



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

Notice of Decision

Decision Date: July 26, 2017

NY State of Health Account ID [REDACTED]
Appeal Identification Number: AP000000015758



Dear [REDACTED]

On May 17, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's verbal 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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Decision Date: July 26, 2017

NY State of Health Account ID [REDACTED]
Appeal Identification Number: AP000000015758



Issue

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

Did NY State of Health (NYSOH) properly determine you and your spouse did not qualify to enroll in a new qualified health plan outside of the open enrollment period?

Procedural History

On December 30, 2015, NYSOH issued an eligibility determination notice stating you and your spouse were eligible to enroll in the Essential Plan, effective February 1, 2016, and you subsequently enrolled in a plan for the upcoming coverage year.

On January 13, 2017, NYSOH received an updated application for health insurance for you and your spouse.

On January 14, 2017, NYSOH issued an eligibility determination notice stating you and your spouse were eligible to receive up to \$721.00 per month in advance payments of the premium tax credit (APTC), effective February 1, 2017, as well as cost-sharing reductions.

Also on January 15, 2017, NYSOH issued an enrollment notice, based on your January 14, 2017 plan section, confirming you and your spouse were enrolled in a qualified health plan (QHP) with Fidelis Care, effective February 1, 2017.

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On February 2, 2017, you contacted NYSOH and attempted to switch the health plan you and your spouse were enrolled in, but NYSOH refused to allow you to do so.

On February 10, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you and your spouse were not eligible to enroll in a new health plan.

On May 17, 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 an Essential Plan with Emblem Health in 2016. Your coverage through that plan ended January 31, 2017.
- 2) An updated application for health insurance was submitted on behalf of you and your spouse on January 13, 2017. That application increased your attested household income and you and your spouse were determined newly eligible to receive APTC.
- 3) You testified you completed the updated application yourself online.
- 4) You testified, and your account confirms, you selected a QHP for enrollment online on January 14, 2017. You testified that the website directed you to provide the name of your primary care physician (PCP), and that after doing so, the website generated a list of health plans available to you.
- 5) You testified that, according to the list of health plans generated by the website, an Emblem Health plan was no longer available to you.
- 6) You testified that because the website directed you to provide the name of your PCP prior to generating a list of available health plans, you believed the list of health plans were all accepted by your PCP. You testified that you selected a health plan based on the assumption that it would be accepted by your PCP.
- 7) You testified that you did not contact your PCP prior to selecting the new health plan to confirm whether the doctor accepted the plan, because you relied on the information provided through the website.

- 8) You testified you learned your PCP did not accept the new health plan following treatment received in February 2017. You testified you contacted NYSOH immediately to switch health plans, but you were told you could not because it was outside the open enrollment period.
- 9) According to your account, you contacted NYSOH on February 2, 2017 to switch health plans and incident [REDACTED] was created. A note related to that incident, dated February 3, 2017, stated "this is not a reason for a SEP."
- 10) Your account confirms that no written notice denying your request for a special enrollment period was ever issued by NYSOH.
- 11) You testified that you are appealing the denial of a special enrollment period to enroll you and your spouse into a new QHP through NYSOH.
- 12) You testified that you live in the [REDACTED], New York and the only doctor in town does not accept your health plan. You testified that the nearest doctor that accepts your health plan is approximately 30 miles away which would require an excessive amount of travel time due to the increased summer traffic in your area.
- 13) You testified you are seeking a special enrollment period so you and your spouse can switch health plans to one accepted by the only PCP in your area.

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 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

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 various triggering events occur, including a qualified individual becoming newly eligible or ineligible for advance payments of the premium tax credit (APTC), or a change in eligibility for cost-sharing reductions (CSR) (45 CFR § 155.420(d)(6)).

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select, or change, a qualified health plan (45 CFR § 155.420(c)(1)).

Legal Analysis

The issue under review is whether NYSOH properly determined you and your spouse did not qualify to enroll in a QHP outside of the open enrollment period when you tried to change your plan on February 2, 2016.

You testified that you are appealing the denial of a special enrollment period to enroll into a new QHP 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 special enrollment periods 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's failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Your credible testimony along with the notes in your account related to incident [REDACTED] specifically a note dated February 3, 2017 stating "this is not a reason for a 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. Although you initially enrolled in a QHP on January 14, 2017,

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within the open enrollment period, your account confirms you contacted NYSOH on February 2, 2017 to switch plans. This was outside the open enrollment period for 2017.

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 this case, your eligibility for financial assistance changed from being eligible for the Essential Plan to being eligible for APTC and CSR effective January 31, 2017.

Pursuant to the regulations, a special enrollment period can be granted if a qualified individual becomes newly eligible for APTC or there is a change in eligibility for CSR. Therefore, you were eligible for a special enrollment period that would continue for 60 days after February 1, 2017, during which you could not only select a new plan, but change enrollment from an existing plan.

Therefore, NYSOH's verbal determination that you and your spouse were not eligible to select a new health plan outside of the open enrollment period for 2017 was incorrect, you and your spouse should have been allowed to change your plan on February 2, 2017.

Your case is RETURNED to NYSOH to assist you and your spouse in enrolling into a new QHP, and you have 60 days from the date of this decision to do so.

You may choose to enroll into a new QHP to be effective as early as March 1, 2017, because that is the first day that such a change would have become effective if you had been allowed to do so on February 2, 2017. In the alternative, you may choose to have the change go into effect from this point forward.

Decision

NYSOH's verbal determination that you and your spouse were not eligible to change your enrollment on February 2, 2017 was incorrect.

Your case is RETURNED to NYSOH to assist you and your spouse in enrolling into a new QHP, and you have 60 days from the date of this decision to do so. You and your spouse may choose to enroll into a new QHP to become effective as early as March 1, 2017. In the alternative, you may choose to have the change go into effect from this point forward. You and your spouse will be responsible for premium payments for any months you are enrolled into coverage.

Effective Date of this Decision: July 26, 2017

How this Decision Affects Your Eligibility

NYSOH improperly denied you and your spouse a special enrollment period.

Your case is being sent back to NYSOH to allow you and your spouse to enroll into a new health plan if you so choose.

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

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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

NYSOH's verbal determination that you and your spouse were not eligible to change your enrollment on February 2, 2017 was incorrect.

Your case is RETURNED to NYSOH to assist you and your spouse in enrolling into a new QHP, and you have 60 days from the date of this decision to do so. You and your spouse may choose to enroll into a new QHP to become effective as early as March 1, 2017. In the alternative, you may choose to have the change go into effect from this point forward. You and your spouse will be responsible for premium payments for any months you are enrolled into coverage.

NYSOH improperly denied you and your spouse a special enrollment period.

Your case is being sent back to NYSOH to allow you and your spouse to enroll into a new health plan if you so choose.

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 مجانًا.

বাংলা (Bengali)

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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।

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 नि:शुल्क 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 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. ye&btumi 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.

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 דאלמענטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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