



STATE OF NEW YORK
DEPARTMENT OF HEALTH
PO Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: July 11, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016830

[REDACTED]

Dear [REDACTED]

On June 21, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's March 15, 2017 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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Decision

Decision Date: July 11, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016830



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 did not qualify to enroll in a qualified health plan outside of the open enrollment period?

Procedural History

On April 23, 2016, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible for Medicaid, effective April 1, 2016.

On April 26, 2016, NYSOH issued a notice of enrollment confirmation stating that you and your spouse were enrolled in a Medicaid Managed Care plan, effective June 1, 2016.

On November 3, 2016, NYSOH issued a notice of eligibility redetermination stating that you and your spouse were no longer eligible for Medicaid, however your Medicaid coverage would continue until February 28, 2017.

On January 5, 2017, NYSOH issued a renewal notice stating that NYSOH did not have enough information from state and federal sources to determine whether you and your spouse qualified for financial help to pay for your health coverage. The notice directed you to update your account by February 15, 2017 or the financial assistance you are receiving might end.

No updates were made by February 15, 2017.

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On February 16, 2017, NYSOH redetermined your eligibility.

On February 17, 2017 NYSOH issued an eligibility redetermination notice stating that you and your spouse were no longer eligible for insurance through NYSOH because you had not responded to the renewal notice.

Also on February 17, 2017, NYSOH issued a disenrollment notice stating that you and your spouse's Medicaid Managed Care plan coverage was ending February 28, 2017.

On February 24, 2017, you submitted an application for financial assistance. NYSOH records reflect that you and your spouse became eligible for an advance premium tax credit (APTC) on February 24, 2017.

Also on February 24, 2017, NYSOH records reflect that the "Special Enrollment Period" Tab of your NYSOH account stated that you were eligible for a special enrollment period because you were an already enrolled member which became eligible for APTC.

On February 25, 2017, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible for APTC in the amount of \$536.00 per month, effective April 1, 2017.

Also on February 25, 2017, NYSOH issued an enrollment confirmation notice stating that you and your spouse were enrolled in a qualified health plan, with an APTC of \$536.00 resulting in a monthly premium of \$595.14 (after the application of APTC), effective April 1, 2017.

On March 15, 2017, you contacted NYSOH in an attempt to cancel your qualified health plan and enroll yourself and your spouse into a new qualified health plan.

Also, on March 15, 2017, you spoke to NYSOH's Account Review Unit and appealed the denial of a special enrollment period to enroll you and your spouse into a health plan outside of the open enrollment period.

On June 21, 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) NYSOH records reflect that you and your spouse were determined eligible for Medicaid, effective April 1, 2016 and that you were subsequently enrolled in a Medicaid Managed Care plan.

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- 2) NYSOH records reflect that you and your spouse were determined no longer eligible for Medicaid but that your coverage would continue until February 28, 2017.
- 3) On February 24, 2017, you submitted an application for financial assistance. The "Special Enrollment Period" Tab of your NYSOH account stated that you were eligible for a special enrollment period because you were an already enrolled member which became eligible for APTC on February 24, 2017.
- 4) NYSOH records reflect that you and your spouse became eligible for an APTC on February 24, 2017.
- 5) NYSOH records reflect that you and your spouse enrolled in United Healthcare Compass HSA Bronze NS INN Pediatric Dental Dep25 on February 24, 2017, with APTC, effective April 1, 2017.
- 6) You testified that you spoke to a NYSOH representative on February 24, 2017 who advised you that that if you determined that the United Health Care Bronze plan was too expensive, that you could cancel the plan and select a new plan. You testified that could not recall how long that the representative told you that you had to change plans.
- 7) You testified that your premium payment after the application of APTC was too expensive for your United Health Care Bronze plan and that you decided to cancel your existing the health plan and enroll in a less expensive plan.
- 8) You testified that you contacted NYSOH on March 15, 2017 to cancel your plan and to choose a new plan and was advised by a NYSOH representative that you could not change plans because it was outside of the open enrollment period.
- 9) NYSOH filed Incident Report Number [REDACTED] on March 15, 2017 based on your telephone conversation with a NYSOH representative on that date. An update to that report on April 14, 2017 was made which stated that you called NYSOH on that date, that you asked if there was any new information and stated that you and your spouse were still without health coverage.
- 10) You testified that you did not pay the premiums for your United Healthcare Bronze plan and that your coverage lapsed.
- 11) You testified that you and your spouse have been without health insurance since March 1, 2017.

12) You testified that you are appealing the March 15, 2017 verbal denial of a special enrollment period to enroll into a health plan through NYSOH.

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 enrollment to another plan. This is generally permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent either:
 - (i) Loses minimum essential coverage.
 - (ii) Is enrolled in any non-calendar year group health plan or individual health insurance coverage, even if the qualified individual or his or her dependent has the option to renew such coverage.
 - (iii) Loses pregnancy-related coverage.

(iv) Loses medically needy coverage as described under section 1902(a)(10)(C) of the Social Security Act only once per calendar year.

(2)(i) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care, or through a child support order or other court order.

(ii) the enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation as defined by State law in the State in which the divorce or legal separation occurs, or if the enrollee, or his or her dependent, dies.

