



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

## Notice of Decision

Decision Date: July 28, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000017352

[REDACTED]

Dear [REDACTED],

On July 11, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's February 21, 2017 and April 21, 2017, eligibility determination notices.

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 28, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000017352

[REDACTED]

## Issues

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

Did NY State of Health (NYSOH) properly determine that your spouse was no longer eligible for health insurance, effective March 1, 2017?

Did NYSOH properly determine that your spouse was not eligible to enroll in a QHP outside of the open enrollment period in 2017?

## Procedural History

On November 17, 2016, NYSOH issued an eligibility determination notice stating that you and your child were eligible and your spouse was conditionally eligible for the advance payment for a premium tax credit up to \$807.00 per month for a limited time, effective as of January 1, 2017. The notice stated that additional proof of your spouse's citizenship status and a valid Social Security number (SSN) must be provided to NYSOH by February 14, 2017, to confirm [REDACTED] eligibility.

Also on November 17, 2016, NYSOH issued an enrollment notice confirming that as of November 16, 2016, you, your spouse, and child were enrolled in a QHP with an enrollment start date of January 1, 2017.

On February 20, 2017, your NYSOH account was systemically updated.

On February 21, 2017, NYSOH issued three notices:

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- (1) An eligibility determination stating that your spouse was no longer eligible for health insurance through NYSOH, effective March 1, 2017. The notice stated this was because proof of your spouse's citizenship status and SSN was not submitted to NYSOH to confirm their eligibility;
- (2) An eligibility determination notice stating that you and your child were eligible for a tax credit up to \$282.00 per month, effective as of April 1, 2017;
- (3) A disenrollment notice stating that you and your child were no longer eligible to enroll in your QHP because your spouse was no longer eligible to enroll in health insurance through NYSOH.

On March 27, 2017, you spoke to NYSOH's Account Review Unit and requested an appeal insofar as your spouse was disenrolled from your QHP and was denied a special enrollment period.

On April 19, 2017, NYSOH issued an enrollment notice confirming that, on April 18, 2017, you and your child were enrolled in a QHP with an enrollment start date of March 1, 2017.

On April 21, 2017, NYSOH issued an eligibility determination notice stating, in relevant part, that your spouse did not qualify to select a health plan outside of the open enrollment period for 2017.

On July 11, 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:

According to your NYSOH account, you receive all of your notices from NYSOH electronically.

You testified that the email address listed in your NYSOH account, [REDACTED] is your current email address.

You testified that you did not receive any emails from NYSOH informing you that notices were posted to your online account.

You testified that you attempted to refill a prescription in March 2017 and were told that your family's health insurance had been cancelled.

- 1) You testified that you contacted the health insurance company and were informed that your family's coverage was cancelled effective March 1, 2017.
- 2) According to your NYSOH account and testimony, you and your child were re-enrolled in a QHP with an enrollment start date of March 1, 2017.
- 3) You testified that your spouse was enrolled in a health plan, outside of NYSOH, effective May 1, 2017.
- 4) You testified that you want your spouse to be re-enrolled in a health plan through NYSOH because the monthly premiums are less expensive.

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

## **Applicable Law and Regulations**

### QHP - Citizenship and Immigration Status

To enroll in a QHP through NYSOH, an applicant must be a citizen or national of the United States, or a non-citizen who is lawfully present in the United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1)).

NYSOH must verify or obtain information in order to determine that an applicant is eligible for enrollment in a QHP, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

If an applicant attests to citizenship, status as a national, or lawful presence, and NYSOH is unable to verify such attestation, NYSOH must provide the applicant with notice of the inconsistency. NYSOH must then provide the applicant with 90 days to provide satisfactory documentary evidence, from the date the notice of inconsistency is received by the applicant. Notice is considered received 5 days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the 5 day period. (45 CFR § 155.315(c)(3), (f)(2)(i)).

If NYSOH remains unable to verify the citizenship attestation after the 90 day period ends, it must determine the applicant's eligibility based on the information available (45 CFR § 155.315(f)(5)).

## QHP - SSN

NYSOH must require an applicant who has a SSN to provide such number to NYSOH (45 CFR § 155.310(a)(3)(i)).

NYSOH must verify or obtain information in order to determine that an applicant is eligible for enrollment in a qualified health plan, including the validation of SSNs (45 CFR § 155.315(a),(b)).

If NYSOH is unable to validate an applicant's SSN, NYSOH must provide the applicant 90 days to provide satisfactory documentary evidence, from the date the notice of inconsistency is received by the applicant. Notice is considered received five days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the five-day period. (45 CFR § 155.315(b)(2)).

If NYSOH remains unable to verify the citizenship attestation after the 90 day period ends, it must determine the applicant's eligibility based on the information available (45 CFR § 155.315(f)(5)).

## Electronic Notices

Applicants may choose to receive notices and information from NYSOH by either electronic or regular mail. If the applicant elects to receive electronic notices, NYSOH must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant's account within 1 day of the notice being generated (45 CFR §155.230(d); 42 CFR §435.918(b)(3) and (4)). If an electronic notice is undeliverable, NYSOH must send a notice by regular mail within three business days of the date of a failed electronic communication (42 CFR §435.918(b)(5)).

