



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

Notice of Decision

Decision Date: July 03, 2017

NY State of Health Account ID [REDACTED]
Appeal Identification Number: AP000000017131



Dear [REDACTED],

On June 26, 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: July 03, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000017131



Issue

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

Did NY State of Health (NYSOH) properly determine that you and your spouse do not qualify to change enrollment in a qualified health plan outside of the open enrollment period?

Procedural History

On January 28, 2016, NYSOH issued a notice of enrollment confirmation stating that you and your spouse were enrolled in the MVP Premier Silver ST INN qualified health plan, effective January 1, 2016.

On October 11, 2016, you updated your household's application for financial assistance.

On October 12, 2016, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to purchase a qualified health plan at full cost through NYSOH, effective November 1, 2016.

On October 25, 2016, NYSOH issued a notice of enrollment confirmation stating that you and your spouse were enrolled in the MVP Premier Silver ST INN qualified health plan, as of January 1, 2016.

On November 17, 2016, NYSOH issued a notice that it was time to renew your household's health insurance for the upcoming coverage year. That notice stated that, based on information from federal and state sources, NYSOH could not

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make a decision about whether you or your spouse would qualify for financial help paying for your health coverage, and that you needed to update your account by December 15, 2016 or you might lose the financial assistance you were currently receiving.

On November 27, 2016, NYSOH issued a disenrollment notice stating that your and your spouse's enrollment in your MVP Premier Silver ST INN qualified health plan would end on December 31, 2016.

On November 30, 2016, NYSOH received your household's application for health insurance.

On December 1, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible to purchase a qualified health plan at full cost through NYSOH, effective January 1, 2017.

Also on December 1, 2016, NYSOH issued a notice of enrollment confirmation, based on your plan selection on November 30, 2016, stating that you and your spouse were enrolled in the MVP Premier Plus Silver 2 NS INN qualified health plan, effective January 1, 2017.

On March 22, 2017, you attempted to change the qualified health plan you and your spouse were enrolled in, but were unable to.

Also on March 22, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you and your spouse were not eligible to change enrollment in a health plan outside of the open enrollment period.

As a result of the March 22, 2017 contact with NYSOH's Account Review Unit, an incident [REDACTED] was created, stating that you were seeking a special enrollment period in order to change qualified health plans outside of the open enrollment period.

On March 23, 2017, NYSOH issued a notice to confirm your appeal request from the previous day. That notice stated that the reason for your appeal was "The wrong plan was selected."

On June 26, 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 testified that you are appealing the denial of a special enrollment period to change your and your spouse's enrollment in a qualified health plan through NYSOH.
- 2) The record reflects that you and your spouse were enrolled in the MVP Premier Silver ST INN qualified health plan as of January 1, 2016 and that this enrollment continued until December 31, 2016.
- 3) You testified that in October 2016 you spoke with an NYSOH representative and updated your household's application for health insurance. You further testified that during this update, you requested to remain enrolled in your same MVP silver level qualified health plan. You further explained that at that time, you thought you were updating your coverage for 2017.
- 4) Following the October 2016 update, NYSOH issued the October 25, 2016 enrollment notice stating that you and your spouse remained enrolled in the MVP Premier Silver ST INN qualified health plan with a plan enrollment start date of January 1, 2016.
- 5) You then testified that in December 2016 you spoke with an NYSOH representative who advised you that the October 2016 update was processed too early to be for your 2017 coverage. You went on to testify that you again told this NYSOH representative that you wanted to remain in the same MVP silver level qualified health plan and you believe this representative selected the wrong MVP silver level qualified health plan on your behalf.
- 6) During the hearing, you gave permission for the Hearing Officer to listen to recordings of phone calls between yourself and NYSOH.
- 7) You confirmed that your user name is [REDACTED].
- 8) On November 30, 2016, you placed a phone call to NYSOH. The recording of that phone call reveals that you were calling in response to the November 27, 2016 disenrollment notice. The NYSOH representative advised you that when you submitted your application in October 2016, it was too early to renew for 2017, and that you would need to update your application. You did not process an application over the phone with the NYSOH representative, and instead, discussed how to go about submitting an application on-line.

