



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

Notice of Decision

Decision Date: August 21, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016697

[REDACTED]

Dear [REDACTED],

On June 15, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's verbal denial of a special enrollment period.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the Account ID at the top of this notice.

Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

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DEPARTMENT OF HEALTH
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Decision

Decision Date: August 21, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016697



Issue

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

Did NY State of Health (NYSOH) properly determine you did not qualify to enroll in a new qualified health plan outside of the open enrollment period for 2017?

Procedural History

On November 29, 2016, NYSOH received an update application for health insurance submitted on your behalf.

On November 30, 2016, NYSOH issued an eligibility determination notice stating you were eligible to receive up to \$242.00 per month in advance payments of the premium tax credit (APTC), effective January 1, 2017.

Also on November 30, 2016, NYSOH issued an enrollment notice, based on your November 29, 2016 plan selection, confirming you were enrolled in a qualified health plan (QHP) with pediatric dental coverage, effective January 1, 2017.

On January 19, 2017, NYSOH received another updated application for health insurance submitted on your behalf.

On January 20, 2017, NYSOH issued an eligibility determination notice stating you were eligible to receive up to \$242.00 per month in APTC, effective March 1, 2017.

Also on January 20, 2017, NYSOH issued an enrollment notice, based on your January 19, 2017 plan selection, confirming you were enrolled in the same QHP with pediatric dental coverage, effective January 1, 2017.

On March 8, 2017, you contacted NYSOH and attempted to switch your health plan, but you were unable to, because it was outside the open enrollment period.

Also on March 8, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you were not eligible to enroll in a new health plan outside of the open enrollment period.

On June 15, 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 enrolled in a Healthfirst "Silver Leaf Premier" QHP with dental coverage, effective August 1, 2016, with a \$286.05 monthly premium after \$154.00 in APTC was applied.
- 2) On November 19, 2016, you contacted NYSOH to renew your health coverage for the 2017 coverage year. An updated application for health insurance was submitted on your behalf that day and you were determined eligible for an increased amount of APTC, effective January 1, 2017.
- 3) According to your account, on November 19, 2016, you were enrolled in a new QHP for 2017 with a \$211.55 monthly premium after APTC was applied, effective January 1, 2017.
- 4) The enrollment notice issued on November 30, 2016 confirmed you were enrolled in a Healthfirst "Silver Leaf" QHP with pediatric dental coverage, effective January 1, 2017.
- 5) Your coverage through your previous QHP ended December 31, 2017.
- 6) You testified the NYSOH representative assured you on November 29, 2016 that you were being enrolled in a new plan for 2017 and that you qualified for a lower monthly premium, but your coverage would remain the same. You testified that you asked the representative if the new plan had dental coverage and the representative confirmed that the new plan provided the same coverage as your previous plan.

- 7) NYSOH Appeals Unit reviewed the recording of the telephone calls made on November 29, 2016 and confirmed that you were advised you were being enrolled in the same Healthfirst silver level QHP for 2017 and your coverage would not change. There was no discussion regarding whether the new plan provided dental coverage.
- 8) You testified that you never received any letters confirming your enrollment and that you believed the enrollment did not go through. You testified that you thought you did not have health coverage for 2017, so you contacted NYSOH again in January 2017 to enroll in a plan.
- 9) Your account confirms you receive your communication from NYSOH by regular mail.
- 10) You testified the mailing address listed on the November 30, 2016 enrollment confirmation notice was your correct mailing address.
- 11) There is no record of any notice issued to you by NYSOH being returned as undeliverable.
- 12) On January 19, 2017, NYSOH received an updated application submitted on your behalf. Your eligibility remained the same.
- 13) According to your account, on January 19, 2017 your enrollment in the same QHP was updated.
- 14) The enrollment notice issued by NYSOH on January 20, 2017 confirmed you were still enrolled in the same QHP with pediatric dental coverage since January 1, 2017.
- 15) You testified that the representative asked you if you wanted to enroll in the same plan on January 19, 2017 and you confirmed that you did. You testified that you still did not know that the new plan did not provide dental coverage at that time.
- 16) Notes in your account from incident [REDACTED] related to your request for a special enrollment period indicate that NYSOH reviewed the recording of the January 19, 2017 call and confirmed that you indicated you wanted to be enrolled in the same plan and there was no discussion of dental coverage.
- 17) You testified that you did not learn your QHP did not provide dental coverage until you sought dental treatment in March 2017.

- 18) Your account confirms that you contacted NYSOH on March 8, 2017, and requested to enroll in a dental plan, but you were not permitted to do so because it was outside the open enrollment period. An appeal was filed on your behalf the same day.
- 19) The Acknowledgement of Appeal Notice issued on March 9, 2017 indicates the reason for appeal was a “Denial of Special Enrollment Period.”
- 20) Your account confirms that no written notice denying your request for a special enrollment period was ever issued by NYSOH.
- 21) You testified that you are appealing the denial of a special enrollment period to enroll into a new QHP with dental coverage.
- 22) You testified that there have been no significant changes in your household in 2017.

