



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

## Notice of Decision

Decision Date: June 12, 2017

NY State of Health Account ID [REDACTED]  
Appeal Identification Number: AP000000016218

[REDACTED]

Dear [REDACTED],

On June 6, 2017, you and your authorized representative appeared by telephone at a hearing on your appeal of NY State of Health's January 27, 2017 disenrollment notice and February 16, 2017 eligibility determination notice.

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: June 12, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000016218

[REDACTED]

## Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did NY State of Health properly terminate your enrollment in your qualified health plan effective January 1, 2017 because of non-payment of premiums?

Did NY State of Health properly determine that you do not qualify to enroll in a qualified health plan outside of the open enrollment period?

## Procedural History

On November 30, 2016, NY State of Health (NYSOH) received your application for financial assistance with health insurance.

On December 1, 2016, NYSOH issued an eligibility determination notice stating that you were eligible to receive an advance premium tax credit of up to \$233.00 per month, effective January 1, 2017.

On December 16, 2016, NYSOH issued a plan enrollment notice, based on your December 15, 2016 plan selection, confirming your enrollment in a silver-level qualified health plan, effective January 1, 2017.

On January 24, 2017, NYSOH received your updated application for financial assistance with health insurance.

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).

On January 25, 2017, NYSOH issued an eligibility determination notice stating that you were eligible to receive an advanced premium tax credit of up to \$233.00 per month, 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 silver-level qualified health plan, effective January 1, 2017.

On January 27, 2017, NYSOH issued a plan disenrollment notice stating that you were disenrolled from your qualified health plan, effective January 1, 2017. That notice further stated that this was because you did not pay your insurance bill by the payment deadline.

On February 15, 2017, NYSOH received your updated application for financial assistance with health insurance.

On February 16, 2017, NYSOH issued an eligibility determination notice stating that you were eligible to receive an advanced premium tax credit of up to \$233.00 per month, effective March 1, 2017. That notice also stated that you did not qualify to select a health plan outside of the open enrollment period for 2017.

On February 24, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you were not eligible to reenroll yourself in a health plan outside of the open enrollment period.

On June 6, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, [REDACTED] acted as your Authorized Representative and assisted you with your testimony. The record was developed during the hearing and the record was closed at the end of the hearing.

## **Findings of Fact**

A review of the record supports the following findings of fact:

- 1) You authorized representative testified that you are appealing the denial of a special enrollment period to reenroll yourself into a health plan through NYSOH.
- 2) On November 30, 2016, you submitted an application for health insurance.
- 3) On December 15, 2016, you enrolled yourself into a silver-level qualified health plan.

- 4) Your authorized representative testified that you never received a premium bill from your qualified health plan.
- 5) Your authorized representative testified that on January 24, 2017, you contacted your qualified health plan to inquire about why you did not receive a premium bill, and your qualified health plan stated that you had already missed the payment deadline of January 16, 2017.
- 6) Your authorized representative further testified that on January 24, 2017, your qualified health plan told you that you had been disenrolled from coverage due to non-payment of premium and would have to contact NYSOH to become reenrolled into the plan.
- 7) Your authorized representative testified, and the record reflects, that you immediately called NYSOH and submitted a new application on January 24, 2017, and selected a plan for reenrollment that day.

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

## **Applicable Law and Regulations**

### Appealable Issues

An applicant has the right to appeal to NYSOH's Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) an eligibility determination for an exemption; (4) a failure by NYSOH to provide timely notice of an eligibility determination 45 CFR § 155.505; and (5) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

### 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

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).

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 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 qualified health plan 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 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.
- (5) The enrollee or, his or her dependent adequately demonstrates to NYSOH that the qualified health plan 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 qualified health plan 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 qualified health plan 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 qualified health plan; 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 qualified health plan (45 CFR § 155.420(c)(1)).

## **Legal Analysis**

The first issue under review is whether NYSOH properly terminated your enrollment in your qualified health plan because of non-payment of premiums, effective January 1, 2017.