- 9) Your NYSOH account reflects that on November 30, 2016 user [REDACTED] completed an application and selected a qualified health plan for enrollment.
- 10) On December 1, 2016, NYSOH issued a notice of enrollment indicating that the plan that was selected for enrollment on November 30, 2016 was the MVP Premier Plus Silver NS INN qualified health plan.
- 11) On December 2, 2016, you placed a phone call to NYSOH. A review of the recording of that phone call reveals that you were calling regarding your and your spouse's ineligibility for financial assistance. The NYSOH representative went through the application questions with you and submitted an updated application. Your and your spouse's plan enrollment was not addressed during that phone call.
- 12) Your NYSOH account reflects that following the December 2, 2016 application, no changes were made to your and your spouse's qualified health plan enrollment.
- 13) On January 17, 2017, you placed a phone call to NYSOH. A review of the recording of that phone call reveals that you were calling because you were advised that you and your spouse had no coverage. The NYSOH representative advised you that the NYSOH system was showing that you and your spouse were enrolled in an MVP silver level qualified health plan which you selected yourself on-line. You confirmed that you had selected the plan yourself on-line. The NYSOH representative then provided you with a confirmation number and directed you to contact MVP directly.
- 14) You testified that you were confused regarding your and your spouse's enrollment because there were several MVP silver level qualified health plans available.
- 15) You testified that you did not realize that you and your spouse were enrolled into the wrong MVP silver level qualified health plan until March 2017, as you and your spouse were out of state for eight weeks beginning in January 2017.
- 16) On March 22, 2017, you attempted to change your and your spouse's enrollment into a different qualified health plan.
- 17) You testified that there have been no major changes to your household, such as a birth, death, marriage, adoption, permanent move, or change in household income.

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.

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(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 issue under review is whether NYSOH properly determined that you and your spouse do not qualify to change enrollment in a qualified health plan outside of the open enrollment period.

You testified that you are appealing the denial of a special enrollment period to change enrollment in 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 along with the incident [REDACTED] filed March 22, 2017 indicating that you were requesting a special enrollment period, and the March 23, 2017 appeal confirmation notice stating that the reason for your appeal was “The wrong plan was selected”, permits an inference that NYSOH did deny your special enrollment request.

Since the Appeals Unit’s 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. On March 22, 2017, you requested to change your and your spouse’s enrollment in a qualified health plan. Also on March 22, 2017 NYSOH denied this request stating that you and your spouse do not qualify to enroll in a qualified health plan outside of the open enrollment period.

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 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

You testified that an NYSOH representative selected the wrong MVP silver level qualified health plan on your behalf. However, the record reflects that you

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accessed your NYSOH account on-line on November 30, 2016 and you selected a different MVP silver level qualified health plan than you and your spouse had previously been enrolled in.

Since you are not an instrumentality or agent of NYSOH, the record does not indicate that NYSOH, by action or inaction, made an error or misrepresented information, a special enrollment period cannot be granted.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2017, no other triggering events have occurred that would qualify you or your spouse for a special enrollment period.

Therefore, NYSOH's denial of a special enrollment period to select a health plan outside of the open enrollment period for 2017 is AFFIRMED.

Decision

NYSOH's denial of a special enrollment period to select a health plan outside of the open enrollment period for 2017 is AFFIRMED.

Effective Date of this Decision: July 03, 2017

How this Decision Affects Your Eligibility

You and your spouse do not qualify for a special enrollment period at this time.

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)).

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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

NYSOH's denial of a special enrollment period to select a health plan outside of the open enrollment period for 2017 is **AFFIRMED**.

You and your spouse do not qualify for a special enrollment period at this time.

Legal Authority

We are issuing this determination in accordance with 45 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).

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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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. y&b&tumi ama wo obi a okyerE kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

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

Tiếng Việt (Vietnamese)

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

שׂוֹדִישׁ (Yiddish)

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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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