

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

Notice of Decision

Decision Date: June 15, 2017

NY State of Health Account ID: Appeal Identification Number: AP00000014689



On May 12, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's January 7, 2017 eligibility determination and enrollment notices, February 16, 2017 cancellation notice and February 19, 2017 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.



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

Decision

Decision Date: June 15, 2017

NY State of Health Account ID:

Appeal Identification Number: AP00000014689



Issue

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

Did NY State of Health (NYSOH) properly determine that your enrollment in a qualified health plan was effective no earlier than February 1, 2017?

Does the Appeals Unit of NYSOH have the authority to review whether you were properly terminated from your qualified health plan for non-payment of premium, effective February 1, 2017?

Did NYSOH properly determine that you did not qualify to enroll in a qualified health plan outside of the open enrollment period?

Procedural History

On October 20, 2016, NY State of Health (NYSOH) issued a notice that it was time to renew your health insurance for the upcoming coverage year. That notice stated that based on information from federal and state sources, NYSOH could not determine whether you would qualify for financial help paying for your health coverage, and that you needed to update your account by December 15, 2016 or you might lose the financial assistance you were currently receiving.

No updates were made to your account by December 15, 2016.

On December 19, 2016, NYSOH issued an eligibility determination notice stating that you were not eligible for Medicaid, Child Health Plus, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance. You were,

however, found eligible to enroll in a qualified health plan (QHP) at full cost. This was because you had not responded to the renewal notice and had not completed your renewal within the required time frame. This eligibility determination was effective January 1, 2017.

On January 6, 2017, NYSOH received your updated application for health insurance. In response to this application, NYSOH prepared a preliminary eligibility determination stating that you were eligible to enroll in a QHP at full cost, effective February 1, 2017.

On January 6, 2017, you spoke to NYSOH's Account Review Unit and appealed the eligibility determination insofar as it began your eligibility and enrollment in a QHP on February 1, 2017, and not January 1, 2017.

On January 7, 2017, NYSOH issued a notice of eligibility redetermination stating that you were eligible to enroll in a QHP at full cost. This eligibility was effective February 1, 2017.

Also on January 7, 2017, NYSOH issued an enrollment notice confirming your selection of a QHP with a monthly premium responsibility of \$503.40, effective February 1, 2017.

On February 16, 2017, NYSOH issued a disenrollment notice stating that your QHP coverage ended effective February 1, 2017 for non-payment of premiums.

On February 18, 2017, NYSOH received an updated application for health insurance.

On February 19, 2017, NYSOH issued an eligibility determination notice stating that you were eligible to enroll in a QHP at full cost, but that you did not qualify to select a QHP outside if the open enrollment period for 2017. This eligibility was effective April 1, 2017.

On May 12, 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 support the following findings of fact:

1) You testified, and the record reflects, that you receive your notices from NYSOH by electronic mail.

- 2) You testified that you did not receive any electronic alerts regarding any renewal notice in your NYSOH account telling you that you needed to update your application to renew your eligibility.
- 3) You testified that you did not know that you needed to update your account until you learned that your coverage had been cancelled.
- 4) The record reflects that on January 6, 2017 NYSOH received your updated application for health insurance.
- 5) Your account reflects that you were subsequently disenrolled from your QHP coverage for non-payment of premiums, effective February 1, 2017.
- 6) You revised your application on February 18, 2017, and were found not to have qualified for a special enrollment period.
- 7) You testified that you are seeking not only reinstatement in your QHP as of January 1, 2017, but also a special enrollment period in which to continue your coverage during the remainder of the 2017 plan year.
- 8) You testified that since filing your application on February 18, 2017 there have been no other major changes to your household.

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

Applicable Law and Regulations

Annual Eligibility Redetermination

Generally, NYSOH must conduct annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, such as tax credits and cost-sharing reductions, Medicaid, or Child Health Plus. In such cases, NYSOH is required to request that the qualified individual provide updated income and family size information for use in an eligibility redetermination for the upcoming year (see 45 CFR § 155.335(a) and (b)).

NYSOH must send an annual renewal notice that contains the information by which NYSOH will use to redetermine a qualified individual's projected eligibility for that year (45 CFR § 155.335(c)(3)). If a qualified individual does not respond to the notice after a 30-day period, NYSOH must redetermine that individual's eligibility using the projected eligibility provided in the annual renewal notice (45

CFR § 155.335(g), (h)). NYSOH must ensure this redetermination is effective on the first day of the coverage year or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)). The rules specified in 45 CFR § 155.330(f) are not pertinent here.

Electronic Notices

If the individual elects to receive electronic communications, NYSOH must send an email or other electronic communication alerting the individual that a notice has been posted to his or her account and send a notice by regular mail within three business days if the electronic communication cannot be delivered (45 CFR § 155.230(d); 42 CFR § 435.918(b)(4), (5)).

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) a failure by NYSOH to provide timely notice of an eligibility determination 45 CFR § 155.505; and (4) 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)).

