



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

Notice of Decision

Decision Date: June 16, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016374

[REDACTED]

Dear [REDACTED],

On June 8, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's March 1, 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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DEPARTMENT OF HEALTH
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Albany, NY 12211

Decision

Decision Date: June 16, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016374



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 (QHP) outside of the 2017 open enrollment period?

Procedural History

On October 19, 2016, NYSOH issued a renewal notice stating that it was time to renew your application for health insurance for 2017. The notice stated that you needed to update your application for health insurance by December 15, 2016, or you and your spouse might lose the financial assistance you were currently receiving.

On November 27, 2016, NYSOH issued a notice of disenrollment, stating that your and your spouse's enrollment in your WellCare QHP was ending, effective December 31, 2016.

On December 7, 2016, NYSOH received your updated application for health insurance.

On December 8, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible to receive advance payments of the premium tax credit (APTC) of up to \$860.00 per month, and eligible for cost-sharing reductions, effective January 1, 2017. The notice also directed you to pick a QHP for enrollment for 2017.

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On December 16, 2016, NYSOH issued an enrollment confirmation notice, based on the plan selection you made on December 15, 2016, stating that you and your spouse were enrolled in an Emblem Health QHP, effective January 1, 2017. The notice further stated that, "If you have a monthly premium, you will receive an invoice from your health plan. You must pay the monthly premium to start and keep your coverage. You will receive information about benefits and your health plan identification card directly from your health plan."

On January 16, 2017, NYSOH issued a cancellation notice stating that your and your spouse's enrollment in your QHP was terminated, effective January 1, 2017, because a premium payment had not been received by the health plan.

On February 7, 2017, you updated your NYSOH application.

On February 8, 2017, NYSOH issued notice of eligibility determination stating that you and your spouse were eligible to receive up to \$860.00 per month in APTC, and eligible for cost-sharing reductions, effective March 1, 2017. The notice also stated that you and your spouse did not qualify to select a health plan outside of the 2017 open enrollment period.

On February 28, 2017, NYSOH again received an updated application for financial assistance. That day, a preliminary eligibility determination was prepared stating that you and your spouse were eligible to receive up to \$860.00 per month in APTC, and eligible to receive cost-sharing reductions if you enrolled in a silver level QHP, effective April 1, 2017. You also attempted to enroll into a QHP, but were unable to select a plan for enrollment.

Also on February 28, 2017, you spoke to NYSOH's Account Review Unit and appealed your inability to enroll into a QHP outside of the open enrollment period.

On March 1, 2017, NYSOH issued an eligibility determination notice, based on the February 28, 2017 application for financial assistance, stating that you and your spouse were eligible to receive APTC of up to \$860.00 per month, and eligible for cost-sharing reductions, effective April 1, 2017. It further stated that you do not qualify to select a health plan outside of the open enrollment period for 2017.

On June 8, 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) You and your spouse were enrolled in a qualified health plan for the 2017 coverage year with a monthly premium of \$120.84, effective January 1, 2017.
- 2) You testified that you thought your coverage through your WellCare plan did not end until February 28, 2017, because it had started on March 1, 2016, and you thought the coverage went for a full year.
- 3) You testified that when you enrolled in the Emblem Health plan on December 15, 2016, you believed that you were choosing a health plan that would start on March 1, 2017.
- 4) You testified that no one told you that your WellCare coverage would be in effect until February 28, 2017, but that you were under this impression because you thought the coverage would last a full year.
- 5) You testified that you did not receive the November 27, 2016 disenrollment notice stating that your and your spouse's enrollment in your WellCare plan was ending on December 31, 2016.
- 6) You testified that you do not recall if you received the October 19, 2016 renewal notice, but that you renewed your application in December 2016 because you saw commercials on television advising that people should log in and reapply for coverage for 2017.
- 7) You testified that you updated your application online on December 7, 2016.
- 8) You testified that you do not recall whether you received the December 8, 2016 eligibility determination.
- 9) Your NYSOH account reflects that you selected a plan for enrollment online on December 15, 2016.
- 10) You testified that you do not recall receiving the December 16, 2016 enrollment confirmation notice.
- 11) Your NYSOH account reflects that you are enrolled to receive email alerts regarding notices in your NYSOH account, and that a notice was issued to you on February 24, 2014, after you initially applied for health insurance through NYSOH, confirming that you had requested to receive information from NYSOH electronically.

- 12) You testified that you remember receiving emails from NYSOH in the first year that you were enrolled, but that you always did everything by phone, and that you would just renew your application when you saw ads stating that it was time to do so.
- 13) You testified that you did not know that you could log into your NYSOH account to review notices until you spoke to a NYSOH representative after you and your spouse were disenrolled from your Emblem Health plan for nonpayment in January 2017.
- 14) You testified that you never received any invoice, bill, or other documentation from Emblem Health, prior to receiving the notice in January 2017 that stated that your coverage was being discontinued.
- 15) You testified that you called Emblem Health when you received the disenrollment notice because you did not understand why you were being disenrolled, as you did not think your coverage was beginning until March 2017.
- 16) You testified that, once you understood that your coverage was supposed to start on January 1, 2017, you asked Emblem Health how you were supposed to make a payment when you had not received any membership documentation or invoice, and that they were unable to answer that question.
- 17) You testified that you did not receive the disenrollment notice until late January 2017, and that you did not speak to anyone from NYSOH or Emblem Health until early February 2017.
- 18) Your NYSOH account reflects that you attempted to re-enroll in coverage on February 7, 2017, and again on February 28, 2017.
- 19) You testified that since filing your application on December 7, 2016, there have been no other major changes to your household.
- 20) You testified that you and your spouse are looking to be able to enroll in coverage for 2017.