(3) The qualified individual, or his or her dependent, becomes newly eligible for enrollment in a qualified health plan because he or she gains citizenship, status as a national, or lawful present or is no longer incarcerated.

(4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities.

(5) The enrollee or, his or her dependent adequately demonstrates to NYSOH that the qualified health plan in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;

(6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions.

(7) The qualified individual or enrollee, or his or her dependent, gains access to new qualified health plan as a result of a permanent move and either—

(i) Had minimum essential coverage for one or more days during the 60 days preceding the date of the permanent move, or

(ii) Was living outside of the United States or in a United States territory at the time of the permanent move;

(8) The qualified individual or dependent who gains or maintains status as an Indian may enroll in a qualified health plan or change from one plan to another, once per month.

(9) The qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide;

(10) A qualified individual or enrollee—

(i) Is a victim of domestic abuse or spousal abandonment, including a dependent or unmarried victim within a household, is enrolled in minimum essential coverage and seeks to enroll in coverage separate from the perpetrator of the abuse or abandonment; or

(ii) Is a dependent of a victim of domestic abuse or spousal abandonment, on the same application as the victim, may enroll in coverage at the same time as the victim;

(11) A qualified individual or dependent—

(i) Applies for coverage through NYSOH during the annual open enrollment period or due to a qualifying event, is assessed as potentially eligible for Medicaid or Child Health Plus and is determined ineligible for Medicaid or Child Health Plus either after open enrollment has ended or more than 60 days after the qualifying event; or

(ii) Applies for coverage at their Local Department of Social Services or Human Resources Administration during the annual open enrollment period, and is determined ineligible for Medicaid or Child Health Plus after open enrollment has ended;

(12) The qualified individual or enrollee, or his or her dependent, adequately demonstrates to NYSOH that a material error related to plan benefits, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a qualified health plan; or

(13) At the option of NYSOH, the qualified individual provides satisfactory documentary evidence to verify his or her eligibility for an insurance affordability program or enrollment following termination of enrollment due to a failure to verify such status within 90 days.

(45 CFR § 155.420(d)).

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a qualified health plan (45 CFR § 155.420(c)(1)).

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 did not qualify to enroll in a qualified health plan outside of the open enrollment period as of March 15, 2017.

You testified that you are appealing the denial of a special enrollment period to enroll into a health plan through NYSOH. However, the record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period.

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Your credible testimony 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 through January 31, 2017. The record reflects that you submitted a complete application on February 24, 2017. Therefore, you did not submit your application during the open enrollment period.

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 by NYSOH. To qualify for a special enrollment period, a person must experience a triggering event.

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 and your spouse became newly eligible for advance payments of the premium tax credits (APTC) on February 24, 2017, which is considered a triggering life event, and allowed you to enroll in your plan.

When a triggering life event occurs, the qualified individual has sixty days from the date of that event to select a qualified health plan, or to change to another.

Sixty days from February 24, 2017 was April 25, 2017, and you and your spouse should have been allowed to select a health plan or to change to another until April 25, 2017.

You credibly testified that you attempted to select a different health plan on March 15, 2017, but were prevented from doing so. Also on March 15, 2017, a NYSOH representative verbally advised you that you and your spouse did not qualify to select a health plan outside of the open enrollment period. However, the special enrollment period already granted by NYSOH did not expire until April 25, 2017.

Therefore, NYSOH's March 15, 2017 verbal denial of your request to change your health plan was incorrect and is **RESCINDED**. You and your spouse qualified to select a health plan outside of the open enrollment period at that time.

You are given a special enrollment period of 60 days for the date of this decision in which to enroll in a plan. Your case is **RETURNED** to the NYSOH to facilitate you and your spouse's enrollment in the plan of your choice, effective as early as April 1, 2017, the first day your enrollment could have been effective had you been allowed to enroll in a plan on March 15, 2017.

Decision

The March 15, 2017 verbal denial of a special enrollment period was incorrect and is **RESCINDED**.

You are given a special enrollment period of 60 days for the date of this decision in which to enroll in a plan. Your case is **RETURNED** to the NYSOH to facilitate you and your spouse's enrollment in the plan of your choice, effective as early as April 1, 2017, the first day your enrollment could have been effective had you been allowed to enroll in a plan on March 15, 2017.

Effective Date of this Decision: July 11, 2017

How this Decision Affects Your Eligibility

You and your spouse should have been permitted to change your enrollment when you called on March 15, 2017. You will now be allowed to enroll in another plan, outside of the open enrollment period.

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
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The March 15, 2017 verbal denial of a special enrollment period was incorrect and is RESCINDED.

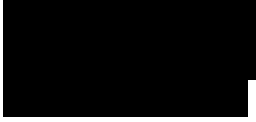
You are given a special enrollment period of 60 days for the date of this decision in which to enroll in a plan. Your case is RETURNED to the NYSOH to facilitate you and your spouse's enrollment in the plan of your choice, effective as early as April 1, 2017, the first day your enrollment could have been effective had you been allowed to enroll in a plan on March 15, 2017.

You and your spouse should have been permitted to change your enrollment when you called on March 15, 2017. You will now be allowed to enroll in another plan, outside of the open enrollment period.

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 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 bεtumi 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 איך געבן א דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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