



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: AP000000016368

[REDACTED]

Dear [REDACTED]

On June 2, 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  
P.O. Box 11729  
Albany, NY 12211

## Decision

Decision Date: June 12, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000016368

[REDACTED]

## Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

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

## Procedural History

On November 16, 2016, NY State of Health (NYSOH) received your application for financial assistance with health insurance.

On November 17, 2016, NYSOH issued an eligibility determination notice stating that you were eligible to receive an advance premium tax credit of up to \$326.00 per month and cost-sharing reductions if you enrolled in a silver-level qualified health plan, for a limited time, effective January 1, 2017. This notice further directed you to submit income documentation by February 14, 2017.

On November 17, 2016, NYSOH issued a plan enrollment notice, based on your November 16, 2016 plan selection, confirming your enrollment in a silver-level qualified health plan, effective January 1, 2017.

On February 6, 2017, you attempted to change your enrollment to a different qualified health plan, but were unable to.

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 February 28, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you were not eligible to change your enrollment to a different qualified health plan outside of the open enrollment period.

On March 1, 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 Special Enrollment Period "SEP"."

On June 2, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open for the Hearing Officer to listen to NYSOH's Call Center recordings.

The Hearing Officer listened to the recordings from November 16, 2016, January 6, 2017, January 9, 2017, February 6, 2017, February 8, 2017 and February 28, 2017 after which 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 your enrollment into a different qualified health plan through NYSOH.
- 2) You testified that you need to change your qualified health plan because you cannot afford the deductible for medications.
- 3) You testified that you were misinformed by a NYSOH representative when making the decision on what qualified health plan to select for enrollment.
- 4) You testified that you were told that your deductible would only be applied when you went to specialists or doctors, and not when obtaining prescriptions from the pharmacy.
- 5) You testified that you called NYSOH to change your enrollment into a different qualified health plan sometime in January 2017.
- 6) The record indicates that the first time you contacted NYSOH to change your enrollment into a different qualified health plan was on February 6, 2017.
- 7) The Hearing Officer reviewed the phone call you made to NYSOH on November 16, 2016 and determined that:

- a. The reason for this call was to renew your health insurance coverage.
  - b. You stated during this call that you wanted the qualified health plan that you were in two years ago, but after finding out the premium cost of that plan after your APTC you decided that plan would be too expensive.
  - c. The NYSOH representative gave you some other options for a silver-level qualified health plan. The NYSOH representative went into some basic details with you about how the qualified health plan would work.
  - d. When you asked specifically about prescription coverage under your qualified health plan, the NYSOH representative told you that your prescriptions would be a \$20.00 copay after the deductible for preferred brands, and a \$5.00 copay for generic brands.
  - e. During this call, you asked the NYSOH representative if he knew every plan, and whether the plan you were enrolling in was a “good plan”. The NYSOH representative stated that he did not know everything about every plan, and only knew the basic information that was given to him in his system.
  - f. The NYSOH representative also stated that for more specific details about how the qualified health plan benefits would work and what the plan would cover that you should contact your qualified health plan directly because they will have more specific information about your plan.
- 8) The Hearing Officer reviewed the phone call you made to NYSOH on January 6, 2017 and January 8, 2017 and determined that:
- a. During these phone calls, you were seeking information about the documentation you needed to submit to NYSOH in order to verify the income information that was listed in your November 16, 2016 application.
  - b. The NYSOH representatives confirmed that you were still enrolled in your silver-level qualified health plan, and at no time during these phone calls did you request to switch to a new qualified health plan.
- 9) The Hearing Officer reviewed the phone call you made to NYSOH on February 6, 2017 and February 8, 2017 and determined that:
- a. The reason for these calls was because you had attempted to fill your prescriptions at your pharmacy where the pharmacist informed you that the deductible on your qualified health plan was applicable to your prescriptions.
  - b. You told the NYSOH representatives that you specifically asked during the November 16, 2016 phone call to NYSOH if the deductible for the qualified health plan applied to your prescriptions,

and that NYSOH representative told you that they did not apply to your prescriptions.

- c. The NYSOH representatives informed you during this call that you would need to qualify for a special enrollment period in order to change your qualified health plan outside of the open enrollment period.
- d. During the call, a NYSOH representative stated that they would review your phone call that you made to NYSOH on November 16, 2016 to determine whether you qualified for a special enrollment period due to being misinformed by the NYSOH representative.

10) The Hearing Officer reviewed the phone call you made to NYSOH on February 28, 2017 and determined that:

- a. During this call, you were informed that your request for a special enrollment period had been denied, and you filed an appeal requesting that a special enrollment period be granted to allow you to change your enrollment into a different qualified health plan.

11) You testified that since filing your application on November 16, 2016 there have been no other major changes to your household.

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

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 issue under review is whether NYSOH properly determined that you do not qualify to change your enrollment into a different qualified health plan outside of the open enrollment period.

You testified that you are appealing the denial of a special enrollment period to enroll into a health plan 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 along with the March 1, 2017 appeal confirmation notice stating that the reason for your appeal was “Denial of Special Enrollment Period “SEP””, 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. On November 16, 2016, you submitted an application for health insurance and requested to enroll in a qualified health plan. On February 6, 2017, you attempted to change your enrollment into a different qualified health plan, but were unable to do so.

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

You testified that you were told by the NYSOH representative you spoke to in November that the silver-level qualified health plan you enrolled in had a deductible, but that your deductible would not be applicable to your prescription medication co-pays. You further testified that you relied upon these statements when enrolling into a qualified health plan and that you now know that these statements were not correct.

However, a review of the telephone call record indicates that on November 16, 2016, you contacted NYSOH and before enrolling into your qualified health plan went over basic information with the NYSOH representative. The NYSOH stated that the cost of prescriptions under your qualified health plan would be a \$20.00 copay after deductible for preferred brand drugs, and a \$5.00 deductible for generic brand drugs. During this call, you asked the NYSOH representative if he knew about all the plans, and if the plan you would be enrolling in was a "good plan". The NYSOH representative told you that he only knows the basic information that is given to him, and advised you to contact your qualified health plan for more specific information about how the plan benefits worked because they would know the most information.

Therefore, you did not adequately demonstrate that your decision to enroll in your qualified health plan was influenced by a material error related to plan benefits because the NYSOH representative stated that he only knew the basic information, and for more specific information about how your qualified health plan benefits would work that you needed to contact the plan directly.

Since the record does not indicate that NYSOH, by action or inaction, made an error or misrepresented information, a special enrollment period cannot be granted.

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).

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2017, no other triggering events have occurred that would qualify you for a special enrollment period.

Therefore, NYSOH's denial of a special enrollment period to select a health plan outside of the open enrollment period for 2017 is **AFFIRMED**.

## **Decision**

NYSOH's denial of a special enrollment period to select a health plan outside of the open enrollment period for 2017 is **AFFIRMED**.

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

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

You do not qualify for a special enrollment period at this time.

## **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:

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).

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 denial of a special enrollment period to select a health plan outside of the open enrollment period for 2017 is **AFFIRMED**.

You do not qualify for a special enrollment period at this time.

### **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)

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.

## **שׂוּדִיש (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.

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