



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

## Notice of Decision

Decision Date: June 5, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000016047

[REDACTED]

Dear [REDACTED],

On May 25, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's February 21, 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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: June 5, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000016047

[REDACTED]

## 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 did not qualify for a special enrollment period as of February 21, 2017 to enroll in health insurance for 2017 outside of the open enrollment period?

## Procedural History

On January 25, 2017, NYSOH issued an eligibility determination notice, based on your January 24, 2017 application, stating that you were eligible to purchase a full cost qualified health plan (QHP), effective March 1, 2017.

Also on January 25, 2017, NYSOH issued a plan enrollment notice, based on your January 24, 2017 plan selection, confirming your enrollment in a bronze-level QHP with a monthly premium of \$409.07 and an enrollment start date of March 1, 2017.

On February 9, 2017, NYSOH issued an eligibility determination notice in your inactivated account ([REDACTED]) stating that you were eligible to purchase a qualified health plan at full cost, effective March 1, 2017.

On February 15, 2017, NYSOH issued a plan enrollment notice confirming your enrollment in a bronze-level qualified health plan, effective February 1, 2017, and with a monthly premium of \$395.89. This notice is located in your inactive account ([REDACTED]).

On February 21, 2017, you updated your inactive NYSOH account ( [REDACTED] ). That same day, NYSOH prepared a preliminary eligibility determination finding you qualified enroll in a full cost QHP. You also attempted to select a qualified health plan this day but were unable to.

Also on February 21, 2017, you spoke to NYSOH's Account Review Unit and appealed NYSOH's verbal denial of your request to enroll in a health plan outside of the 2017 open enrollment period.

Also on February 21, 2017, NYSOH issued a disenrollment notice stating that your enrollment in your QHP was terminated, effective February 1, 2017, because a premium payment had not been received by your health plan. This notice is located in your inactive account ( [REDACTED] ).

On February 22, 2017, NYSOH issued eligibility determination that stated you are eligible to purchase a qualified health plan at full cost through NYSOH, effective April 1, 2017. That notice also stated that you may be able to enroll in coverage if you qualify for a special enrollment period. This notice is also located in your inactive account ( [REDACTED] ).

Also on February 22, 2017, NYSOH issued a notice to confirm your appeal request from the previous day, which is located in your active account. That notice stated that the reason for your appeal was "Other: QHP missed initial pmt and has to wait until open enrollment."

On May 25, 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) The record indicates that you submitted your initial application for 2017 health insurance coverage on January 24, 2017. You were found eligible for and enrolled in a bronze-level QHP with an enrollment start date of March 1, 2017.
- 2) You testified that, on February 8, 2017, you called NYSOH and requested that your health coverage be backdated to February 1, 2017.
- 3) On February 15, 2017, NYSOH issued an enrollment notice, based on your February 8, 2017 plan selection, confirming your enrollment in a

bronze-level QHP with a monthly premium of \$395.89, with an enrollment start date of February 1, 2017.

- 4) You testified that you have not made a payment towards your premium, but if you had received an invoice you would have. You are happy to pay the back premium and just want health insurance.
- 5) You testified that you did attempt to pay online and through the telephone but you were unable to do so.
- 6) You testified that you received NYSOH's February 21, 2017 disenrollment notice, but that you were confused by it because you would have paid the premiums if you received an invoice.
- 7) On February 21, 2017, you attempted to re-enroll in a qualified health plan but were verbally denied a special enrollment period.
- 8) Your application on February 21, 2017 states that you were seeking a special enrollment based on loss of minimum essential coverage.
- 9) You testified that since filing your application on February 8, 2017 there have been no other major changes to your household.
- 10) You testified that you did not rely on any statements made by NYSOH that prevented you in enrolling in a qualified health plan sooner.

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 QHP and enrollees may change QHPs (45 CFR §155.410(a)(1)).

