



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

## Notice of Decision

Decision Date: June 28, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000016219



Dear [REDACTED],

On June 9, 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 28, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000016219



## 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 and your two adult children do not qualify to enroll in a qualified health plan outside of the open enrollment period?

## Procedural History

On December 11, 2016, NYSOH issued an eligibility determination notice stating that you and your two adult children were eligible to purchase a qualified health plan (QHP) at full cost, effective January 1, 2017.

Also on December 11, 2016, NYSOH issued a plan enrollment notice confirming that you and your adult children were enrolled in a bronze-level QHP (Empire HMO 6350 X Bronze NS INN Pediatric Dental Dep 25) at full cost, effective January 1, 2017.

On February 25, 2017, NYSOH issued an appeal confirmation notice acknowledging your appeal, which stated, "Other" and "Consumer feels that she logged onto her application on 1/26/2017 to change her plan to Care Connect, however there is no record of her doing so."

On June 9, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeal Unit. The record was developed and held open for you to submit supporting documentation and for the Hearing Officer to listen to a telephone recording from January 26, 2017.

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 June 13, 2017, you submitted a three-page facsimile, consisting of two pages of your statement and a “talk activity” report from your telephone carrier. This three-page facsimile was made part of the record as “Appellant’s Exhibit A.”

On June 22, 2017, the telephone recording was reviewed and the record was closed.

## **Findings of Fact**

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

- 1) You testified that you are appealing the denial of a special enrollment period to change QHPs for yourself and your adult children through NYSOH.
- 2) On December 10, 2016, you submitted an application for health insurance.
- 3) According to the January 26, 2017 telephone recording and your testimony, you spoke with a NYSOH representative with the Contact Center and requested to change QHPs to be able to enroll yourself and your adult children’s in a different bronze-level QHP in which your providers participated. That telephone recording lasted approximately 24 minutes during which the NYSOH representative provided you with the specifics of the bronze-level QHP you wanted to change to, informed you that your enrollment start date in that plan would be March 1, 2017, it would take a day or two to process and to show up on your NYSOH account. The representative stayed on the line while you confirmed your selection. You then stated that the screen indicated your change in plans to a Care Connect bronze-level QHP was in progress and the call was ended.
- 4) On February 23, 2017, you again attempted to enroll yourself and your adult children in a QHP and were denied. You filed your appeal that same day.
- 5) On February 24, 2017, NYSOH issued a notice that stated there was no record of your January 26, 2017 telephone conversation with NYSOH.
- 6) You submitted a report from your telephone carrier showing “talk activity” on “Jan 26 10:35 AM,” originating from [REDACTED] to [REDACTED] that lasted 24 minutes (see Appellant’s Exhibit A, p. 3). You testified this is the recorded telephone conversation you had with the NYSOH representative on January 26, 2017.

- 7) Judicial notice is taken that the 855-number noted on your talk activity report belongs to NYSOH as noted in the footers in this Decision.
- 8) You testified that there have been no changes in your household income or size since your last application.
- 9) You further testified that you still want to change your bronze-level QHP to Care Connect, because your providers participate in that network.

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

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 a triggering event occurs, such as:

- (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.  
(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 issue under review is whether NYSOH properly determined that you and your adult children do not qualify to enroll in a QHP outside of the open enrollment period.

You testified that you are appealing the denial of a special enrollment period to change QHPs 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 to appeal an adverse notice of eligibility determination. Your credible testimony that, on February 23, 2017, you were verbally denied a special enrollment period, along with no event thereafter showing you were able to change QHPs, 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. Based on the contents of the telephone recording and your testimony, the credible evidence of record supports that you intended to change QHPs on January 26, 2017, within the open enrollment period and with the assistance of a NYSOH representative. While you believed you had succeeded in changing QHPs that day and within the open enrollment period, your efforts were unsuccessful for some unknown reason. On February 23, 2017, you again attempted to change QHPs over the telephone and were verbally denied a special enrollment period because you did not qualify 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 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.

According to the recorded telephone conversation, on January 26, 2017, you spoke to a NYSOH representative and he assisted you in changing QHPs that day despite NYSOH's statement to the contrary. A review of the telephone conversation itself confirms that the NYSOH representative told you your change of QHPs would take effect on March 1, 2017, and would take a day or two to process and show up on your account. You credibly testified you believed this information to mean you had successfully changed QHPs.

Since the record indicates that your non-enrollment into the QHP you wanted, which you initiated during open enrollment, was unintentional, inadvertent, or erroneous and is the result of unexplained error, you should have been granted a special enrollment period as of your February 23, 2017 application.

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, as you should have been eligible for a special enrollment period as of the date of your February 23, 2017 application.

Your case is RETURNED to NYSOH to assist you in enrolling yourself and your adult children into a different QHP. You may choose to enroll into a QHP as of March 1, 2017, because NYSOH delayed your change of enrollment as of that date into the QHP you preferred. In the alternative, you may elect to enroll into coverage within 60 days from the date of this Decision.

## **Decision**

NYSOH's verbal determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is incorrect, as you should have been eligible for a special enrollment period as of the date of your February 23, 2017 application.

Your case is RETURNED to NYSOH to assist you in enrolling yourself and your adult children into a different QHP. You may choose to enroll into a QHP as of March 1, 2017, because NYSOH delayed your change of enrollment as of that

date into the QHP you preferred. 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 28, 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 yourself and your adult children into coverage as of March 1, 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 a different QHP.

## **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

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).



- 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 open enrollment period for 2017 is incorrect, as you should have been eligible for a special enrollment period as of the date of your February 23, 2017 application.

Your case is RETURNED to NYSOH to assist you in enrolling yourself and your adult children into a different QHP. You may choose to enroll into a QHP as of March 1, 2017, because NYSOH delayed your change of enrollment as of that date into the QHP you preferred. 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 yourself and your adult children into coverage as of March 1, 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 a different QHP.

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).

## **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)

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).

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 b etumi ama wo obi a okyer e 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.

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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