



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

Notice of Decision

Decision Date: August 24, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000017343

[REDACTED]

Dear [REDACTED],

On July 17, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health’s March 17, 2017 cancellation notice and March 22, 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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Decision

Decision Date: August 24, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000017343



Issues

The issues 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 the termination of your coverage in your qualified health plan (QHP) for failure to pay your premium by the payment deadline?

Did NYSOH properly determine that you do not qualify to enroll in a QHP outside of the 2017 open enrollment period, effective May 1, 2017?

Procedural History

On January 29, 2017, NYSOH received your updated application for health insurance.

On January 30, 2017, NYSOH issued an eligibility determination notice stating you were eligible to receive advance payments of the premium tax credit (APTC) of up to \$256.00 per month for a limited time, effective March 1, 2017.

On January 31, 2017, NYSOH issued an enrollment confirmation notice, based on your January 30, 2017 plan selection, stating you were enrolled in a Healthfirst silver-level QHP with a monthly premium of \$197.57, after the application of your APTC, beginning March 1, 2017.

On March 17, 2017, NYSOH issued a cancellation notice stating your enrollment in your QHP was terminated, effective March 1, 2017, because your health plan had not received your premium payment by the payment deadline.

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On March 21, 2017, NYSOH received your updated application for health insurance.

On March 22, 2017, NYSOH issued an eligibility determination notice stating you were eligible to receive up to \$256.00 per month in APTC, effective May 1, 2017. It further stated that you did not qualify to select a health plan outside of the open enrollment period for 2017.

On March 27, 2017, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination, insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On July 17, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing closed at the end of the hearing.

Findings of Fact

A review of the record supports the following findings of fact:

- 1) You were enrolled in a Healthfirst silver-level QHP for the 2017 coverage year with a monthly premium of \$197.57, beginning March 1, 2017.
- 2) You testified that you did not receive an invoice from the health plan until one week before the due date. You testified that when you received the invoice you tried to pay the bill online, but you were not able to do so due to an issue with the system.
- 3) You testified you tried contacting the health plan several times, but you were placed on hold for excessive amounts of time and never able to speak with a representative.
- 4) You testified you finally reached a representative for the health plan by phone and you were told that you had to mail in the first payment. You testified that this conversation occurred past the March 1, 2017 due date, so you did not mail in a payment.
- 5) You testified you later received a letter from the health plan indicating you had been granted an extension to pay the first premium payment, but you did not receive this notice until after the extended due date.
- 6) You testified you did not make a premium payment to the health plan.

- 7) According to your account, the health plan initiated termination of your coverage on March 16, 2017 and your enrollment was terminated, effective March 1, 2017.
- 8) Your account confirms that you contacted NYSOH on March 21, 2017 and an updated application was submitted on your behalf that day.
- 9) NYSOH determined you were not eligible to enroll in a QHP outside the open enrollment period for 2017.
- 10) You testified you have been going back and forth with the health plan and NYSOH to try and get reinstated in a QHP for 2017, but you have been unsuccessful.
- 11) You testified that you are seeking a special enrollment period to reenroll into a health plan for 2017, because you tried to pay your first monthly premium on time, even though you did not receive the invoice until a week before the due date, and you were unable to do so due to no fault of your own.
- 12) You testified that since filing your application on January 29, 2017, there have been no major changes to your household.

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) a 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 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 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.

(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 a 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)).

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 first issue under review is whether the Appeals Unit of NYSOH has the authority to review whether your QHP properly terminated your coverage for failure to pay your premium by the payment deadline.

On January 30, 2017, you were enrolled into a QHP for the 2017 coverage year with a monthly premium of \$197.57, beginning March 1, 2017.

You testified that you did not receive an invoice from the health plan until one week before the payment due date. However, you testified that when you

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received the invoice you tried to pay the bill online, but you were not able to, due to an issue with the system. Additionally, you testified you tried to contact the health plan to pay over the phone, but you were not able to get through to a representative until the payment due date had passed. Additionally, you testified that you were granted an extension to pay your first monthly premium, but that you did not receive the notice informing you of the extension until the extended due date had already passed.

According to your account, the health plan initiated termination of your coverage on March 16, 2017. The cancellation notice issued by NYSOH on March 17, 2017 stating that you were disenrolled from your health plan for failure to pay your QHP premium by the payment deadline, effective March 1, 2017.

