



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

Notice of Decision

Decision Date: July 7, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016222

[REDACTED]

Dear [REDACTED],

On June 2, 2017, your spouse appeared by telephone at a hearing on your appeal of NY State of Health's 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
P.O. Box 11729
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Decision

Decision Date: July 7, 2017

NY State of Health Account ID [REDACTED]
Appeal Identification Number: AP000000016222



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 spouse do not qualify to enroll in a qualified health plan outside of the open enrollment period, as of February 6, 2017?

Procedural History

On November 24, 2016, NYSOH issued eligibility determination and plan enrollment notices, based on your November 23, 2016 application, by which you and your spouse were determined eligible to receive up to \$381.00 per month in advance payments of the premium tax credit and were enrolled in a bronze-level qualified health plan with a monthly premium of \$440.74, both effective January 1, 2017.

On January 5, 2017, you contacted NYSOH's call center and requested information about a special enrollment period.

On January 23, 2017, your spouse contacted NYSOH's call center and requested information about a special enrollment period.

On February 7, 2017, NYSOH issued an eligibility determination notice, based on your February 6, 2017 updated application for health insurance, stating that you and your spouse were eligible to receive an advance premium tax credit of up to \$381.00 per month, effective March 1, 2017. It further stated that you and your

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spouse do 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 requested an appeal insofar as your spouse was not eligible to enroll in a health plan outside of the open enrollment period.

On June 2, 2017, your spouse 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) Your spouse testified that you are appealing the denial of a special enrollment period to allow [REDACTED] to change health plans through NYSOH.
- 2) Your spouse testified that, in November 2016, after researching on your own, you called NYSOH and were told that if your spouse became pregnant, that is considered a qualifying life event and [REDACTED] would be eligible for a special enrollment period.
- 3) Your spouse testified that, because of this statement, you both decided initially to choose a bronze-level qualified health plan.
- 4) Your spouse testified that [REDACTED] spoke to a NYSOH account representative sometime in January 2017 and was told that you, as the account holder, had to update the account. Your spouse was also told, after stating [REDACTED] might be pregnant, to have you call back with [REDACTED] due date after [REDACTED] visited [REDACTED] doctor on [REDACTED].
- 5) During the hearing, your spouse gave permission for the Hearing Officer to listen to recordings of your phone calls with NYSOH.
- 6) A review of the record shows that in both telephone calls made to NYSOH in January 2017, you and your spouse were calling with questions regarding your qualified health plan and ability to change plans. Your spouse also inquired about the effect of [REDACTED] possibly being pregnant. Neither representative informed you or your spouse that the end of the open enrollment period was January 31, 2017, or that you and your spouse could not change health plans after that date.

- 7) A review of your January 5, 2017 telephone conversation indicates that the NYSOH representative confirmed that pregnancy was a qualifying life event for which a special enrollment would be granted.
- 8) A further review of the January 23, 2017 telephone recording reveals that your spouse notified the NYSOH representative that [REDACTED] was likely pregnant and wanted to change your and your spouse's health plan, but did not yet have a due date. The NYSOH representative advised your spouse that you personally would have to update the account and should call back on [REDACTED], after [REDACTED] doctor's appointment that day, with [REDACTED] expected due date. The NYSOH representative also confirmed that pregnancy was a qualifying life event for which a special enrollment would be granted.
- 9) Your spouse testified that when you called to update your account on February 6, 2017, you were told by a NYSOH representative that you could not change health plans through a special enrollment period because you both were already enrolled in a health plan.
- 10) Your spouse testified that you have medical bills that are not being covered by your bronze-level qualified health plan and [REDACTED] wants to change to a different health plan.
- 11) You and your spouse are seeking a special enrollment period to be able to change qualified health plans in order to select a plan with better coverage and lower copays.

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

Applicable Law and Regulations

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 a triggering life 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)).

In New York, pregnancy triggers a special enrollment period for individuals without insurance allowing them to enroll in a qualified health plan through NYSOH's Exchange (NYS Insurance Law § 4328(b)(4)(A)). However, this law does not allow individuals who have already enrolled in qualified health plans and later become pregnant to change to a different qualified health plan.

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)).

If one person in the household is eligible for an SEP, everyone in the household that is eligible for or enrolled in a QHP through NYSOH gets an SEP (see <http://info.nystateofhealth.ny.gov/sites/default/files/FAQs> re: Special Enrollment Periods).

