to enroll or change your enrollment in a QHP outside of the open enrollment period, either as of August 16, 2016 or earlier.

In the present case, you testified credibly that you had paid some premiums by check, before switching to automated payments, and that you had been given no notice that you were behind in payments.

On June 7, 2016, you attempted to reenroll in coverage, even though NYSOH had not issued any notice to you advising that your coverage was canceled due to nonpayment of premiums.

On August 16, 2016, you again tried to reenroll in coverage. Again, you were notified that you were not eligible to change your coverage outside of the open enrollment period.

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

Although you and your spouse lost health coverage purportedly because of a failure to pay premiums, an issue that generally cannot be addressed by the Appeals Unit of NYSOH, an SEP can be granted if a qualified individual's enrollment or non-enrollment in a QHP 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.

Your credible testimony, along with the information in your NYSOH account, both support a finding that the disruption of your coverage was improper, as the plan did not follow the proper procedures to cancel coverage through NYSOH and had not yet cancelled your coverage when you tried to make premium payments prior to June 7, 2016.

Although the Appeals Unit of NYSOH cannot address cancellations due to failure to pay premiums, it does have the authority to determine when an SEP should be provided. In the present case, pursuant to 45 CFR § 155.42016(d)(4), it is found that you should have been provided an SEP in which to enroll in new coverage, both on June 7, 2016 and again on August 16, 2016, based on errors made by your plan in conducting enrollment activities.

Decision

Your appeal of the cancellation of your coverage effective May 31, 2016 due to an alleged nonpayment of premiums is not an issue that can be reviewed by the Appeals Unit of NYSOH, and your appeal insofar as it addresses that point is **DISMISSED**.

However, it is also found that you should be given a special enrollment period of 60-days from the date of this decision in which to retroactively enroll in coverage with your former plan for as much of the 2016 tax year as you choose.

Your case is **RETURNED** to Plan Management to assist you in your reenrollment.

Effective Date of this Decision: April 26, 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.

However, you will be given an opportunity to retroactively reenroll in your plan.

PLEASE NOTE: you may owe additional premiums to cover this additional coverage.

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

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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:

- 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

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Summary

Your appeal of the cancellation of your coverage effective May 31, 2016 due to an alleged nonpayment of premiums is not an issue that can be reviewed by the Appeals Unit of NYSOH, and your appeal insofar as it addresses that point is DISMISSED.

However, it is also found that you should be given a special enrollment period of 60-days from the date of this decision, in which to retroactively enroll in coverage with your former plan for as much of the 2016 tax year as you choose.

Your case is RETURNED to Plan Management to assist you in your reenrollment.

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

However, you will be given an opportunity to retroactively reenroll in your plan.

PLEASE NOTE: you may owe additional premiums to cover this additional coverage.

Legal Authority

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

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 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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