



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

## Notice of Decision

Decision Date: August 9, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000016845

[REDACTED]

Dear [REDACTED]

On June 22, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's January 14, 2017 disenrollment notice and the March 4, 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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## Decision

Decision Date: August 9, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000016845

[REDACTED]

## Issues

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

Does the Appeals Unit of NY State of Health (NYSOH) have the authority to review whether NYSOH properly terminated enrollment for you and your spouse, effective January 1, 2017, for non-payment of the premium?

Did NYSOH properly determine that you and your spouse did not qualify to enroll in a qualified health plan outside of the open enrollment period for 2017?

## Procedural History

On December 15, 2016, NYSOH received an updated application for health insurance submitted on behalf of you and your spouse.

On December 16, 2016, NYSOH issued an eligibility determination notice stating you and your spouse were eligible to receive an advance premium tax credit (APTC) of up to \$465.00 per month, effective January 1, 2017.

Also on December 16, 2016, NYSOH issued an enrollment notice confirming you and your spouse were enrolled in a qualified health plan (QHP) with a \$269.07 monthly premium, effective January 1, 2017.

On January 13, 2017, NYSOH issued an eligibility determination notice, based on your January 12, 2017 updated application, stating you and your spouse were eligible to receive APTC of up to \$465.00 per month, effective February 1, 2017.

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Also on January 13, 2017, NYSOH issued an enrollment notice confirming you and your spouse were enrolled in a QHP since January 1, 2017.

On January 14, 2017, NYSOH issued a disenrollment notice stating the enrollment of you and your spouse was terminated, effective January 1, 2017, because you did not pay your insurance bill by the payment deadline.

On March 4, 2017, NYSOH issued an eligibility determination notice, based on your March 3, 2017 updated application, stating you and your spouse were eligible to receive APTC of up to \$443.00 per month, effective April 1, 2017. The notice also stated that you and your spouses did not qualify to select a health plan outside of the open enrollment period for 2017.

On March 15, 2017, NYSOH received the updated application for health insurance submitted on behalf of you and your spouse. That day, a preliminary eligibility determination was prepared stating that although you and your spouse were eligible to receive up to \$445.00 in APTC, effective April 1, 2017, you and your spouse did not qualify to select a health plan outside the open enrollment period for 2017.

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

On March 16, 2017, NYSOH issued an eligibility determination notice, based on your March 15, 2017 updated application, stating you and your spouse were eligible to receive APTC of up to \$443.00 per month, effective April 1, 2017. The notice also stated that you and your spouse did not qualify to select a health plan outside of the open enrollment period for 2017.

On June 22, 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 QHP, effective January 1, 2017.
- 2) At the hearing, you acknowledged that you did not make the January 2017 premium payment to the health plan by the payment due date.

- 3) You testified you contacted the health plan to make the January 2017 premium payment, after the due date, and you were advised by a plan representative that your coverage had already been terminated for non-payment. You testified the representative advised you to contact NYSOH to reapply for coverage, and then you could make a payment and you and your spouse could be reinstated for February 2017.
- 4) You testified you contacted NYSOH and reapplied for insurance for you and your spouse.
- 5) Your account confirms that an updated application was submitted on behalf of you and your spouse on January 12, 2017. The information in that application was identical to the information in the previous application.
- 6) The enrollment notice issued by NYSOH on January 13, 2017 confirmed you and your spouse were enrolled in a QHP since January 1, 2017.
- 7) You testified you made a premium payment to the health plan the following day which they accepted. You testified you believed you were making a payment for the February 2017 premium, because you were advised your January 1, 2017 enrollment had already been cancelled.
- 8) Your account confirms that the health plan initiated termination of the January 1, 2017 enrollment for you and your spouse on January 13, 2017 for non-payment of the January 2017 premium.
- 9) On February 15, 2017, NYSOH acknowledged you had multiple accounts and a request to make account [REDACTED] inactive was submitted. The same day, an updated application was submitted on your behalf on account [REDACTED] indicating you were no longer seeking health insurance under that account.
- 10) Account [REDACTED] confirms that an updated application was submitted on behalf of you and your spouse on March 3, 2017. NYSOH denied you and your spouse a special enrollment period to reenroll into a health plan.
- 11) Another updated application was submitted on behalf of you and your spouse on March 15, 2017. Again, NYSOH denied you and your spouse a special enrollment period to reenroll into a health plan.
- 12) An appeal was filed on behalf of you and your spouse on March 15, 2017 insofar as you and your spouse were not eligible for a special enrollment period to reenroll into a health plan for 2017.

- 13) You testified the health plan has since reimbursed you for the premium payment made in January 2017.
- 14) You testified there have been no significant changes in your household since applying for health insurance.
- 15) You are seeking insurance for you and your spouse.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

## **Applicable Law and Regulations**

### Appealable Issues

An applicant has the right to appeal to NYSOH's Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) failure by NYSOH to provide timely notice of an eligibility determination 45 CFR § 155.505; and (4) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

### 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.

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(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)).