Legal Analysis

The issue under review is whether NYSOH properly determined that you and your spouse did not qualify to enroll in a qualified health plan outside of the open enrollment period as of February 6, 2017. This review includes you because, when a special enrollment period is granted for one member of a family in a qualified health plan, all members benefit from it.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. You and your spouse were initially enrolled for January 1, 2017 on November 24, 2016 during the open enrollment period for 2017. On February 6, 2017 after the open enrollment period ended, you re-applied for health insurance and requested to change your and your spouse's health plan. On February 7, 2017, NYSOH issued a notice stating in part that you and your

spouse do 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 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.

Although pregnancy is a triggering life event that may qualify an individual for a special enrollment period to enroll in health coverage, the law applies to pregnant individuals who are **not** currently enrolled in health insurance (emphasis added). Therefore, the new law does not allow an individual who is already enrolled in a qualified health plan and later becomes pregnant to change to a different qualified health plan, as in your spouse's case.

However, 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.

In your case, you contacted NYSOH on January 5, 2017 and your spouse again contacted NYSOH on January 23, 2017, and requested information about a special enrollment period. Your spouse credibly testified, and the record confirms, that you and your spouse were never advised that you needed to come in and change your health plan prior to the end of the open enrollment period on January 31, 2017. In fact, according to the January 5, 2017 telephone recording, you inquired and were told that your spouse would qualify for a special enrollment period to change health plans as pregnancy is a life changing event. Further, according to a January 23, 2017 recorded telephone conversation, the NYSOH representative told your spouse to visit [REDACTED] doctor on [REDACTED], which is after the open enrollment period, and to have you call back with [REDACTED] due date to update the account and to change health plans. Neither NYSOH representative informed you that the open enrollment period ended January 31, 2017.

Had the NYSOH representative properly advised you on January 5, 2017 or your spouse on January 23, 2017 that pregnancy is not a qualifying life event that would trigger a special enrollment period and that you needed to select a different qualified health plan before the open enrollment period ended on January 31, 2017, you would have been able to select a different qualified health plan for enrollment no later than January 23, 2017.

Since the record indicates that your and your spouse's inability to enroll into a different qualified health plan as of January 23, 2017, was the direct result of

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erroneous statements made to you and/or your spouse by two separate NYSOH representative, you should have been granted a special enrollment period as of your February 6, 2017 application.

Therefore, NYSOH's February 7, 2017 eligibility determination notice that you and your spouse 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 your February 6, 2017 application.

Your case is RETURNED to NYSOH to assist you and your spouse in enrolling into a qualified health plan. You and your spouse may choose to enroll into a qualified health plan as of February 6, 2017, with a March 1, 2017 enrollment start date at the earliest, because NYSOH gave you incorrect information. In the alternative, you and your spouse may elect to enroll into coverage within 60 days from the date of this decision.

Decision

The February 7, 2017 eligibility determination notice stating that you and your spouse do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you and your spouse are eligible for a special enrollment period as of the date of your February 6, 2017 application.

Your case is RETURNED to NYSOH to assist you and your spouse in enrolling into a qualified health plan. You and your spouse may choose to enroll into a qualified health plan as of February 6, 2017, with a March 1, 2017 enrollment start date at the earliest, because NYSOH gave you incorrect information. In the alternative, you and your spouse may elect to enroll into coverage within 60 days from the date of this decision.

Effective Date of this Decision: July 7, 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 coverage as of February 6, 2017. In the alternative, you and your spouse 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 in coverage.

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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

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P.O. Box 11729
Albany, NY 12211

- By fax: 1-855-900-5557

Summary

The February 7, 2017 eligibility determination notice stating that you and your spouse do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you and your spouse are eligible for a special enrollment period as of the date of your February 6, 2017 application.

Your case is RETURNED to NYSOH to assist you and your spouse in enrolling into a qualified health plan. You and your spouse may choose to enroll into a qualified health plan as of February 6, 2017, with a March 1, 2017 enrollment start date at the earliest, because NYSOH gave you incorrect information. In the alternative, you and your spouse may elect to enroll into coverage within 60 days from the date of this decision.

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 coverage as of February 6, 2017. In the alternative, you and your spouse 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 in 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 مجاناً.

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 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.

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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