For the benefit year beginning on January 1, 2016, the annual open enrollment period began on November 1, 2015, and extended through January 31, 2016 (45 CFR §155.410(e)(2)).

### Special Enrollment Periods

After each open enrollment period ends, NYSOH provides special enrollment periods (SEP's) to qualified individuals. During a SEP, a qualified individual may enroll in a QHP, and an enrollee may change their enrollment to another plan. This is generally permitted when certain triggering events occur, including the following:

- (1) The qualified individual or his or her dependent involuntarily loses certain health insurance coverage:
  - (a) Health insurance considered to be minimum essential coverage;
  - (b) Enrolled in any non-calendar year health insurance policy, even if they have the option to renew the expiring non-calendar year individual health insurance policy; or
  - (c) Pregnancy-related coverage; or
  - (d) Medically needy coverage;
- (2) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange; or a non-Exchange entity providing enrollment assistance or conducting enrollment activities; or

(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 QHP (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”  
(45 CFR § 155.420(e)).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined that you did not qualify for a special enrollment period as of February 21, 2017 to enroll in health insurance for 2017 outside of the open enrollment period.

You testified that you are appealing your 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 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 failure to timely issue a notice of eligibility determination as you are entitled to appeal an adverse notice of eligibility determination. Your testimony, along with the February 22, 2017 appeal confirmation notice stating that you are the appellant and the reason for your appeal was “Other: QHP missed initial [payment] and has to wait until open enrollment,” 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 February 21, 2017, you applied for health insurance and requested to enroll in a qualified health plan. That same day you were verbally denied your request 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.

Your application states that your health insurance coverage through NYSOH ended on February 1, 2017.

Ordinarily, the loss of health insurance coverage is considered a triggering event.

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).

Here, on February 8, 2017, you contacted NYSOH and requested to have your bronze-plan backdated to February 1, 2017 and that request was granted. On February 21, 2017, you were issued a disenrollment notice that stated you were being disenrolled from your health plan as of February 1, 2017 because you did not pay the premium in a timely manner. That same day, you contacted NYSOH to reenroll into a QHP but were verbally denied a special enrollment period because you did not have a triggering life event that would permit you to qualify for one.

You testified that you attempted to make payments but were unable to do so.

However, this testimony is contrary to your more credible initial statements and other statements that you never paid your premium and that you would have done so, if you had received an invoice. Additionally, there is no credible evidence in the record that you attempted to contact NYSOH or to make payments to your health plan prior to the February 21, 2017 disenrollment notice being issued.

Therefore, NYSOH considers your initial non-payment of premium to be a voluntary act, which resulted in your coverage being terminated. As such, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis.

Your NYSOH account and your testimony further indicates that, since the open enrollment period closed on January 31, 2017, no other triggering events have occurred that would qualify you for a special enrollment period.

Therefore, the February 21, 2017 denial of a special enrollment period is **AFFIRMED** because NYSOH properly denied your request for a special enrollment period.

## **Decision**

NYSOH's February 21, 2017 denial of your request for a special enrollment period to select a health plan outside of the open enrollment period for 2017 is **AFFIRMED**.

**Effective Date of this Decision:** June 5, 2017

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

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

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 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

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).

P.O. Box 11729  
Albany, NY 12211

- By fax: 1-855-900-5557

## **Summary**

NYSOH's February 21, 2017 denial of your request for a special enrollment period to select a health plan outside of the open enrollment period for 2017 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.

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## বাংলা (Bengali)

এই নথি গুরুত্বপূর্ণ। আপনি যদি এটি বুঝতে সাহায্যের প্রয়োজন হয়, তবে দয়া করে 1-855-355-5777-এ কল করুন। আমরা আপনাকে আপনার মাতৃভাষায় একটি ব্যক্তিগত অনুবাদকর্মের মাধ্যমে সাহায্য করতে সক্ষম।

## 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 bɛtumi ama wo obi a okyerɛ 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)

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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.

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).