



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

### Notice of Decision

Decision Date: February 2, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000015114

[REDACTED]

Dear [REDACTED],

On February 2, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's December 22, 2016, eligibility determination notice and December 22, 2016 disenrollment 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 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.

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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: February 2, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000015114



## 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 you and your spouse's eligibility for the Essential Plan ended effective January 31, 2017?

## Procedural History

On September 16, 2016, NYSOH received you and your spouse's updated application for financial assistance.

On September 17, 2016, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to enroll in the Essential Plan for a limited time, effective November 1, 2016. The notice further directed you to provide documentation confirming your income before December 15, 2016. The determination was based on your household income of \$25,000.00.

On September 17, 2016, NYSOH issued a notice confirming you and your spouse's enrollment in an Essential Plan at \$20.00 per month, effective November 1, 2016.

No income documentation was received by NYSOH by December 15, 2016.

On December 22, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were newly eligible to purchase a qualified health plan at full cost. The notice stated that you were not eligible to enroll in the Essential Plan because NYSOH did not receive the income documentation needed to

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verify the income listed in your application. This eligibility was effective February 1, 2017.

On December 22, 2016 NYSOH issued a disenrollment notice stating that you and your spouse's enrollment in the Essential Plan would end as of January 31, 2017, because you were both no longer eligible to remain in your plan.

On January 23, 2017 you updated your application for financial assistance.

On January 24, 2017, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to enroll in the Essential Plan for a limited time, effective March 1, 2017. The notice further directed you to provide documentation confirming your income before April 23, 2017. The determination was based on your household income of \$25,000.00.

Also on January 24, 2017, NYSOH issue a notice of enrollment confirmation, based on your plan selection on January 23, 2017, stating that you and your spouse were enrolled in an Essential Plan at \$20.00 per month effective March 1, 2017.

On January 24, 2017, you spoke to NYSOH's Account Review Unit and appealed the termination of your Essential Plan for you and your spouse for the month of February, 2017.

On January 24, 25, 26, and 29, 2017 you uploaded income documentation and documentation from your physicians.

On January 25, 2017, you requested an expedited appeal hearing.

On January 25, 2017, your request for an expedited appeal was granted.

On January 27, 2017, your request for Aid to Continue through the length of your appeal was granted.

On February 2, 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 that you believe you receive all of your notices from NYSOH by electronic mail. You testified you were not certain.

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- 2) You testified that you did not receive any electronic alerts notifying you of any notice in your NYSOH account stating that your eligibility was only conditional and that you needed to provide documentation of your income by December 15, 2016.
- 3) The first time you became aware that your coverage ended was when you went to pay your bill online on January 23, 2017 on the Fidelis website.
- 4) You testified when you contacted NYSOH on January 23, 2017, you were told by a representative that e-mail alerts were sent to you regarding your eligibility.
- 5) When you contacted NYSOH on January 23, 2017 you were told you needed income documentation to verify your household income.
- 6) You testified when you updated your application over the phone with a NYSOH representative on September 16, 2016, you were told you did not need to provide any further information. You believed you had provided your income information over the phone that day, and that was all they required.
- 7) NYSOH did not receive income documentation from you before December 15, 2016.
- 8) Your NYSOH account indicates that on December 21, 2016 your application was run and you and your spouse were found no longer eligible for the Essential Plan as of January 31, 2017.
- 9) You uploaded income documentation in the form of your 2015 1040 Individual tax return on January 24, 2017. See Document [REDACTED].
- 10) You testified that you are seeking enrollment in your Essential Plan as of February 1, 2017 for you and your spouse.

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

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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).

A person who has a household income greater than 150% of the FPL or below 200% of the FPL has a \$20.00 per month premium contribution (New York's Basic Health Plan Blueprint, as approved January 2016).

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)).

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

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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 that you and your spouse's eligibility for the Essential Plan ended effective January 31, 2017.

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 September 17, 2016, 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 December 15, 2016.

The record reflects that NYSOH did not receive the requested income documentation before the deadline.

However, you testified that you believe you elected to receive alerts regarding notices from NYSOH electronically. You stated a NYSOH representative told you they had sent e-mails to alert you to your eligibility determination asking for income documentation.

You credibly testified that you did not receive an electronic alert regarding the eligibility determination notice, which advised you that your eligibility was only conditional and that you needed to submit documentation to confirm your income. There is also no evidence in your account documenting that any email alert was sent to you regarding the need to submit documentation, whether such alert failed to be delivered, nor is there any evidence that the notice was sent to you by regular mail.

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

Since you were not made aware of and did not receive proper notice that there was an inconsistency in your NYSOH account, the December 22, 2016, eligibility determination notice finding you and your spouse no longer eligible for the Essential Plan because you failed to submit documentation, and the December 22, 2016 disenrollment notice are RESCINDED.

Your case is RETURNED to NYSOH to reinstate you and your spouse's coverage in your Essential Plan as of February 1, 2017.

## **Decision**

The December 22, 2016 notice of eligibility determination is RESCINDED.

The December 22, 2016 notice of disenrollment is RESCINDED.

Your case is RETURNED to NYSOH to reinstate you and your spouse's coverage in your Essential Plan as of February 1, 2017.

**Effective Date of this Decision:** February 2, 2017

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

NYSOH erred in terminating you and your spouse's Essential Plan effective January 31, 2017, without the proper notice.

Your case is being sent back to NYSOH to reinstate you and your spouse's coverage in your Essential Plan as of February 1, 2017.

## **If You Disagree with this Decision (Appeal Rights)**

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).



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 December 22, 2016 notice of eligibility determination is RESCINDED.

The December 22, 2016 notice of disenrollment is RESCINDED.

NYSOH erred in terminating your Essential Plan effective January 31, 2017, without the proper notice.

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Your case is RETURNED to NYSOH to reinstate you and your spouse's coverage in your Essential Plan as of February 1, 2017.

### **Legal Authority**

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

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