## 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

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

- (1) The qualified individual or his or her dependent either:
  - (i) Loses minimum essential coverage.
  - (ii) Is enrolled in any non-calendar year group health plan or individual health insurance coverage, even if the qualified individual or his or her dependent has the option to renew such coverage.
  - (iii) Loses pregnancy-related coverage.
  - (iv) Loses medically needy coverage as described under section 1902(a)(10)(C) of the Social Security Act only once per calendar year.
- (2)(i) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care, or through a child support order or other court order.
  - (ii) the enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation as defined by State law in the State in which the divorce or legal separation occurs, or if the enrollee, or his or her dependent, dies.
- (3) The qualified individual, or his or her dependent, becomes newly eligible for enrollment in a qualified health plan because he or she gains citizenship, status as a national, or lawful present or is no longer incarcerated.
- (4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities.
- (5) The enrollee or, his or her dependent adequately demonstrates to NYSOH that the qualified health plan in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;
- (6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions.

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

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

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

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

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

(10) A qualified individual or enrollee—

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

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

(11) A qualified individual or dependent—

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

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



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

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

(45 CFR § 155.420(d)).

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

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

(1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or

(2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128” such as failure to comply with other requirements (45 CFR § 147.128(b))

(45 CFR § 155.420(e)).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined that your spouse was no longer eligible to enroll in a QHP plan through NYSOH, effective March 1, 2017.

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH, and must confirm, among other things, that they have valid citizenship status and a valid SSN.

If NYSOH cannot verify an individual's citizenship status and SSN, it must provide the individual with notice of the inconsistency. NYSOH must then provide the individual with a period of 90 days from the date notice is received to resolve the inconsistency. For purposes of confirming proof of citizenship and SSN, notice is considered received 5 days after the date on the notice.

In the notices issued on November 17, 2016, you were advised that your spouse's eligibility was only conditional, and that additional proof of [REDACTED] citizenship status and SSN was needed before February 14, 2017, to confirm [REDACTED] eligibility.

According to your NYSOH account, you did not submit any documents before February 14, 2017.

On February 21, 2017, NYSOH issued an eligibility determination notice, based on a February 20, 2017 systematic update to your account, stating your spouse was no longer eligible for health insurance through NYSOH because [REDACTED] citizenship status and SSN had not been confirmed.

However, the record reflects that you elected to receive alerts regarding notices from NYSOH, electronically. You credibly testified that you did not receive any electronic alert stating that additional documentation was needed to confirm your spouse's eligibility. There is also no evidence in your account documenting that any email alert was sent to you regarding the need to submit additional documentation, or that it failed, and the notice was sent to you by regular mail.

Therefore, it is concluded that NYSOH did not provide proper notice that additional proof of your spouse's citizenship status and SSN were needed. Since you were not made aware of and did not receive proper notice that there was an inconsistency in your NYSOH account, the February 21, 2017 eligibility determination notice stating that your spouse was no longer eligible for health insurance through NYSOH is RESCINDED.

The second issue under review is whether your spouse was properly denied a special enrollment period.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. 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.

The record reflects that your spouse was enrolled in a QHP effective January 1, 2017. However, on February 21, 2017, NYSOH issued a notice stating that their QHP enrollment would end effective March 1, 2017, for failing to timely submit additional proof of her citizenship status and SSN.

Generally, the loss of health insurance coverage in such case cannot be considered a triggering event for a special enrollment period, because it was due to the failure to submit necessary documentation to confirm your spouse's eligibility. This failure is considered a voluntary action causing the termination of [REDACTED] coverage.

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However, based on the analysis above, NYSOH failed to provide proper notice that additional proof of your spouse's citizenship status and SSN were needed. Therefore, the April 21, 2017, eligibility determination notice stating that your spouse was not eligible for a special enrollment period is RESCINDED.

You testified your spouse was enrolled in a health plan, outside of NYSOH, effective May 1, 2017. However, you want your spouse to be re-enrolled in a health plan through NYSOH because the monthly premiums are less expensive.

Your spouse's case is RETURNED to NYSOH to allow [REDACTED] to select a QHP within 60 days from the date on this decision.

## **Decision**

The February 21, 2016 eligibility determination notice stating that your spouse was no longer eligible for health insurance through NYSOH is RESCINDED.

The April 21, 2017, eligibility determination notice stating that your spouse was not eligible for a special enrollment period is RESCINDED.

Your spouse's case is RETURNED to NYSOH to allow [REDACTED] to select a QHP within 60 days from the date on this decision.

**Effective Date of this Decision:** July 28, 2017

## **How this Decision Affects Your Eligibility**

NYSOH improperly disenrolled your spouse from their QHP effective March 1, 2017, without giving proper notice.

Your spouse's case is being sent back to NYSOH to contact you and allow you to select a QHP for your spouse within 60 days from the date on this decision.

## **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

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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

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## **Summary**

The February 21, 2016 eligibility determination notice stating that your spouse was no longer eligible for health insurance through NYSOH is RESCINDED.

The April 21, 2017, eligibility determination notice stating that your spouse was not eligible for a special enrollment period is RESCINDED.

Your spouse's case is RETURNED to NYSOH to allow [REDACTED] to select a QHP within 60 days from the date on this decision.

NYSOH improperly disenrolled your spouse from their QHP effective March 1, 2017, without giving proper notice.

Your spouse's case is being sent back to NYSOH to contact you and allow you to select a QHP for your spouse within 60 days from the date on this decision.

## **Legal Authority**

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

**A Copy of this Decision Has Been Provided To:**



## Getting Help in a Language Other than English

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

### Español (Spanish)

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

### 中文 (Traditional Chinese)

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

### Kreyòl Ayisyen (Haitian Creole)

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

### 中文 (Simplified Chinese)

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

### Italiano (Italian)

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

### 한국어 (Korean)

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

### Русский (Russian)

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

### العربية (Arabic)

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 1-855-355-5777. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجاناً.

### বাংলা (Bengali)

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।

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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. ye&etumi 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 דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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