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 QHP and enrollees may change QHPs (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 QHP, 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 QHP because he or she gains citizenship, status as a national, or lawful present or is no longer incarcerated.

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(4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP 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 QHP 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 APTC, or change in eligibility for cost-sharing reductions.

(7) The qualified individual or enrollee, or his or her dependent, gains access to a new QHP 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 QHP 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 QHP; 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 QHP (45 CFR § 155.420(c)(1)).

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

(1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or

(2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128” such as failure to comply with other requirements (45 CFR § 147.128(b))

(45 CFR § 155.420(e)).

Legal Analysis

The issue under review is whether NYSOH properly determined that you and your spouse do not qualify to enroll in a QHP outside of the 2017 open enrollment period.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On December 15, 2016, you submitted a request to enroll in a QHP for yourself and your spouse. Therefore, you initially enrolled in a QHP during open enrollment. However, on January 16, 2017, NYSOH issued a disenrollment notice stating that you and your spouse were disenrolled from your QHP, effective January 1, 2017, for failure to pay your premium payment by the payment deadline.

On February 7, 2017 and February 28, 2017, you attempted to reenroll in a QHP for yourself and your spouse.

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.

In the present case, there is no evidence in the record to establish grounds for a special enrollment period. You testified that there have been no changes to your household in 2017.

Though you did lose health coverage as a result of the January 16, 2017 disenrollment, the loss of health insurance coverage in this case cannot be considered a triggering event for a special enrollment period, because it was a result of non-payment of your premiums which NYSOH considers a voluntary action causing the termination of your coverage.

Though you testified that you did not receive the notice from NYSOH confirming your enrollment in your QHP as of January 1, 2017 or the notice that stated that your enrollment in your former QHP was ending as of December 31, 2016, the record reflects that you requested to receive email alerts from NYSOH when you created your account and applied for insurance in 2014. You testified that, since that time, you may have received some emails, but you have never logged into your NYSOH account until approximately February 2017. Therefore, by your own admission, you may have received email alerts regarding these notices, but you failed to take steps to retrieve the notices from your NYSOH account.

Additionally, though you testified that you were under the impression that your WellCare coverage would be in effect until February 28, 2017, you admitted in your testimony that this impression was the result of your belief that the coverage

would last a full year, and not based on any statement made by NYSOH or anyone else.

At this time, then, the record does not contain evidence to show that you experienced a triggering event that would qualify you and your spouse for a special enrollment period, as of the date of the hearing.

Therefore, the March 1, 2017 eligibility determination, to the extent it denied you a special enrollment period, was correct and is AFFIRMED.

However, you credibly testified during the hearing that you never received any documentation from your Emblem Health plan until you were disenrolled from coverage in January 2017. Therefore, your case is RETURNED to Plan Management to investigate whether you were properly and timely sent an invoice or bill from your Emblem Health QHP prior to NYSOH's January 16, 2017 disenrollment notice for nonpayment of premiums.

If it is determined that Emblem Health did NOT issue any invoice or bill to you prior to cancelling your coverage, then you and your spouse will be eligible for a special enrollment period, and NYSOH will contact you to assist you in enrolling in coverage, beginning as early as January 1, 2017, or a later date of your choosing.

Decision

The March 1, 2017 eligibility determination, insofar as it stated that you and your spouse were not eligible for a special enrollment period as of February 28, 2017, is AFFIRMED.

Your case is RETURNED to NYSOH's Plan Management to investigate whether Emblem Health issued an invoice or bill to you and your spouse for your January 2017 premium payment, prior to the cancellation of your coverage.

If it is determined that no invoice was ever sent, you and your spouse will be eligible for a special enrollment period, and NYSOH will contact you to assist you and your spouse in enrolling in a QHP, beginning as early as January 1, 2017, or a later date of your choosing.

Effective Date of this Decision: June 16, 2017

How this Decision Affects Your Eligibility

You do not qualify for a special enrollment period at this time, based on the evidence in the record.

However, your case is being sent back to NYSOH to determine whether Emblem Health ever properly issued an invoice or bill to you for your January 2017 premium. If no invoice or bill was issued, you and your spouse will be eligible to enroll in coverage outside of the 2017 open enrollment period, and can choose to have your coverage begin on January 1, 2017, or a later month of your choosing. You will be responsible for any retroactive premium payments if you enroll in coverage for any months in the past.

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 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 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

The March 1, 2017 eligibility determination, insofar as it stated that you and your spouse were not eligible for a special enrollment period as of February 28, 2017, is AFFIRMED.

Your case is RETURNED to NYSOH's Plan Management to investigate whether Emblem Health issued an invoice or bill to you and your spouse for your January 2017 premium payment, prior to the cancellation of your coverage.

If it is determined that no invoice was ever sent, you and your spouse will be eligible for a special enrollment period, and NYSOH will contact you to assist you and your spouse in enrolling in a QHP, beginning as early as January 1, 2017, or a later date of your choosing.

However, your case is being sent back to NYSOH to determine whether Emblem Health ever properly issued an invoice or bill to you for your January 2017 premium. If no invoice or bill was issued, you and your spouse will be eligible to enroll in coverage outside of the 2017 open enrollment period, and can choose to have your coverage begin on January 1, 2017, or a later month of your choosing. You will be responsible for any retroactive premium payments if you enroll in coverage for any months in the past.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

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A Copy of this Decision Has Been Provided To:



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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&tumi 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.

אַײַדיש (Yiddish)

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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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