



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

Notice of Decision

Decision Date: June 23, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016214

[REDACTED]

Dear [REDACTED],

On June 6, 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

Decision Date: June 23, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016214



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 (QHP) outside of the 2017 open enrollment period?

Procedural History

On January 31, 2017, NYSOH received your application for health insurance.

On February 1, 2017, NYSOH issued an eligibility determination notice stating that you were eligible for a limited time to receive advance payments of the premium tax credit (APTC) of up to \$118.00 per month, effective March 1, 2017. The notice further directed you to select a QHP, and to submit documentation of your income by May 1, 2017.

No plan selection was made on January 31, 2017.

On February 10, 2017, NYSOH's system reran your eligibility.

On February 11, 2017, NYSOH issued a notice stating that you were eligible to receive up to \$118.00 per month in APTC, effective March 1, 2017. It further stated that you might qualify to select a health plan outside of the open enrollment period for 2017, and that you should sign into your account and answer the questions about the Special Enrollment Period (SEP) for 2017.

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On February 24, 2017, you attempted to enroll into a QHP, but were unable to.

That same day, you spoke to NYSOH's Account Review Unit and appealed, insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On February 25, 2017, NYSOH issued a notice to confirm your appeal request from the previous day. That notice stated that the reason for your appeal was "denial of SEP."

On June 6, 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) On January 31, 2017, you submitted an application for health insurance. You did not select a plan that day.
- 2) You testified that you know that you applied for health insurance within the required timeframe, but then you received paperwork stating that you had not signed up in time.
- 3) You testified that you submitted your application on January 31, 2017 online, but also called NYSOH when you had questions.
- 4) You testified that the system asked you to pick a plan, but there was no list or link to the plans, so you called NYSOH.
- 5) You testified that you recalled speaking to someone at some point who stated that you had until February 11, 2017 or so to enroll.
- 6) According to notes in Incident # [REDACTED], you attempted to enroll in a QHP on February 24, 2017, but were told that it was outside of the open enrollment period. You filed an appeal that day.
- 7) You testified that, since filing your application on January 31, 2017, there have been no other major changes to your household.
- 8) After the hearing, the Hearing Officer listed to the recording of a phone call that you had with a NYSOH agent on January 31, 2017. The following findings of fact are taken from this recording:

- a. You indicated to the agent that you had just completed an application, and that you were being asked to provide income documentation;
- b. The NYSOH agent explained that you could upload documentation to your NYSOH account, and that it would be reviewed within seven to ten business days;
- c. You told the NYSOH agent that the system was telling you to select a plan, and you asked the agent if you were going to be asked to pick a bronze or gold plan, or “something like that;”
- d. The NYSOH agent told you that you would need to pick a plan type, but advised that you “hold off” on picking a plan until your income documentation had been submitted and reviewed so that you could see what financial assistance you would be eligible for;
- e. The NYSOH agent did not mention that January 31, 2017, the day of your phone conversation with him, was the last day of open enrollment.

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, 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 QHP, and an enrollee may change their enrollment to

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another plan. This is generally permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent either:
 - (i) Loses minimum essential coverage.
 - (ii) Is enrolled in any non-calendar year group health plan or individual health insurance coverage, even if the qualified individual or his or her dependent has the option to renew such coverage.
 - (iii) Loses pregnancy-related coverage.
 - (iv) Loses medically needy coverage as described under section 1902(a)(10)(C) of the Social Security Act only once per calendar year.
- (2)(i) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care, or through a child support order or other court order.
 - (ii) the enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation as defined by State law in the State in which the divorce or legal separation occurs, or if the enrollee, or his or her dependent, dies.
- (3) The qualified individual, or his or her dependent, becomes newly eligible for enrollment in a QHP because he or she gains citizenship, status as a national, or lawful present or is no longer incarcerated.
- (4) 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, 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.
- (5) The enrollee or, his or her dependent adequately demonstrates to NYSOH that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;
- (6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions.
- (7) The qualified individual or enrollee, or his or her dependent, gains access to new QHP as a result of a permanent move and either—

(i) Had minimum essential coverage for one or more days during the 60 days preceding the date of the permanent move, or

(ii) Was living outside of the United States or in a United States territory at the time of the permanent move;

(8) The qualified individual or dependent who gains or maintains status as an Indian may enroll in a QHP or change from one plan to another, once per month.

