



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: AP000000016298

[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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: June 23, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000016298

[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 to enroll in a qualified health plan outside of the open enrollment period as of February 24, 2017?

## Procedural History

On January 19, 2017, NYSOH issued a disenrollment notice stating that your coverage in your Essential Plan 2 would end January 31, 2017.

On February 7, 2017, NYSOH received your application for financial assistance in 2017.

On February 8, 2017, NYSOH issued an eligibility determination notice stating that, based on your listed income of \$29,607.00, you were eligible to receive up to \$189.00 per month in advance payments of the premium tax credit (APTC) for a limited time, effective March 1, 2017. The notice also stated that you need to pick a plan by April 8, 2017 and provide proof of income by May 8, 2017.

On February 8, 2017, February 25, 2017 and February 28, 2017, NYSOH issued plan enrollment notices confirming that you were enrolled in a bronze-level individual qualified health plan (QHP) with a monthly premium of \$147.64 per month, effective March 1, 2017, with APTC of \$189.00 per month to be applied as of that date. The notice further stated that the annual deductible would be \$5,000.00.

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On February 27, 2017, you spoke to NYSOH's Account Review Unit and appealed being denied a special enrollment period (SEP) to enroll in higher-tiered health plan outside of the open enrollment period.

On February 28, 2017, NYSOH issued a notice confirming your appeal on the issue of "Denial of Special Enrollment Period (SEP)."

No updates were made to your NYSOH account by May 8, 2017.

On May 15, 2017, NYSOH issued an eligibility determination notice stating that you may qualify for a special enrollment period and, if you did, you could purchase a QHP at full cost, effective June 1, 2017. The notice further stated that you did not qualify for Medicaid, Child Health Plus, or the Essential Plan, and you were not eligible to receive the advance payment of the premium tax credit or cost-sharing reductions to help pay for the cost of coverage through NY State of Health. This is because NY State of Health did not receive the income documentation needed to verify the income listed in your application, the date to send in this information had passed, and your eligibility for help paying for health coverage could not be determined without this information.

Also on May 15, 2017, NYSOH issued a plan enrollment notice confirming that you were enrolled in a bronze-level QHP at full cost with a monthly premium of \$336.64.

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) According to your NYSOH account, you expect to file your 2017 federal tax return using a tax filing status of single and will not claim any dependents on that return.
- 2) Th application filed on February 7, 2017 listed annual projected income for 2017 of \$29,607.00, consisting of \$13,475.00 in Social Security benefits you are to receive over 11 months in 2017 at \$1,225.00 per month, and \$16,632.00 in additional income from your [REDACTED] pension less \$500.00 in business expense deductions. You testified that these amounts were correct.

- 3) You testified and your NYSOH account shows that, on February 7, 2017, you applied for health insurance and were assisted in enrolling in a QHP by a NYSOH representative.
- 2) You testified that, when you contacted NYSOH on February 7, 2017 to enroll in a QHP, you asked what the cheapest plans available were and the NYSOH representative responded that the bronze-level QHPs were the cheapest.
- 3) According to your NYSOH account and your testimony, you selected a bronze-level individual QHP that day with a monthly premium of \$147.66 after the monthly APTC of \$189.00 was applied.
- 4) You testified that the NYSOH representative did not explain at the time that the bronze-level QHP had an annual \$5,000.00 deductible associated with it and you first learned about the high deductible when you received QHP information in the mail sometime later.
- 6) On or about February 24, 2017, according to your NYSOH account and your testimony, you contacted NYSOH to see if you could switch to a different health plan for yourself; specifically, one with a lesser deductible.
- 7) You testified that a NYSOH supervisor called you back and said your only option was to file an appeal.
- 8) According to your NYSOH account, no notice denying an SEP was issued and this appeal is based on NYSOH's February 7, 2017 verbal denial of an SEP.
- 9) You testified that there have been no qualifying life changes, such as a change in household size or a permanent move, and there have been no changes in your household's expected 2017 income of \$29,607.00.

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's 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).

