



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

Notice of Decision

Decision Date: June 27, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016409

[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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Decision

Decision Date: June 27, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016409

[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 and your spouse do not qualify to enroll in a qualified health plan (QHP) outside of the open 2017 enrollment period?

Procedural History

On January 17, 2017, NYSOH received your updated application for health insurance.

On January 18, 2017, 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 \$457.00 per month, effective February 1, 2017.

Also on January 18, 2017, NYSOH issued an enrollment confirmation notice stating that you and your spouse were enrolled in a QHP, effective February 1, 2017.

On February 17, 2017, NYSOH issued a cancellation notice stating that your and your spouse's enrollment in your QHP was terminated, effective February 1, 2017, because a premium payment had not been received by the health plan.

On February 28, 2017, NYSOH received your application for health insurance.

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On March 1, 2017, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible to receive up to \$497.00 per month in APTC, effective April 1, 2017. It further stated that you and your spouse did not qualify to select a health plan outside of the open enrollment period for 2017.

Also on March 1, 2017, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination, insofar as you and your spouse were not eligible to enroll in a health plan outside of the open enrollment period.

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 were enrolled in a QHP for the 2017 coverage year with a monthly premium of \$277.07, effective February 1, 2017
- 2) You testified, and your NYSOH account confirms, that you and your spouse were initially found eligible to enroll in the Essential Plan as of February 1, 2017, but that you updated your account again when your income changed, and you and your spouse became eligible to enroll in a QHP with APTC instead.
- 3) You testified that you received an invoice from your Fidelis QHP, and that you mailed a check for your premium payment to your QHP by regular mail in the first or second week of February 2017.
- 4) You testified that you did not follow up with your QHP or take any action after you mailed the check.
- 5) You testified that you were waiting to receive membership documentation from your QHP, but when you did not receive any, you called Fidelis.
- 6) You testified that Fidelis kept telling you that they could not give you any information because your coverage was through NYSOH, but when you called NYSOH, they did not have any information about what happened to your premium payment.
- 7) You testified that, at some point, you received a notice stating that you and your wife had been cancelled from your coverage for nonpayment of the premium.

- 8) You testified that you found out from Fidelis that they never received your payment. You testified that the check never came back to you as returned mail, and was never cashed. You testified that the check was never found.
- 9) Your NYSOH account reflects that you and your spouse were disenrolled from your QHP, effective February 1, 2017.
- 10) You testified that you asked Fidelis whether they would reinstate you if you made the premium payment, and they said they would not, and that you would need to contact NYSOH to reenroll in coverage.
- 11) On February 28, 2017, you contacted NYSOH to reenroll into a QHP, but were told that you could not because you had missed the enrollment deadline, and that you would need to file an appeal.
- 12) You testified that you are concerned about incurring a tax penalty.
- 13) You testified that you and your spouse would like to enroll in coverage retroactive to February 1, 2017.
- 14) You testified that you and your spouse have had to pay out of pocket for medical expenses that you have incurred in 2017.
- 15) You testified that your income has changed since you last updated your account on February 28, 2017. You testified that you began a new job on [REDACTED], and that your expected annual income is now \$62,000.00
- 16) You testified that your spouse's annual expected income is still \$9,880.00, and that there are still two people in your household.
- 17) You testified that there have been no other major changes to your household since you last updated your account in February 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.
- (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 new QHP because 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)).

An “enrollee” is an individual currently enrolled in a QHP (45 CFR § 155.20).

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 open enrollment period for 2017.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On January 17, 2017, you submitted a request to enroll in a QHP on behalf of yourself and your spouse. Therefore, you initially enrolled into

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coverage during the 2017 open enrollment period. However, on February 17, 2017, NYSOH issued a notice stating that you and your spouse were disenrolled from your QHP coverage, effective February 1, 2017, for nonpayment of premium.

Once the annual open enrollment period ends, an individual 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 you did lose health coverage because of the February 17, 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.

The credible evidence of record indicates that during the period between when the open enrollment period closed on January 31, 2017 and when you updated your application on February 28, 2017, you did not experience 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 and your spouse a special enrollment period as of your February 28, 2017 application, was correct and is AFFIRMED.

During the hearing, you testified that you began a new job on [REDACTED], and that your annual salary has increased to \$62,000.00. You testified that your spouse's annual expected income is still \$9,880.00, and that there are still two people in your household. You also confirmed that you still reside in Queens County.

Although this might result in you and your spouse being found ineligible for financial assistance, and only eligible to purchase a QHP at full cost, this would not lead to you and your spouse being found eligible for a special enrollment period pursuant to 45 CFR § 155.420(e)(6), because that provision relates only to enrollees; that is, individuals who are already enrolled in a plan.

Decision

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

Effective Date of this Decision: June 27, 2017

How this Decision Affects Your Eligibility

You did not qualify for a special enrollment period as of your February 28, 2017 application.

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 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 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 is **AFFIRMED**, insofar as it stated that you and your spouse were not eligible for a special enrollment period, as of your February 28, 2017 application.

You did not qualify for a special enrollment period as of your February 28, 2017 application.

Legal Authority

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

A Copy of this Decision Has Been Provided To:



Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

中文 (Traditional Chinese)

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您免费提供相应语种的口译服务。

Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

العربية (Arabic)

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 1-855-355-5777. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجانًا.

বাংলা (Bengali)

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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 איר געבן א דאלמענטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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