

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

Notice of Decision

Decision Date: July 10, 2017

NY State of Health Account ID:

Appeal Identification Number: AP00000017265



On July 5, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's determination that your spouse was not eligible to enroll in a qualified health plan outside of the 2017 open 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.



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

Decision

Decision Date: July 10, 2017

NY State of Health Account ID:

Appeal Identification Number: AP00000017265



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 your spouse did not qualify to enroll in a qualified health plan (QHP) outside of the 2017 open enrollment period?

Procedural History

On December 7, 2016, NYSOH received your updated application for health insurance, which requested financial assistance.

On December 8, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible to receive up to \$182.00 per month in advance payments of the premium tax credit (APTC), for a limited time, effective January 1, 2017. It further stated that you needed to provide documentation of your income by March 7, 2017 to confirm the information in your application.

Also on December 8, 2016, NYSOH issued a notice of enrollment confirmation, confirming that you and your spouse were enrolled in a couple's silver-level QHP through MVP, with an enrollment start date of January 1, 2017. The notice further stated that your APTC would be applied to your monthly premium beginning January 1, 2017.

No income documentation was received by NYSOH by the March 7, 2017 deadline.

On March 14, 2017, NYSOH redetermined your household's eligibility for financial assistance.

On March 15, 2017, NYSOH issued a notice of eligibility determination stating that you were newly eligible to purchase a QHP at full cost, effective April 1, 2017. That same notice stated that your spouse was eligible for \$0.00 in APTC, effective April 1, 2017.

That same day, NYSOH issued a disenrollment notice stating that your spouse was disenrolled from your MVP silver-level QHP as of March 31, 2017, because was no longer eligible to enroll in that plan.

Also on March 15, 2017, NYSOH issued a notice of enrollment confirmation stating that you were enrolled in an MVP silver-level QHP at full cost, with a monthly premium of \$378.61.

On March 24, 2017, you spoke to NYSOH's Account Review Unit and appealed, insofar as NYSOH would not let your spouse re-enroll into coverage for 2017.

On March 25, 2017, NYSOH issued a notice to confirm your appeal request from the previous day. That notice stated that the reason for your appeal was "denial of Special Enrollment Period (SEP)."

On July 5, 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) On December 7, 2016, you submitted an application to NYSOH for health insurance.
- 2) On December 8, 2016, NYSOH issued a notice stating that you and your spouse were eligible for up to \$182.00 in APTC. However, on the first page, it stated "You are eligible for a limited time because more information is needed to confirm the information in your application. See the section 'Request for Additional Information to Confirm Your Eligibility' for what you need to send to NY State of Health to confirm your eligibility." On page three of the notice, it stated "Please provide proof of **Income** by **March 7, 2017** for: (Emphasis in original).

- 3) You testified that you applied for insurance on December 7, 2016, over the phone with NYSOH, and were never informed that you needed to supply income documentation.
- 4) You testified that you received the December 8, 2016 eligibility determination notice, but that you also received two other notices from NYSOH that day, and that you did not read each notice in its entirety. You testified that you did not notice that you were asked to submit documentation, as that information did not appear until page four of one of the notices.
- 5) You testified that you did not realize that you were supposed to submit income documentation until you received a notice on March 14 or 15, 2017, stating that your spouse's coverage was cancelled because you had not submitted proof of your income.
- 6) You testified that you contacted NYSOH because you were very upset, and because you had not realized that NYSOH was waiting for income documentation.
- 7) You testified that you asked the NYSOH representative if you could submit income documentation at that point, and were told that you could not because it was past the due date.
- 8) You testified that you asked the NYSOH representative if you and your spouse could enroll in a full cost QHP together instead, and were told that was not possible because you needed a qualifying event to enroll in coverage outside of open enrollment.
- 9) You testified that you were told by the NYSOH representative that you spoke with that your only option was to file an appeal, and so you did.
- 10) You testified that you also have no current health insurance coverage.
- 11) You testified that you received bills from MVP for your coverage for April and May 2017, but you did not maintain your coverage because it was more expensive for you to be enrolled on your own, and your spouse needed coverage, too.
- 12) You testified that MVP went paperless, and you never logged into your account, so you do not know if any further bills or letters were sent.
- 13) You testified that you have not received anything in the mail stating that your coverage was cancelled at any point.

- 14) You testified that the last premium payment you made for any health insurance coverage was the March 2017 premium payment for your couple's QHP.
- 15) You testified that, at this point, you are looking for you and your spouse to be able to enroll in coverage together, beginning August 1, 2017.
- 16) You testified that you are no longer seeking financial assistance with that coverage.

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

Applicable Law and Regulations

De Novo Review

The 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 QHP and enrollees may change QHPs (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 QHP, 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 QHP 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 nonenrollment 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.
- (5) The enrollee or, his or her dependent adequately demonstrates to NYSOH that the QHP 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 APTC, or change in eligibility for cost-sharing reductions.
- (7) The qualified individual or enrollee, or his or her dependent, gains access to new QHP 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 QHP 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 QHP; 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 QHP (45 CFR § 155.420(c)(1)).

Legal Analysis

The issue under review is whether NYSOH properly determined that your spouse does not qualify to enroll in a QHP outside of the 2017 open enrollment period.

You testified that you are appealing the denial of a special enrollment period to enroll into a health plan through NYSOH for your spouse and yourself. 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 March 25, 2017 appeal confirmation notice stating that the reason for your appeal was "denial of SEP," 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. On December 7, 2016, you submitted an application for health insurance, and a request to enroll in a QHP, on behalf of yourself and your spouse. Therefore, your initial application and enrollment were completed during the 2017 open enrollment period.