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## 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 SEP periods to qualified individuals. During an SEP, 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 (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**

Initially it is noted that, on February 24, 2017, you spoke with NYSOH's Account Review Unit and requested an SEP within which to enroll in a different QHP for yourself with a lesser deductible amount. The record does not contain a notice of eligibility determination or redetermination on this issue. It does contain a February 28, 2017 notice in which NYSOH acknowledges receipt of an appeal request and identifies the issue on appeal as "Denial of Special Enrollment Period (SEP)."

Here, the lack of an eligibility determination or redetermination notice on the issue of an SEP as of February 24, 2017, 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. The text of the February 28, 2017, which acknowledges the appeal on the issue of denial of an SEP, along with your credible testimony that you were verbally denied a special enrollment period to enroll in a different QHP outside the open enrollment period, permits an inference that NYSOH did deny your request for an SEP.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to an eligibility determination notice had one been issued. Therefore, the issue under review is whether

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NYSOH properly determined that you did not qualify to enroll in a QHP outside of the open enrollment period, as of February 24, 2017.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. Once the annual open enrollment period ends, a health plan enrollee must qualify for an SEP to enroll in, or change to another health plan offered in NYSOH. The record reflects that, on February 7, 2017, NYSOH received your application for health insurance in 2017, determined you newly eligible to receive APTC such that you qualified for an SEP, and processed your enrollment in a bronze-level QHP, with an effective start date of March 1, 2017.

On February 24, 2017, when you requested to change health plans, NYSOH verbally denied your request on the basis that it was made outside of the open enrollment period for 2017. Since you were still within 60 days of the February 8, 2017 eligibility determination notice and your SEP was effective until April 8, 2017 as stated in the February 8, 2017 notice, NYSOH erred in verbally denying your request to change to a different QHP.

Therefore, by this Decision, NYSOH's verbal denial of an SEP on the basis that you do not qualify to select a health plan outside of the open enrollment period for 2017 is **RESCINDED**. Further, by this Decision, you were eligible for an SEP as of February 24, 2017 to change QHPs since you were still within 60 days of your then current SEP until April 8, 2017. As such, you should have been permitted to change QHPs at that time.

Accordingly, your case is **RETURNED** to NYSOH to assist you in enrolling into a different QHP.

You may choose to enroll into a QHP as of February 24, 2017, which would result in an April 1, 2017 enrollment start date, bearing in mind that any claims processed to date by your current bronze-level QHP might be charged back by the plan and reprocessed under the different QHP you select. In the alternative, you may elect to enroll into a different QHP 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. You should have been eligible for a special enrollment period as of the date of your February 7, 2017 application through April 8, 2017, and been afforded the opportunity to change QHPs on February 24, 2017.

Therefore, by this Decision, NYSOH's verbal denial of an SEP on the basis that you do not qualify to select a health plan outside of the open enrollment period for 2017 is RESCINDED.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan as of February 24, 2017, with an April 1, 2017 enrollment start date, if you so choose, bearing in mind that any claims processed to date by your current bronze-level QHP might be charged back by the plan and reprocessed under the different QHP you select. 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 23, 2017

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

NYSOH improperly denied you a special enrollment period on February 24, 2017.

Your case is being sent back to NYSOH to allow you to enroll into coverage as of February 24, 2017, if you so choose, with an enrollment start date as early as April 1, 2017. 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 coverage in 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)).

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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):**

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- 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. You should have been eligible for a special enrollment period as of the date of your February 7, 2017 application through April 8, 2017, and been afforded the opportunity to change QHPs on February 24, 2017.

Therefore, by this Decision, NYSOH's verbal denial of an SEP on the basis that you do not qualify to select a health plan outside of the open enrollment period for 2017 is **RESCINDED**.

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 RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan as of February 24, 2017, with an April 1, 2017 enrollment start date, if you so choose, bearing in mind that any claims processed to date by your current bronze-level QHP might be charged back by the plan and reprocessed under the different QHP you select. 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 on February 24, 2017.

Your case is being sent back to NYSOH to allow you to enroll into coverage as of February 24, 2017, if you so choose, with an enrollment start date as early as April 1, 2017. 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 coverage in a different QHP.

## **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&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 אייך געבן א דאלמענטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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