



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

Notice of Decision

Decision Date: September 6, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000017601

[REDACTED]

Dear [REDACTED],

On July 19, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's April 4, 2017 eligibility determination notice.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the Account ID at the top of this notice.

Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

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DEPARTMENT OF HEALTH
P.O. Box 11729
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Decision

Decision Date: September 6, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000017601

[REDACTED]

Issue

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

Did NY State of Health (NYSOH) properly determine you did not qualify to enroll in a qualified health plan outside of the open enrollment period?

Procedural History

On December 9, 2016, NYSOH received your updated application for health insurance.

On December 10, 2016, NYSOH issued an eligibility determination notice stating you were eligible to receive an advance premium tax credit (APTC) of up to \$134.00 per month, for a limited time, effective January 1, 2017. It further stated NYSOH was checking federal data sources to confirm your immigration status and would contact you if proof of your immigration status was needed.

Also on December 10, 2016, NYOSH issued an enrollment notice confirming your enrollment in a qualified health plan (QHP), effective January 1, 2017.

On December 23, 2016, NYSOH issued an eligibility determination notice, based on a December 22, 2016 systematic eligibility redetermination, stating you were eligible to receive an APTC of up to \$134.00 per month, for a limited time, effective February 1, 2017. The notice directed you to submit proof of your immigration status by March 22, 2017 to confirm your eligibility or you might lose your insurance or receive less help paying for your coverage. The notice included

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a “Documentation List” providing various types of acceptable documents to prove different types of immigration statuses.

On March 17, 2017, NYSOH issued an enrollment notice confirming you were enrolled in a QHP since January 1, 2017.

On March 27, 2017, NYSOH systematically redetermined your eligibility.

On March 28, 2017, NYSOH issued an eligibility determination notice stating you were no longer eligible to enroll in health insurance through NYSOH, effective April 1, 2017, because you did not provide proof of your immigration status to confirm your eligibility.

Also on March 28, 2017, NYSOH issued a disenrollment notice stating your enrollment in your QHP would end on March 31, 2017, because you were no longer eligible to enroll in the plan.

On April 3, 2017, NYSOH received your updated application for health insurance. That day, a preliminary eligibility determination was prepared stating you were eligible to receive an APTC of up to \$134.00 per month, effective May 1, 2017, but you were not eligible to enroll in a health plan outside the open enrollment period for 2017.

Also on April 3, 2017, you spoke to NYSOH’s Account Review Unit and appealed your inability to enroll into a QHP outside of the open enrollment period.

On April 4, 2017, NYSOH issued an eligibility determination notice, based on the April 3, 2017 application, stating you were eligible to receive an APTC of up to \$134.00 per month, effective May 1, 2017. The notice further stated that you were not eligible to enroll in a health plan outside the open enrollment period for 2017.

On July 19, 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 9, 2016, NYSOH received your updated application for health insurance for 2017.
- 2) That application indicated that your immigration status was “Non-Immigrant Visa Holder” and your immigration documentation type was an

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- “I-94 Arrival/ Departure Record” with an expiration date of November 14, 2016.
- 3) Previously uploaded to your account in 2015 was a copy of an I-797 Notice of Action and an I-94 Arrival/ Departure record, all with an expiration date of November 14, 2016.
 - 4) Based on the information in your application, NYSOH determined you were conditionally eligible to enroll in a QHP with APTC for 2017, pending verification of your immigration status.
 - 5) The eligibility determination notice issued by NYSOH on December 23, 2016, directed you to submit proof of your immigration status by March 22, 2017 to confirm your eligibility, or you might lose your insurance or receive less help paying for your coverage. The notice included a “Documentation List” providing various types of acceptable documents to prove different types of immigration statuses.
 - 6) According to your account, on December 23, 2016, a copy of a Form G-845 from the US Citizenship and Immigration Services was uploaded to your account. This document contains an I-94 Arrival/ Departure Record number which is the same as the number listed in the December 9, 2016 application. The document does not contain any information on your current immigration status.
 - 7) You testified that you do not recall submitting the Form G-845 on December 23, 2016. You testified that you do not know why it was submitted or who submitted it.
 - 8) You testified that you do not recall receiving the December 23, 2016 notice directing you to submit proof of your immigration status to NYSOH at the time it was issued, but that you have since printed out a copy from the electronic notice posted to your account.
 - 9) You testified you were out of the country until January 25, 2017. You further testified that you have issues getting your mail at your apartment building.
 - 10) You testified, and your account confirms, you receive your communication from NYSOH by regular mail. You testified that you want to receive your communication by email, but you have not updated your communication preference with NYSOH.
 - 11) The mailing address listed on the December 23, 2016 eligibility determination notice matches the mailing address listed on your account.

