



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

Notice of Decision

Decision Date: May 12, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000015445

[REDACTED]

Dear [REDACTED]

On April 27, 2017, [REDACTED] appeared by telephone on your behalf, as your authorized representative, at a hearing on your appeal of NY State of Health's February 1, 2017 denial of a special enrollment period.

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).

This page intentionally left blank.



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

Decision

Decision Date: May 12, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000015445



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 do not qualify to enroll in a qualified health plan outside of the open enrollment period?

Procedural History

On February 1, 2017, NYSOH issued an eligibility determination notice, based on your January 31, 2017 application for health insurance, stating that you were eligible to receive an advance premium tax credit of up to \$258.00 per month, effective March 1, 2017. It further stated that you need to pick a health plan.

Also on February 1, 2017, NYSOH received your updated application for financial assistance. That day, a preliminary eligibility determination was prepared to this effect. Your authorized representative was unable to select a plan for you because it was outside of the open enrollment period.

Also on February 1, 2017, your authorized representative spoke to NYSOH's Account Review Unit and appealed that preliminary determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On February 2, 2017, NYSOH issued an eligibility determination notice stating that you were eligible to receive an advance premium tax credit of up to \$258.00 per month, effective March 1, 2017. It further stated that you may qualify to enroll in coverage outside of the open enrollment period.

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).

Also on February 2, 2017, NYSOH issued a notice to confirm your appeal request from the previous day. That notice identified you as the appellant and stated that the reason for your appeal was “Denial of Special Enrollment (SEP).”

On April 27, 2017, your authorized representative 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) Your authorized representative testified that you are appealing the denial of a special enrollment period to enroll into a health plan through NYSOH.
- 2) On January 31, 2017, your authorized representative added you to her application for health insurance.
- 3) Your authorized representative testified that, on January 31, 2017, she was on the phone for several hours with a NYSOH representative trying to obtain health insurance for you for 2017. When she was placed on hold, the phone call was dropped and due to the high call volume, when she tried to call NYSOH back at approximately 7:00 p.m., she was on hold for 45 minutes before being told the NYSOH Marketplace was closed. As such, the application you submitted was not continued until February 1, 2017.
- 4) Your authorized representative testified that, on February 1, 2017 at 9:00 a.m., she called NYSOH to complete your application and enroll you in a qualified health plan. She was told by a representative from NYSOH that she could not continue with your application and her only option was to appeal the decision.
- 5) According to your NYSOH account, on January 31, 2017, your authorized representative contacted NYSOH and began your application for health insurance. This application was continued February 1, 2017 and an appeal was created on that day.
- 6) Your authorized representative testified that you are appealing because your employer will not provide you with health coverage and she would like you to have coverage for the remainder of the year.

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

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).

Applicable Law and Regulations

De Novo Review

NYSOH Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “De novo review means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

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 a triggering event occurs, such as:

(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.

(45 CFR § 155.420(d)(4)).

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)).

Legal Analysis

The issue under review is whether NYSOH properly determined that you do not qualify to enroll in a qualified health plan outside of the open enrollment period.

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).

Your authorized representative testified that you are appealing the denial of a special enrollment period to enroll into a health plan through NYSOH. However, the record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period.

Here, the lack of a notice of eligibility determination on the issue of a special enrollment period does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Your authorized representative's credible testimony, along with the February 2, 2017 appeal confirmation notice stating that the reason for your appeal was "Denial of Special Enrollment (SEP)," permits an inference that NYSOH did deny your special enrollment request.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to the eligibility determination notice had it been issued.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On January 31, 2017, your authorized representative applied for health insurance on your behalf and requested to enroll you in a qualified health plan. On February 1, 2017, your authorized representative was verbally denied a special enrollment period for you to enroll in a qualified health plan outside of the open enrollment period.

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.

A special enrollment period can be granted if a qualified individual'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.

Your authorized representative testified, and the record reflects, that she spoke to a representative from NYSOH at great length on January 31, 2017 attempting to get you enrolled in health coverage. The record further reflects that this application was continued February 1, 2017 and that an appeal was created on that day. Your authorized representative credibly testified further that her January 31, 2017 phone call to NYSOH was dropped and that when she tried to call back that same day, she was on hold for 45 minutes before being told that NYSOH's Marketplace was closed.

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).

Therefore, it is reasonable to conclude that your authorized representative attempted to select a health plan for you on January 31, 2017, during open enrollment period, and was unable to because of a technical problem and a dropped call during a high volume period. Had your application been processed that day, you would have been able to enroll in a QHP during the open enrollment period. As such, due to a NYSOH technical problem and the dropped call, your non-enrollment was unintentional, inadvertent or erroneous and was the result of error, misrepresentation, or inaction of an agent of the NYSOH. Therefore, you should have been granted a special enrollment period as of the February 1, 2017 application.

Accordingly, NYSOH's February 1, 2017 verbal determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is incorrect and is RESCINDED.

By this Decision, you are being granted a special enrollment period for 60 days from the date of this Decision to enroll in a qualified health plan.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan and to apply the amount of APTC to which you are entitled as of the start date of enrollment.

Decision

NYSOH's verbal determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is incorrect and RESCINDED.

By this Decision, you are being granted a special enrollment period for 60 days from the date of this Decision to enroll in a qualified health plan.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan and to apply the amount of APTC to which you are entitled as of the start date of enrollment.

Effective Date of this Decision: May 12, 2017

How this Decision Affects Your Eligibility

You are being given a special enrollment period of 60 days from the date of this Decisions to enroll in a qualified health plan

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).

Your case is being sent back to NYSOH to assist you in enrolling in a qualified health plan and to apply the amount of APTC to which you are entitled as of the start date of enrollment.

You will be responsible for your portion of the premium for any months you are enrolled into 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 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 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).

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

NYSOH's verbal determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is incorrect and RESCINDED.

By this Decision, you are being granted a special enrollment period for 60 days from the date of this Decision to enroll in a qualified health plan.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan and to apply the amount of APTC to which you are entitled as of the start date of enrollment.

You are being given a special enrollment period of 60 days from the date of this Decisions to enroll in a qualified health plan

Your case is being sent back to NYSOH to assist you in enrolling in a qualified health plan and to apply the amount of APTC to which you are entitled as of the start date of enrollment.

You will be responsible for your portion of the premium for any months you are enrolled into 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.

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.

(Bengali)

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).

1-855-355-5777

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 nkyerεkyerεmu a, ye srε wo, frε 1-855-355-5777. ye&b&tumi 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.

אַײַדיש (Yiddish)

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).

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.

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).