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 to qualified individuals. During a special enrollment period, 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 nonenrollment 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 determined that your enrollment in a QHP was effective no earlier than February 1, 2017.

NYSOH must redetermine a qualified individual's eligibility for health insurance annually. NYSOH must issue a renewal notice that contains the individual's projected eligibility. If an individual does not respond to this notice, NYSOH must issue an eligibility determination for the upcoming coverage year based on the information contained in the renewal notice.

On October 20, 2016, NYSOH issued an annual renewal notice in your case. That notice stated that based on information from federal and state sources, NYSOH could not determine whether you qualified for health coverage through NYSOH. You were asked to update the information in your account by December 15, 2016.

Because there was no timely response to this notice, you were redetermined eligible to enroll in a QHP at full cost, effective January 1, 2017. Your NYSOH account reflects that you did not select a QHP until you had submitted a new

application on January 6, 2017, which provided you a coverage start date of February 1, 2017.

However, you testified and your account confirms that you elected to receive alerts regarding notices from NYSOH electronically. You credibly testified that you did not receive an electronic alert regarding the renewal notice, which directed you to update the information in your NYSOH account. There is no evidence in your account documenting that any email alert was sent to you regarding the renewal notice or the need to renew your application, or that any written notice was subsequently sent to you.

Therefore, it is concluded that NYSOH did not give you the proper notice that you needed to update your account.

You first renewed your eligibility for financial assistance through NYSOH for 2017 on January 6, 2017, and we must assume that this is the information that would have been used had you been timely informed of the need to update your account, as stated in the renewal notice.

Therefore, the January 7, 2017 eligibility determination and enrollment notices are MODIFIED to state that your eligibility for and enrollment in your QHP is effective January 1, 2017.

The second issue under review is whether NYSOH has the authority to review whether you were properly terminated from your QHP for non-payment of premiums, effective February 1, 2017.

On January 6, 2017, you enrolled in a qualified health plan for the 2017 coverage year with a monthly premium of \$503.40, effective February 1, 2017.

Your account reflects that you were subsequently disenrolled from your QHP coverage for non-payment of premiums, effective February 1, 2017.

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) a failure to provide timely notice of an eligibility determination and (4) 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 February 16, 2017 cancellation notice is DISMISSED as a non-appealable issue.

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

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On February 18, 2017, you submitted a request to reenroll in a QHP.

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

In the present case, there is no evidence in the record to establish grounds for a special enrollment period. You testified that there have been no changes to your household in 2017.

Although you did lose health coverage as a result of the February 1, 2017 disenrollment, the loss of health insurance coverage in this case cannot be considered a triggering event for a special enrollment period, because it was a result of non-payment of your premiums which NYSOH considers a voluntary action causing the termination of your coverage.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2017, you did not experience a triggering event that would qualify you for a special enrollment period as of the date of the hearing.

Therefore, the February 19, 2017 eligibility determination notice, to the extent it denied you a special enrollment period, was correct and is AFFIRMED.

Your case is RETURNED to NYSOH to reinstate your QHP coverage during the month of January 2017 only. Please note, however, that you will be responsible for the premium amount due in connection with this reinstatement of coverage.

Decision

The January 7, 2017 eligibility determination and enrollment notices are MODIFIED to state that your eligibility for and enrollment in your QHP is effective January 1, 2017.

Your appeal of the February 16, 2017 cancellation notice is DISMISSED as a non-appealable issue.

The February 19, 2017 eligibility determination notice, to the extent it denied you a special enrollment period, was correct and is AFFIRMED.

Your case is RETURNED to NYSOH to reinstate your QHP coverage during the month of January 2017 only. Please note, however, that you will be responsible for the premium amount due in connection with this reinstatement of coverage.

Effective Date of this Decision: June 15, 2017

How this Decision Affects Your Eligibility

Your enrollment in your qualified health plan should have begun as of January 1, 2017, and your case is being sent back to NYSOH to effectuate this change.

You do not qualify for a special enrollment period at this time.

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:

- 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 January 7, 2017 eligibility determination and enrollment notices are MODIFIED to state that your eligibility for and enrollment in your QHP is effective January 1, 2017.

Your enrollment in your qualified health plan should have begun as of January 1, 2017.

Your case is being sent back to NYSOH to effectuate this change.

Your appeal of the February 16, 2017 cancellation notice is DISMISSED as a non-appealable issue.

The February 19, 2017 eligibility determination notice, to the extent it denied you a special enrollment period, was correct and is AFFIRMED.

You do not qualify for a special enrollment period at this time.

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。我们可以为您免费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.

<u>한국어 (Korean)</u>

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.

(Arabic)العربية

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

বাংলা (Bengali)

এটি এক গুরুত্বপূর্ণ নখি। 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।

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 निःश्ल्क 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 महत्त्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई नि:शुल्क 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. yebetumi ama wo obi a okyere kasa a woka no ase ama wo kwa a wontua hwee.

اردو(Urdu)

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم5777-355-855-1 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.