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

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

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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.

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(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 you did not qualify to enroll in a new QHP outside of the open enrollment period for 2017.

You testified that you are appealing the denial of a special enrollment period to enroll into a new QHP 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's 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 Acknowledgement of Appeal Notice listing the reason for appeal as "Denial of a Special Enrollment Period", 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. Although, according to your account, you initially enrolled in a QHP on November 29, 2016, within the open enrollment period, your account confirms you contacted NYSOH on March 8, 2017 to switch plans. This was outside the open enrollment period for 2017.

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.

Your account confirms you were enrolled in a Healthfirst "Silver Leaf Premier" QHP with dental coverage, effective August 1, 2016. You contacted NYSOH on November 29, 2016 to renew your coverage for 2017 and you were determined eligible for an increased amount of APTC. You testified the NYSOH representative informed you that you were being enrolled in a new plan for 2017 and that you qualified for a lower monthly premium, but your coverage would remain the same. A review of the telephone call recording from that day confirms that you were advised you were being enrolled in the same Healthfirst silver level QHP for 2017 and that your coverage would not change; however, there was no discussion regarding whether the new plan provided dental coverage.

Although you testified you never received any notice from NYSOH confirming your enrollment on November 29, 2016, according to your account, NYSOH issued an enrollment confirmation notice on December 30, 2016 stating you were enrolled in a Healthfirst "Silver Leaf" QHP with pediatric dental coverage, effective January 1, 2017. You confirmed the mailing address listed on that notice was your correct mailing address and there is no record of any notice issued to you by NYSOH being returned as undeliverable. Accordingly, it is concluded that NYSOH provided you with proper written confirmation of your enrollment in a QHP for 2017.

Notwithstanding, it is concluded that the NYSOH representative provided you with misinformation at the time of enrollment on November 29, 2016 in that you were advised your coverage in 2017 would remain the same. That was clearly inaccurate, because your previous plan provided dental coverage and your new plan did not. It is concluded that your enrollment in the new plan was the result of misinformation by NYSOH.

Pursuant to the regulations, a special enrollment period can be granted if a qualified individual'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.

It is noted that when you contacted NYSOH on January 19, 2017 and your enrollment in the same plan was updated, this was because you still believed you were reenrolling in your previous plan with dental coverage. Accordingly, your updated enrollment on January 19, 2017 was still the result of the misinformation provided by the previous representative on November 29, 2016. This constituted a triggering event, under the regulations, and you were entitled to a special

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enrollment period of 60 days from January 19, 2017. Since you contacted NYSOH on March 8, 2017, within the special enrollment period to which you were entitled, you should have been permitted to switch your health plan to one with dental coverage.

Therefore, NYSOH's verbal determination that you did not qualify to select a health plan outside of the open enrollment period for 2017 is incorrect, you should have been eligible for a special enrollment period as of January 19, 2017.

Your case is RETURNED to NYSOH to assist you in enrolling into a new QHP. You may choose to enroll into a new QHP as of January 19, 2017, because NYSOH gave you incorrect information. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

Decision

NYSOH's verbal determination that you did not qualify to select a new health plan outside of the open enrollment period for 2017 is incorrect, you should have been eligible for a special enrollment period as of the date of your January 19, 2017 application and plan selection.

Your case is RETURNED to NYSOH to assist you in enrolling into a new QHP. You may choose to enroll into a new QHP as of January 19, 2017, if so choose. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision. You will be responsible for premium payments for any months you are enrolled into coverage.

Effective Date of this Decision: August 21, 2017

How this Decision Affects Your Eligibility

NYSOH improperly denied you a special enrollment period.

Your case is being sent back to NYSOH to allow you to enroll into a new health plan as of January 19, 2017, if you so choose. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

You will be responsible for any premium payments for any months you are enrolled into coverage.

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:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
NY State of Health Appeals
P.O. Box 11729

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Albany, NY 12211

- By fax: 1-855-900-5557

Summary

NYSOH's verbal determination that you did not qualify to select a new health plan outside of the open enrollment period for 2017 is incorrect, you should have been eligible for a special enrollment period as of the date of your January 19, 2017 application and plan selection.

Your case is RETURNED to NYSOH to assist you in enrolling into a new QHP. You may choose to enroll into a new QHP as of January 19, 2017, if so choose. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision. You will be responsible for premium payments for any months you are enrolled into coverage.

NYSOH improperly denied you a special enrollment period.

Your case is being sent back to NYSOH to allow you to enroll into a new health plan as of January 19, 2017, if you so choose. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

You will be responsible for any premium payments for any months you are enrolled into coverage.

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)

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।

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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&etumi ama wo obi a okyerε kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

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

Tiếng Việt (Vietnamese)

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

אידיש (Yiddish)

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

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