## **Legal Analysis**

The first issue under review is whether the Appeals Unit of NYSOH has the authority to review whether NYSOH properly terminated enrollment for you and your spouse, effective January 1, 2017, for non-payment of the premium. Pursuant to the regulations, the New York State of Health Appeals Unit only has the authority to review issues related to the following: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) a failure by NYSOH to provide timely notice of an eligibility determination, and (4) a denial of a special enrollment period.

Since the Appeals Unit is not given the authority to review termination of enrollment due to non-payment of premiums, we cannot reach the merits as to whether you and your spouse were properly disenrolled from your health plan for non-payment of premiums. Therefore, your appeal of the January 14, 2017 disenrollment notice is **DISMISSED** as a non-appealable issue.

The second issue under review is whether NYSOH properly determined that you and your spouse did 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. Your account confirms that on January 13, 2017 you contacted NYSOH and an updated application for health insurance was submitted on behalf of you and your spouse. This was within the open enrollment period for 2017.

You testified that you contacted NYSOH on January 12, 2017 to reapply for health insurance for you and your spouse, because you had been advised by your health plan that your enrollment had already been terminated due to non-payment of the January 2017 premium. Your testimony is corroborated by the evidence, specifically the fact that the information in the January 13, 2017

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application was identical to the information in the previous application. Accordingly, there would be no reason for you to submit an updated application unless you had already been advised by the health plan that your enrollment had already been cancelled and you needed to reapply.

Your account confirms that your health plan did not initiate termination of the January 1, 2017 enrollment until January 13, 2017, the day after you had submitted the new application. Since your enrollment had not been cancelled by the health plan at the time of your January 12, 2017 application, you were not given a new enrollment; instead, your January 1, 2017 enrollment was simply confirmed.

Given the totality of the evidence, including your credible testimony, it is concluded that it was an error on the part of the health plan to advise you that your enrollment had been terminated prior to actually initiating termination of your enrollment with NYSOH. Had the health plan properly advised you to wait until after January 13, 2017, the date the plan initiated termination of your enrollment with NYSOH, to reapply for health coverage, you would have had sufficient time left in the open enrollment period for 2017 to enroll you and your spouse in a new plan for 2017 with coverage, potentially, effective as early as February 1, 2017.

Accordingly, the credible evidence of record establishes that your January 12, 2017 application for health insurance was submitted prior to the expiration of the open enrollment period and, due to error on the part of the health plan your application was not properly processed. Pursuant to the regulations, this error constituted a triggering event, qualifying you for a special enrollment period for 60 days from the date of that event to select a qualified health plan.

The evidence establishes that you contacted NYSOH as early as February 15, 2017 to attempt to reenroll you and your spouse in a QHP. This was within the 60-day special enrollment period to which you were entitled. Additionally, the March 4, 2017 eligibility determination notice stating you and your spouse were not eligible to enroll in a health plan outside the open enrollment period was also issued within the 60-day special enrollment period to which you were entitled.

Accordingly, the March 4, 2017 eligibility determination, to the extent it stated you and your spouse were not eligible to enroll in a health plan outside of the open enrollment period, is not correct and is **RESCINDED**.

Your case is **RETURNED** to NYSOH to assist you and your spouse in enrolling into a new QHP. You and your spouse may choose to enroll into a new QHP, as early as January 12, 2017, the date your new enrollment should have been processed. In the alternative, you and your spouse may elect to enroll into coverage from this point forward. You have 60 days from the date of this decision to select a plan and enroll.

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).

## **Decision**

Your appeal on the issue of disenrollment for non-payment of premium as described in the January 14, 2017 disenrollment notice is **DISMISSED**.

The March 4, 2017 eligibility determination, to the extent it stated you and your spouse were not eligible to enroll in a health plan outside of the open enrollment period, is not correct and is **RESCINDED**.

Your case is **RETURNED** to NYSOH to assist you and your spouse in enrolling into a new QHP. You and your spouse may choose to enroll into a new QHP, as of January 12, 2017, the date your new enrollment should have been processed. In the alternative, you and your spouse may elect to enroll into coverage within 60 days from the date of this decision.

**Effective Date of this Decision:** August 9, 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 and your spouse to enroll into coverage as of January 12, 2017, if you so choose. In the alternative, you and your spouse 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

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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 4, 2017 eligibility determination to the extent it stated you and your spouse were not eligible to enroll in a health plan outside of the open enrollment period is not correct and is **RESCINDED**.

Your case is **RETURNED** to NYSOH to assist you and your spouse in enrolling into a new QHP. You and your spouse may choose to enroll into a new QHP, as of January 12, 2017, the date your new enrollment should have been processed.

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In the alternative, you and your spouse may elect to enroll into coverage within 60 days from the date of this decision.

NYSOH improperly denied you a special enrollment period.

Your case is being sent back to NYSOH to allow you and your spouse to enroll into coverage as of January 12, 2017, if you so choose. In the alternative, you and your spouse 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 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 דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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