



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

## Notice of Decision

Decision Date: August 24, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000016643

[REDACTED]

Dear [REDACTED],

On July 18, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's determination to deny you 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: August 24, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000016643

[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 for a special enrollment period to enroll in a qualified health plan outside the open enrollment period?

## Procedural History

On December 19, 2016, NYSOH received your application for health insurance.

On December 20, 2016, NYSOH issued an eligibility determination notice stating that you were eligible to purchase a qualified health plan (QHP) at full cost, effective February 1, 2017.

Also on December 20, 2016, NYSOH issued a plan enrollment notice confirming that as of December 19, 2016, you were enrolled in a QHP with an enrollment start date of February 1, 2017.

On February 16, 2017, NYSOH issued a disenrollment notice stating that your QHP enrollment would end on February 1, 2017, because you did not pay your insurance bill by the payment deadline.

On March 6, 2017, you spoke to NYSOH's Account Review Unit and requested an appeal relative to being disenrolled from your coverage and your eligibility to have your coverage reinstated.

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On June 6, 2017, NYSOH issued a notice stating that your mailing address had changed to: [REDACTED].

On July 18, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Testimony was taken during the hearing, and the record was left open until July 20, 2016, to allow you to submit additional documentation to NYSOH's Appeals Unit.

On July 19, 2017, you uploaded three-pages of documentation to your NYSOH account. That documentation was made part of the record as "Appellant Exhibit A."

The Hearing Officer requested the recording of your February 13, 2017, conversation with the representative from NYSOH. That recording has been received and made part of the record as "Appellant Exhibit B." The record is now complete and closed.

## **Findings of Fact**

A review of the record supports the following findings of fact:

- 1) According to your NYSOH account, you submitted an application and enrolled in a QHP on December 19, 2016.
- 2) You testified that you never received an invoice or health insurance card from your health insurance company, Empire Blue Cross Blue Shield (Empire).
- 3) You testified that, on February 13, 2017, you contacted Empire and were informed by a representative that you were not enrolled in an Empire health plan for 2017. The representative instructed you to contact NYSOH to resend your enrollment to them (Appellant's Exhibit A, p. 1).
- 4) You further testified that, on February 13, 2017, you had a three-way conversation with representatives from Empire and NYSOH. The Empire representative stated that your enrollment had not been received from NYSOH for 2017. The NYSOH representative stated that the enrollment would be resent to Empire (Appellant's Exhibit B).
- 5) On February 16, 2017, NYSOH issued you a notice stating that your Empire health plan was ending February 1, 2017, because you did not pay your health insurance bill by the payment deadline (see Document [REDACTED]).

- 6) On March 6, 2017, you contacted NYSOH and were informed that your enrollment could not be reinstated with Empire because you failed to pay your health insurance premiums. The representative instructed you to contact Empire directly to get your insurance reinstated (Appellant's Exhibit A, p. 1).
- 7) On March 6, 2017, you contacted Empire and were informed by a representative that they were unable to reinstate your coverage because your enrollment did not exist in their system (Appellant's Exhibit A, p. 1).
- 8) According to the "Appeal Summary" in the Evidence Packet, you requested an appeal on March 6, 2017, on the basis that you were "disputing the disenrollment of coverage due to nonpayment; requesting for coverage to be reinstated" (see Document [REDACTED]).
- 9) According to your NYSOH account, your information was updated on June 5, 2017, to reflect that you reside in [REDACTED].
- 10) You are no longer requesting enrollment in health insurance through NYSOH because you moved out of state at the end of July 2017. You are requesting that NYSOH compensate you for the tax penalty that will be incurred because you did not have health insurance for seven months (Appellant's Exhibit A, pp. 2-3).

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)).

NYSOH may require payment of the first month's premium to effectuate an enrollment and establish a standard policy for setting premium payment deadlines (45 CFR §155.400(e)).

### 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 qualified health plan, and an enrollee may change their enrollment to another plan, if a triggering event occurs (45 CFR § 155.420(a)(1)).

On such triggering event occurs when 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, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange; or a non-Exchange entity providing enrollment assistance or conducting enrollment activities (45 CFR § 155.420(d)(4)).

CMS has defined enrollment error to include situations when consumers enroll through NYSOH, but the insurance company did not get their information due to technical issues (Guidance for Issuers on Special Enrollment Periods for Complex Cases in after the Initial Open Enrollment Period, Affordable Exchange Guidance, Department of Health & Human Services, CMS, dated March 26, 2014, at: <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/complex-cases-sep-3-26-2014.pdf>).

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)).

## **Legal Analysis**

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

The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period. 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

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timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination.