The record reflects that you enrolled yourself in a qualified health plan effective January 1, 2017. However, your authorized representative testified that you contacted your qualified health plan on January 24, 2017, after not receiving a premium bill and were told by your qualified health plan that your payment was due January 16, 2017. Your authorized representative further testified that your qualified health plan stated that you had been disenrolled for non-payment of premiums.

On January 27, 2017, NYSOH issued a notice stating that you and your child were disenrolled from your health plan for nonpayment of the premium effective January 1, 2017.

NYSOH Appeals Unit only has the authority to review issues related to the following: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) an eligibility determination for an exemption, (4) a failure to provide timely notice of an eligibility determination and (5) a denial of a special enrollment period.



Since the Appeals Unit is not given the authority to review termination of enrollment due to nonpayment of premiums, we cannot reach the merits as to whether or not you were properly terminated from your health plan for nonpayment of premiums. Therefore, your appeal of the January 27, 2017 disenrollment notice is DISMISSED as a non-appealable issue.

The second 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, effective March 1, 2017.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On November 30, 2016, you submitted an application for health insurance and enrolled yourself into a qualified health plan on December 15, 2016. On January 24, 2017, your authorized representative testified that you contacted your qualified health plan and were told that your coverage had been canceled due to non-payment of the premium. Your authorized representative further testified that your health plan told you to contact NYSOH to reenroll yourself back into a qualified health plan. On January 24, 2017, your authorized representative testified, and the record reflects, that you reenrolled yourself into a qualified health plan.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered in NYSOH. In order 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 that as a result of being informed that you had been cancelled from your health plan for non-payment, on January 24, 2017, you called NYSOH to reenroll yourself into coverage. Your authorized representative testified, and the record reflects, that during that phone call you reenrolled yourself into a qualified health plan.

On January 27, 2017, NYSOH disenrolled you from your qualified health plan, effective January 1, 2017, due to non-payment of your health plan premium.

However, instead of disenrolling you from your qualified health plan you enrolled in, effective January 1, 2017, NYSOH disenrolled you from the qualified health plan you enrolled into on January 24, 2017, effective March 1, 2017.

Since the record indicates that your disenrollment from a qualified health plan was the direct result of an error made by a representative of NYSOH, you should have been granted a special enrollment period as of January 24, 2017 or the date in which you reenrolled yourself into a qualified health plan after finding out you lost coverage due to non-payment of your health insurance premium by the due date.

Therefore, NYSOH's February 16, 2017 eligibility determination notice stating that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period as of January 24, 2017.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll yourself into a qualified health plan as of January 24, 2017, which would result in a March 1, 2017 start date, because your inability to reenroll into a plan during open enrollment period was due to the error of NYSOH or its instrumentalities. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

## **Decision**

Your appeal of the January 27, 2017 disenrollment notice is DISMISSED as a non-appealable issue.

The February 16, 2017 eligibility determination notice stating that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of January 24, 2017.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll yourself into a qualified health plan as of January 24, 2017, which would result in a March 1, 2017 start date, because your inability to reenroll into a plan during open enrollment period was due to the error of NYSOH or its instrumentalities. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

**Effective Date of this Decision:** June 12, 2017

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

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 January 24, 2017, if you so choose. In the alternative, you may elect to enroll yourself 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.

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**

Your appeal of the February 1, 2017 disenrollment notice is **DISMISSED** as a non-appealable issue.

The February 16, 2017 eligibility determination notice stating that you do not qualify to select a health plan outside of the open enrollment period for 2017 is **MODIFIED** to reflect that you are eligible for a special enrollment period as of the date of January 24, 2017.

Your case is **RETURNED** to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll yourself into a qualified health plan as of January 24, 2017, which would result in a March 1, 2017 start date, because your inability to reenroll into a plan during open enrollment period was due to the error of NYSOH or its instrumentalities. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

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 January 24, 2017, if you so choose. In the alternative, you may elect to enroll yourself 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.

## **Legal Authority**

We are issuing this determination in accordance with 45 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).

**A Copy of this Decision Has Been Provided To:**

[REDACTED]

[REDACTED]

## **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)**

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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### **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.

### **שׂוּדִישׁ (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).