However, the December 8, 2016 eligibility determination stated that your eligibility was for a limited time, and that you needed to submit documentation of your income by March 7, 2017. Since that documentation was not received by that date, NYSOH redetermined your, and your spouse's, eligibility.

As you have testified that you are no longer seeking financial assistance with the cost of your health insurance, there is no reason to analyze the issue of your failure to submit income documentation. However, it is relevant to mention that your spouse's disenrollment from coverage occurred when NYSOH redetermined your and your spouse's eligibility, after income documentation was not received by the March 7, 2017 deadline.

Once the annual open enrollment period ends, a qualified individual or enrollee must qualify for a special enrollment period enroll in, or change to another health plan offered in NYSOH. 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 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.

The record reflects that, on March 14, 2017, NYSOH redetermined your household's eligibility. As a result, you were determined eligible to purchase a QHP only at full cost because income documentation had not been received by NYSOH. However, although your spouse should have shared this eligibility, NYSOH separately determined that was eligible to receive \$0.00 in APTC. Therefore, even though you were re-enrolled into a full cost QHP following the removal of your APTC, your spouse was not similarly re-enrolled.

You testified that on March 24, 2017, you spoke to a representative from NYSOH who told you that it was too late to submit income documentation at all, and that your spouse could not re-enroll in coverage because did not qualify for a special enrollment period, as did not have a triggering even that would qualify for one.

First, the Appeals Unit finds that you should have been allowed to submit income documentation when you spoke to NYSOH on March 24, 2017. Ordinarily, a late submission of income documentation would cause only a gap in the receipt of APTC, but would not cause a gap in enrollment, assuming you and your spouse remained enrolled in a QHP.

However, in this case, NYSOH erroneously analyzed your and your spouse's eligibility separately, and incorrectly disenrolled your spouse from coverage. This mistake on NYSOH's part in disenrolling your spouse was a mistake, and is a qualifying event and a basis for a special enrollment period. Therefore, NYSOH improperly determined that your spouse could not re-enroll in coverage outside of the open enrollment period. NYSOH also erred in telling you that you could not submit income documentation after a deadline, although this alone should not have affected enrollment.

Because the record indicates that your spouse's disenrollment from his QHP was the direct result of errors made by NYSOH, your household should have been granted a special enrollment period when you contacted NYSOH on March 24, 2017.

Therefore, your household is eligible for a special enrollment period. Your case is RETURNED to NYSOH to assist you and your spouse in enrolling into a full cost QHP. You may choose to enroll into a QHP as of April 1, 2017, because NYSOH's error caused your spouse's disenrollment as of that date. In the alternative, you may elect to enroll into coverage from this point forward.

In either case, you have sixty (60) days from the date of this decision to select a full cost QHP for enrollment.

NYSOH's failure to grant you a special enrollment period resulted in you and your spouse being without insurance coverage for part of the 2017 coverage year.

Sometimes after an appeal decision, an appellant can claim an exemption from the requirement to have health insurance. You might qualify for a health coverage exemption in 2017 if you did not have health coverage while you were waiting for an appeal decision about coverage eligibility or savings and your appeal was eventually successful.

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

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

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

Decision

Your spouse should not have been disenrolled from coverage. Having been disenrolled in error, was eligible for a special enrollment period when you called in March 2017. Your household is now again eligible for a special enrollment period based on these errors.

Your case is RETURNED to NYSOH to assist you and your spouse in enrolling into a full-cost QHP. You may choose to enroll into a QHP as of April 1, 2017. In the alternative, you may elect to enroll into coverage from this point forward.

You have 60 days from the date of this decision to select a QHP for enrollment.

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

Effective Date of this Decision: July 10, 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 at full cost, as of April 1, 2017, if you so choose. In the alternative, you may elect to enroll into coverage from this point forward.

You have 60 days from the date of this decision to select a health plan for enrollment.

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

You will be responsible for premiums for any month in which you are enrolled in coverage.

You may wish to apply for an exemption with HHS as discussed above.

If You Disagree with this Decision (Appeal Rights)

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

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

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

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

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:

Health Insurance Marketplace Attn: Appeals 465 Industrial Blvd. London, KY 40750-0061

By fax: 1-877-369-0129

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

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

You can contact us in any of the following ways:

- 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

Your household was eligible for a special enrollment period as of April 1, 2017.

Your case is RETURNED to NYSOH to assist you and your spouse in enrolling into a full-cost QHP. You may choose to enroll into a QHP as of April 1, 2017. In the alternative, you may elect to enroll into coverage from this point forward.

You have 60 days from the date of this decision to select a QHP for enrollment.

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 and your spouse to enroll into coverage at full cost, as of April 1, 2017, if you so choose. In the alternative, you may elect to enroll into coverage from this point forward.

You have 60 days from the date of this decision to select a health plan for enrollment.

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

You will be responsible for premiums for any month in which you are enrolled in coverage.

You may wish to apply for an exemption with HHS as discussed above.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:



Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

中文 (Traditional Chinese)

這是重要的文件。 如果您需要獲得關於瞭解文件內容方面的協助 · 請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件,请打电话至 **1-855-355-5777**。我们可以为您免费提供相应语种的口译服务。

Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

(Arabic)العربية

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 5777-355-455-1. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجانًا.

□□□□□ (Bengali)

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 महत्त्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई नि:शुल्क 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. yebetumi ama wo obi a okyere kasa a woka no ase ama wo kwa a wontua hwee.

اردو(Urdu)

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم5777-355-855-1 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)

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