Pursuant to the regulations, the NYSOH 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 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 were properly terminated from your health plan for non-payment of premiums. Therefore, your appeal of the March 17, 2017 cancellation notice is DISMISSED as a non-appealable issue.

The second issue under review is whether NYSOH properly determined that you did not qualify to enroll in a QHP outside of the open enrollment period, effective May 1, 2017.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On March 21, 2017, you submitted a request to reenroll in a QHP.

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

In the present case, there is no evidence in the record to establish grounds for a special enrollment period. You testified that there have been no changes to your household in 2017.

Although you did lose health coverage as a result of the March 17, 2017 disenrollment, the loss of health insurance coverage in this case cannot be

considered a triggering event for a special enrollment period, because it was a result of non-payment of your premiums which NYSOH considers a voluntary action causing the termination of your coverage.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2017, you did not experience a triggering event that would qualify you for a special enrollment period as of the date of the hearing.

Therefore, the March 22, 2017 eligibility determination, to the extent it denied you a special enrollment period, was correct and is **AFFIRMED**.

However, during the hearing you testified that you did not receive an invoice from the health plan until one week prior to the due date and that you tried to make timely payment on several occasions, but you were unable to do so due to system errors. For this reason, your case is **RETURNED** to Plan Management to investigate whether you were properly and timely sent an invoice or bill from your health plan and whether you were improperly prevented from making timely payment of your first premium.

If it is determined that your health plan improperly failed to issue a timely invoice or bill to you, or improperly prevented you from timely paying your first monthly premium, then you will be eligible for a special enrollment period based on that error, and NYSOH will contact you to assist you in enrolling in coverage, beginning as early as May 1, 2017, or a later date of your choosing.

Decision

Your appeal of the March 17, 2017 cancellation notice is **DISMISSED** as a non-appealable issue.

The March 22, 2017 eligibility determination, insofar as it stated that you were not eligible for a special enrollment period as of March 22, 2017, is **AFFIRMED**.

Your case is **RETURNED** to NYSOH's Plan Management to investigate whether the health plan issued a timely invoice or bill to you for your March 2017 premium payment, or improperly prevented you from timely making your first premium payment.

If it is determined that an invoice was not timely sent or you were improperly prevented from making your first premium payment on time, you will be eligible for a special enrollment period, and NYSOH will contact you to assist you in enrolling in a QHP, beginning as early as May 1, 2017, or from this point forward.

Effective Date of this Decision: August 24, 2017

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How this Decision Affects Your Eligibility

You do not qualify for a special enrollment period at this time, based on the evidence in the record.

However, your case is being sent back to NYSOH to determine whether the health plan issued a timely invoice or bill to you for your March 2017 premium payment, or improperly prevented you from timely making your first premium payment. If it is determined that an invoice was not timely sent or you were improperly prevented from making your first premium payment on time, you will be eligible for a special enrollment period, and NYSOH will contact you to assist you in enrolling in a QHP, beginning as early as May 1, 2017, or from this point forward. You will be responsible for any retroactive premium payments if you enroll in coverage for any months in the past.

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 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).

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 appeal of the March 17, 2017 cancellation notice is **DISMISSED** as a non-appealable issue.

The March 22, 2017 eligibility determination, insofar as it stated that you were not eligible for a special enrollment period as of March 22, 2017, is **AFFIRMED**.

Your case is **RETURNED** to NYSOH's Plan Management to investigate whether the health plan issued a timely invoice or bill to you for your March 2017 premium payment, or improperly prevented you from timely making your first premium payment.

If it is determined that an invoice was not timely sent or you were improperly prevented from making your first premium payment on time, you will be eligible for a special enrollment period, and NYSOH will contact you to assist you in enrolling in a QHP, beginning as early as May 1, 2017, or from this point forward.

You do not qualify for a special enrollment period at this time, based on the evidence in the record.

However, your case is being sent back to NYSOH to determine whether the health plan issued a timely invoice or bill to you for your March 2017 premium payment, or improperly prevented you from timely making your first premium payment. If it is determined that an invoice was not timely sent or you were improperly prevented from making your first premium payment on time, you will

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be eligible for a special enrollment period, and NYSOH will contact you to assist you in enrolling in a QHP, beginning as early as May 1, 2017, or from this point forward. You will be responsible for any retroactive premium payments if you enroll in coverage for any months in the past.

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&btumi 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.

אידיש (Yiddish)

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

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