

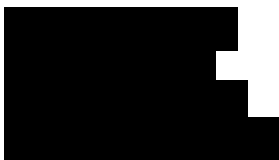


STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
P.O. Box 11729  
Albany, NY 12211

## Notice of Decision

Decision Date: May 15, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000015471



Dear [REDACTED],

On May 4, 2017, [REDACTED] appeared by telephone at a hearing on your appeal of NY State of Health's February 2, 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).

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

## Decision

Decision Date: May 15, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000015471



## 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 family did not qualify to enroll in a qualified health plan (QHP) outside of the open enrollment period, effective February 2, 2017?

## Procedural History

On December 7, 2016, NYSOH received your household's application for health insurance in 2017.

On December 8, 2016, NYSOH issued an eligibility determination notice stating that your family was eligible to share in an advance premium tax credit (APTC) of up to \$984.00 per month, effective January 1, 2017.

On December 8, 2016, NYSOH issued a plan enrollment notice confirming your family's enrollment in a bronze-level family QHP, effective January 1, 2017, with APTC of \$984.00 per month to be applied as of that date. The notice further stated that the annual deductible would be "\$7150 per person | \$14300 per group."

On February 2, 2017, you spoke to NYSOH's Account Review Unit and appealed being denied a special enrollment period (SEP) to enroll your family in another health plan outside of the open enrollment period.

On February 3, 2017, NYSOH issued a notice confirming your appeal on the issue of "Denial of Special Enrollment Period (SEP)."

On May 4, 2017, your spouse 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 spouse testified and your NYSOH account shows, that, on December 7, 2016, she applied for health insurance for your family and was assisted in enrolling in a QHP by a NYSOH representative.
- 2) Your spouse testified that, when she contacted NYSOH on December 7, 2016 to enroll in a QHP, the NYSOH representative described different options.
- 3) According to your NYSOH account and your spouse's testimony, a bronze-level family QHP was selected that day, based on a monthly premium of \$342.13 after the family's shared APTC of \$984.00 was applied.
- 4) Your spouse testified that the NYSOH representative did not explain at the time that the bronze-level QHP had over a \$7,00.00 deductible per person.
- 5) Your spouse further testified that she first learned about the high-level individual deductible when she received the insurance benefit cards in the mail over a month later.
- 6) On or about February 2, 2017, your spouse testified that she contacted NYSOH to see if she could switch to a different health plan package for the family; specifically, one with lesser deductibles.
- 7) Your spouse testified that a NYSOH supervisor responded that her only option was to file an appeal.
- 8) Your spouse testified that, had she been made aware that a bronze-level family QHP had such a high deductible at the onset, she would not have

selected it and, instead, would have chosen a higher-tiered plan with lesser deductibles.

9) According to your NYSOH account, no notice denying an SEP was issued and this appeal is based on NYSOH's February 2, 2017 verbal denial of an SEP.

10) Your spouse testified that there have been no qualifying life changes in your family, such as a change in household size or a permanent move, and there have been no changes in your household's expected 2017 income.

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

## **Applicable Law and Regulations**

### De Novo Review

NYSOH's 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 SEP periods 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 a triggering event occurs, such as when:

...(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,

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or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities...

...(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...

(45 CFR § 155.420(d)(4) and (12)).

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**

Initially it is noted that, on February 2, 2017, your spouse spoke with NYSOH's Account Review Unit and requested an SEP within which to enroll in a different QHP for the family with lesser deductibles. The record does not contain a notice of eligibility determination or redetermination on this issue. It does contain a February 3, 2017 notice in which NYSOH acknowledges receipt of an appeal request and identifies the issue on appeal as "Denial of Special Enrollment Period (SEP)."