According to the “Appeal Summary” in the Evidence Packet, you requested an appeal on March 6, 2017 on the basis that you were “disputing the disenrollment of coverage due to nonpayment; requesting for coverage to be reinstated” (see [REDACTED]). Therefore, it is presumed that NYSOH denied your request for a special enrollment period.

Since the Appeals Unit’s review of NYSOH determinations are 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. The record indicates that you submitted a complete application, and enrolled in a QHP, through Empire, on December 19, 2016.

The record reflects the following: (1) you never received a premium invoice or a health insurance card from Empire; (2) on February 13, 2017, you were informed by an Empire representative that you were not enrolled in a health plan for 2017 and were instructed to contact NYSOH to resend your enrollment information; and (3) on that same day, you had a three-way conversation with representatives from Empire and NYSOH and the Empire representative stated that your enrollment had not been received from NYSOH for 2017, and the NYSOH representative stated that the enrollment would be resent to Empire.

On February 16, 2017, NYSOH sent you a notice stating that your Empire health plan was cancelled on February 1, 2017, because you did not pay your health insurance bill by the payment deadline.

On March 6, 2017, you were informed by NYSOH that your enrollment could not be reinstated with Empire because you failed to pay your health insurance premiums. That same day you submitted an appeal regarding the disenrollment of your coverage and requested that the coverage be reinstated.

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 into a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of NYSOH. An enrollment error includes situations when consumers enroll through NYSOH, but the insurance company didn’t get their information due to technical issues.

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Based on the foregoing, the insurance company was unable to effectuate your coverage because they did not receive the necessary information from NYSOH. Therefore, NYSOH's error or inaction in not providing the necessary information to the health plan regarding your enrollment was the direct cause for you not being enrolled in a health plan. As such, NYSOH incorrectly denied you a special enrollment period.

The record indicates that the enrollment error resulted in you being without insurance coverage for part of the 2017 coverage year. You are requesting that NYSOH compensate you for the tax penalty that will be incurred because you did not have health insurance for seven months. However, there is no mechanism in the law to permit compensation for this reason. Further, NYSOH's Appeals Unit lacks the jurisdiction to determine whether an individual is eligible to claim an exemption from being assessed a tax penalty.

Notwithstanding, sometimes after an appeal decision, an appellant can claim an exemption from the requirement to have health insurance. You might qualify for a health coverage exemption in 2017 if you didn't have health coverage while you were waiting for an appeal decision about coverage eligibility or savings **and** your appeal was eventually successful (emphasis added).

You must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, NYSOH does not accept hardship exemption applications.

You will find the information you need to claim the exemption due to an appeal decision at <https://www.healthcare.gov/exemptions-tool/#/results/2017/details/eligible-based-on-appeal>. You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word "pending" in column "c" and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

## **Decision**

NYSOH improperly determined you ineligible for a special enrollment period.

**Effective Date of this Decision:** August 24, 2017

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

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).



You should have been granted a special enrollment period through NYSOH.

If you are seeking to claim an exemption for 2017, follow the instructions above.

### **If You Disagree with this Decision (Appeal Rights)**

This Decision is final unless you submit an appeal request to the Federal Marketplace or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the Federal Marketplace. This must be done within 30 days of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:  
Health Insurance Marketplace  
Attn: Appeals  
465 Industrial Blvd.  
London, KY 40750-0061
- By fax: 1-877-369-0129

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

### **If You Have Questions about this Decision (Customer Service Resources):**

You can contact us in any of the following ways:

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).

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:  
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- By fax: 1-855-900-5557

## **Summary**

NYSOH improperly determined you ineligible for a special enrollment period.

You should have been granted a special enrollment period through NYSOH.

If you are seeking to claim an exemption for 2017, follow the instructions above.

## **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 bɛtumi ama wo obi a okyerɛ kasa a woka no ase ama wo kwa a wontua hwee.

### **(Urdu) اردو**

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم 1-855-355-5777 پر کال کریں۔ ہم آپ کو آپ کی مادری زبان میں ایک مفت مترجم فراہم کر سکتے ہیں۔

### **Tiếng Việt (Vietnamese)**

Đây là tài liệu quan trọng. Nếu quý vị cần trợ giúp để hiểu tài liệu này, vui lòng gọi 1-855-355-5777. Chúng tôi có thể cung cấp thông dịch viên miễn phí nói ngôn ngữ của quý vị.

### **אידיש (Yiddish)**

דאס איז א וויכטיגער דאקומענט. אויב איר דארפט הילף עס צו פארשטיין, ביטע רופט 1-855-355-5777. מיר קענען איר געבן א דאלמענטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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