(9) The qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide;

(10) A qualified individual or enrollee—

(i) Is a victim of domestic abuse or spousal abandonment, including a dependent or unmarried victim within a household, is enrolled in minimum essential coverage and seeks to enroll in coverage separate from the perpetrator of the abuse or abandonment; or

(ii) Is a dependent of a victim of domestic abuse or spousal abandonment, on the same application as the victim, may enroll in coverage at the same time as the victim;

(11) A qualified individual or dependent—

(i) Applies for coverage through NYSOH during the annual open enrollment period or due to a qualifying event, is assessed as potentially eligible for Medicaid or Child Health Plus and is determined ineligible for Medicaid or Child Health Plus either after open enrollment has ended or more than 60 days after the qualifying event; or

(ii) Applies for coverage at their Local Department of Social Services or Human Resources Administration during the annual open enrollment period, and is determined ineligible for Medicaid or Child Health Plus after open enrollment has ended;

(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 QHP; or

(13) At the option of NYSOH, the qualified individual provides satisfactory documentary evidence to verify his or her eligibility for an insurance affordability program or enrollment following termination of enrollment due to a failure to verify such status within 90 days.

(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)).

Legal Analysis

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

You testified that you are appealing the denial of an SEP to enroll into a health plan through NYSOH. However, the record does not contain any notice of eligibility determination or redetermination on the issue of an SEP.

Here, the lack of a notice of eligibility determination on the issue of an SEP 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 February 24, 2017 appeal confirmation notice stating that the reason for your appeal was "denial of SEP," permits an inference that NYSOH did verbally 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, you applied for health insurance through NYSOH and were found eligible, for a limited time, to receive APTC of up to \$118.00 per month, effective March 1, 2017. The notice also directed you to select a health plan. Therefore, your initial application was completed within the open enrollment period.

However, no plan selection was made on January 31, 2017, the last day of open enrollment.

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.

You testified that you thought someone told you that you had until February 11, 2017 to enroll in a plan. You also testified that, though the system told you to select a plan, there was no list of plans visible and you did not know what you were supposed to do at that point. You testified that you thought you did speak to someone from NYSOH on January 31, 2017 when you were unable to select a plan.

A special enrollment period can be granted if a qualified individual's enrollment or non-enrollment in a QHP 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

After the hearing, the Hearing Officer listened to the phone recording of your conversation with a NYSOH agent on January 31, 2017. The NYSOH agent answered your questions with regard to submission of income documentation. However, when you told the agent that the system was prompting you to select a plan, and asked what your options would be, the agent advised you to wait to select a plan until your income documentation had been received and reviewed by NYSOH so that you would know how much financial assistance you would be eligible for. At no time did the agent mention that the day of your phone conversation was the last day of open enrollment, and that waiting to select a plan could cause you to be unable to enroll.

Since the record indicates that your non-enrollment into a QHP was the direct result of statements made to you by a representative of NYSOH, you should have been granted a special enrollment period when you contacted NYSOH on February 24, 2017.

Therefore, NYSOH's verbal determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is incorrect, you should have been eligible for a special enrollment period as of February 24, 2017, when you called NYSOH to try to enroll in a plan.

Your case is RETURNED to NYSOH to assist you in enrolling into a QHP. You have sixty days from the date of this decision to select a plan for enrollment. You may choose to enroll into a QHP with a start date of April 1, 2017, because NYSOH gave you incorrect information. In the alternative, you may elect to enroll into coverage going forward.

Decision

NYSOH's verbal determination that you do not qualify to select a health plan outside of the 2017 open enrollment period is incorrect. You should have been eligible for a special enrollment period as of February 24, 2017.

Your case is RETURNED to NYSOH to assist you in enrollment into a QHP. You have sixty days to choose a plan for enrollment. You may choose to have coverage beginning as early as April 1, 2017, or to enroll in coverage from this point forward.

Effective Date of this Decision: June 23, 2017

How this Decision Affects Your Eligibility

NYSOH improperly denied you a special enrollment period.

Your case is being sent back to NYSOH to allow you to enroll into coverage as of April 1, 2017 if you choose. Alternatively, you may choose to enroll in coverage from this point forward.

You have sixty days from the date of this decision to select a QHP.

You will be responsible for 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.

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 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 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

Summary

NYSOH's verbal determination that you do not qualify to select a health plan outside of the 2017 open enrollment period is incorrect. You should have been eligible for a special enrollment period as of February 24, 2017.

Your case is RETURNED to NYSOH to assist you in enrollment into a QHP. You have sixty days to choose a plan for enrollment. You may choose to have coverage beginning as early as April 1, 2017, or to enroll in coverage from this point forward.

NYSOH improperly denied you a special 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 case is being sent back to NYSOH to allow you to enroll into coverage as of April 1, 2017 if you choose. Alternatively, you may choose to enroll in coverage from this point forward.

You have sixty days from the date of this decision to select a QHP.

You will be responsible for premium payments 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 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 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&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 איר געבן א דאלמענטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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