Here, the lack of an eligibility determination or redetermination notice on the issue of an SEP as of February 2, 2017, 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 Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the February 3, 2017, which acknowledges the appeal on the issue of denial of an SEP, along with your spouse's credible testimony that she was seeking to enroll in a different QHP outside the open enrollment period, permits an inference that NYSOH did deny your request for an SEP.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to an eligibility determination notice had it been issued. Therefore, the issue under review is whether NYSOH properly determined that your family did not qualify to enroll in a qualified health plan outside of the open enrollment period, effective February 2, 2017.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. The record reflects that, on December 7, 2016, NYSOH received your family's application for health insurance in 2017 and processed the family's enrollment in a bronze-level QHP, with an effective start date of January

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1, 2017. However, on February 2, 2017, NYSOH verbally denied your spouse's request to qualify to enroll in a qualified health plan outside of the open enrollment period, which was outside the open enrollment period for 2017.

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

An SEP 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.

Further, an SEP period can be granted in a qualified individual or enrollee, or his or her dependent, adequately demonstrates to NYSOH that a material error relative to plan benefits, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a qualified health plan.

Your spouse testified that, on December 7, 2016, she spoke to a NYSOH representative who explained tier-level options regarding QHPs, but did not disclose that the family's annual deductible in a bronze-level QHP would be \$7,150.00 per person and \$14,300.00 per family. Your spouse also credibly testified that, based on the monthly premium amount, she unwittingly selected a bronze-level QHP without knowing there were higher deductibles associated with that QHP. She also credibly testified that, had she been informed of this material fact, she would have selected a higher-tiered QHP with a lesser deductible per family member. Lastly, your spouse credibly testified that she did not become aware of the high deductible amounts until she received the insurance benefits cards from the QHP over a month later.

Since the record indicates that your family's enrollment in a QHP was the direct result of statements made by a NYSOH representative, who omitted a material fact relative to plan deductibles and which influenced your spouse's decision in purchasing a bronze-level QHP, your family should have been granted an SEP as of February 2, 2017.

Therefore, by this Decision, NYSOH's verbal denial of an SEP on the basis that your family does not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that your family is eligible for an SEP as of February 2, 2017.

Your case is RETURNED to NYSOH to assist your family in enrolling into a different QHP. You may choose to enroll into a QHP as of February 2, 2017 because NYSOH gave you incorrect information, bearing in mind that any claims

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processed to date by your current bronze-level QHP might be charged back by the plan and reprocessed under the different QHP you select. In the alternative, you may elect to enroll your family into coverage within 60 days from the date of this Decision,

## **Decision**

The February 2, 2017 verbal denial of an SEP that your family did not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that your family is eligible for a SEP as of the date of your February 2, 2017 application.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan as of February 2, 2017, if so choose, bearing in mind that any claims processed to date by your current bronze-level QHP might be charged back by the plan and reprocessed under the different QHP you select. In the alternative, you may elect to enroll into coverage within 60 days from the date of this Decision.

You will be responsible for premium payments for any months your family is enrolled into coverage with a different QHP.

**Effective Date of this Decision:** May 15, 2017

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

NYSOH improperly denied your family an SEP to allow you to change to a different QHP.

Your case is being sent back to NYSOH to allow you to enroll into coverage as of February 2, 2017, if you so choose. In the alternative, you may elect to enroll into coverage within 60 days from the date of this Decision.

You will be responsible for any premium payments 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.

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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

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).

## **Summary**

The February 2, 2017 verbal denial of an SEP that your family did not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that your family is eligible for a SEP as of the date of your February 2, 2017 application.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan as of February 2, 2017, if so choose, bearing in mind that any claims processed to date by your current bronze-level QHP might be charged back by the plan and reprocessed under the different QHP you select. In the alternative, you may elect to enroll into coverage within 60 days from the date of this Decision.

NYSOH improperly denied your family an SEP to allow you to change to a different QHP.

Your case is being sent back to NYSOH to allow you to enroll into coverage as of February 2, 2017, if you so choose. In the alternative, you may elect to enroll into coverage within 60 days from the date of this Decision.

You will be responsible for premium payments for any months your family is enrolled into coverage with a different QHP.

## **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.

### **বাংলা (Bengali)**

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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&tumi ama wo obi a okyerE 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.

### **שׂוּדִישׁ (Yiddish)**

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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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