- 12) There is no record of any notice issued to you by NYSOH being returned as undeliverable.
- 13) There is no record of NYSOH receiving any additional immigration documentation by the March 22, 2017 deadline.
- 14) On March 27, 2017, NYSOH systematically redetermined your eligibility and found you ineligible to enroll in health coverage through NYSOH, because you did not submit the requested immigration documentation in time to confirm your eligibility.
- 15) You were disenrolled from your QHP, effective March 31, 2017.
- 16) According to your account, you submitted an updated application to NYSOH on April 3, 2017 and attempted to reenroll into a QHP, but you were denied a special enrollment period in which to enroll into a plan outside the open enrollment period for 2017.
- 17) You testified you have been without health coverage since March 31, 2017.
- 18) You testified you are seeking a special enrollment period to reenroll into a QHP for 2017.
- 19) You testified you have had no significant changes to your household since applying for health insurance for 2017.
- 20) You testified your current immigration status is that of a non-immigrant visa holder. You testified your previous visa expired on November 14, 2016. You testified that you had applied to renew that visa, but you had not received your new visa at the time of the December 9, 2016 application.
- 21) On July 19, 2017, NYSOH received a copy of your current United States visa with an issue date of December 21, 2016 and an expiration date of November 14, 2019.
- 22) You testified that you did not know you had to submit your new visa to NYSOH, because it was the same visa, just renewed.

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

Applicable Law and Regulations

Citizenship and Immigration Status

To enroll in a qualified health plan 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 to determine that an applicant is eligible for enrollment in a qualified health plan, 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 five-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)).

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:

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- (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.

(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. NYSOH has not elected to adopt this subsection at this time.

(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 do not qualify to enroll in a QHP outside of the open enrollment period, effective May 1, 2017.

According to your account, you submitted an updated application for health insurance on December 9, 2016. That application indicated that your immigration status was a “Non-Immigrant Visa Holder” and your immigration documentation type was an “I94 Arrival/ Departure Record” with an expiration date of November 14, 2016. Your account confirms that the only immigration documentation on file at the time of your application expired on November 14, 2016. According to your account, NYSOH was unable to verify your attested immigration status with federal data sources.

Pursuant to the above cited regulations, NYSOH must verify or obtain information to determine that an applicant is eligible for enrollment in a QHP, including the certification of citizenship, status as a national, or lawful presence. 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 and 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. 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.

In the present case, NYSOH issued a notice on December 23, 2017 indicating that it was unable to verify your immigration status and directing you to submit proof of said status by March 22, 2017. Although you testified that you did not recall receiving that notice and further testified that you were traveling at that time, your account confirms that the mailing address listed on that notice

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matches the mailing address listed in your account and there is no record of any notice issued to you by NYSOH being returned as undeliverable. It is noted that you testified that you have issues receiving mail at your apartment building and that you wished to receive your communications from NYSOH electronically. However, you testified, and your account confirms, you have not updated your communication preference with NYSOH. Accordingly, it is concluded that, based on the evidence, NYSOH properly notified you of the need to submit documentation establishing a sufficient immigration status by March 22, 2017 to confirm your eligibility for health insurance.

Your account confirms that on December 23, 2016 a copy of a Form G-845 from the US Citizenship and Immigration Services was uploaded to your account. However, this document did not contain any information regarding your current immigration status. Furthermore, it referenced an I-94 Arrival/ Departure Record number which the evidence establishes was expired. Accordingly, it is concluded that this was not sufficient documentation of a satisfactory *current* immigration status.

According to your account, NYSOH did not receive any additional immigration documentation by the March 22, 2017 deadline. As a result, NYSOH was unable to verify your immigration status and you were determined ineligible to enroll in health insurance through NYSOH and disenrolled from your QHP, effective March 31, 2017.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On April 3, 2017, you submitted an updated application for health insurance and requested to reenroll in a QHP. On April 4, 2017, NYSOH issued a notice stating that you do not qualify to enroll in a QHP outside of the open enrollment period. You appealed that determination.

Pursuant to the regulations, 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 the record confirms you did lose health coverage as a result of the March 31, 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 your failure to timely submit the requested documentation necessary to confirm your eligibility. NYSOH considers this a voluntary action causing the termination of your coverage, thus it does not constitute a triggering event.

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Additionally, there is no evidence that your enrollment or non-enrollment in your QHP was unintentional, inadvertent, or erroneous and was 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. Thus, 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 April 4, 2017 eligibility determination, to the extent it denied you a special enrollment period, was correct and is AFFIRMED.

Decision

The April 4, 2017 eligibility determination is AFFIRMED.

Effective Date of this Decision: September 6, 2017

How this Decision Affects Your Eligibility

You 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)).

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

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- By calling the Customer Service Center at 1-800-318-2596
- By mail at:
Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd.
London, KY 40750-0061
- By fax: 1-877-369-0129

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

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

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The April 4, 2017 eligibility determination is AFFIRMED.

You 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.

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 مجانًا.

বাংলা (Bengali)

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এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

Français (French)

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

हिंदी (Hindi)

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

日本語 (Japanese)

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

नेपाली (Nepali)

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

Polski (Polish)

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

Twi (Twi)

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye bɛtumi ama wo obi a okyerɛ kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

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

Tiếng Việt (Vietnamese)

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

אידיש (Yiddish)

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

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