



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: AP000000017647

[REDACTED]

Dear [REDACTED],

On July 25, 2017, you and your authorized representative appeared by telephone at a hearing on your appeal of NY State of Health’s March 1, 2017 eligibility redetermination and disenrollment 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.

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DEPARTMENT OF HEALTH  
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Albany, NY 12211

## Decision

Decision Date: August 24, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000017647



## Issue

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

Did NY State of Health (NYSOH) properly determine that you were not eligible to enroll in a qualified health plan at full cost effective April 1, 2017, because NYSOH could not verify your immigration status?

## Procedural History

On February 23, 2017, NYSOH received your updated application for health insurance.

On February 24, 2017, NYSOH issued an eligibility determination notice stating that you were conditionally eligible to purchase a qualified health plan at full cost through NYSOH, effective April 1, 2017. The notice stated that NYSOH was checking federal data sources to confirm your immigration status and that you would be contacted if you needed to send in proof that you have an eligible immigration status.

Also on February 24, 2017, NYSOH issued an enrollment confirmation notice stating that you were enrolled in a platinum level qualified health plan as of April 1, 2017.

On March 1, 2017, NYSOH issued an eligibility redetermination notice stating that you were no longer eligible for health insurance through NYSOH because your immigration status could not be verified.

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Also on March 1, 2017, NYSOH issued a disenrollment notice stating that your enrollment in your platinum level qualified health plan would end on April 1, 2017 because you were no longer eligible to enroll in health insurance through NYSOH.

On April 3, 2017, you contacted NYSOH's Account Review Unit and requested an appeal insofar as you were not eligible to enroll in a qualified health plan through NYSOH.

On July 25, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, you appointed [REDACTED] as your authorized representative to assist you with your testimony. The record was developed during the hearing and held open up to August 8, 2017, to allow you time to submit supporting documents.

On July 26, 2017, NYSOH Appeals Unit received by fax a 19-page document containing a copy of your current lease agreement. This was incorporated into the record as Appellant's Exhibit 1 and the record is now closed.

## **Findings of Fact**

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

- 1) On February 23, 2017, you submitted a non-financial application for health insurance seeking enrollment into a full pay qualified health plan.
- 2) The February 23, 2017 application stated that you are a Non-Immigrant Visa Holder.
- 3) The February 23, 2017 application states that you have not applied to become a legal permanent resident, you do not work, you do not have a child in school, you do not own your own home, and you do not rent a house or apartment.
- 4) You testified, and the record indicates, that you have a B-2 "Co-Habiting Partner" Visa which is a non-immigrant visa. Your visa is intended to allow you to stay in the country for the duration of your cohabitating partner's visa.
- 5) You testified that your current visa is valid until December 31, 2017.
- 6) You submitted a copy of your B-2 Visa which shows an issue date of [REDACTED] and an expiration date of September 2, 2025.

- 7) You testified that you have lived at your current address in New York since August or September 2015.
- 8) On July 26, 2017, you provided a copy of your current lease agreement for a condominium located at [REDACTED]. The agreement states that you are an occupant of the residence and that the lease began on [REDACTED] and ends on December 31, 2017.
- 9) You are seeking insurance for yourself.
- 10) Your application states that you live in [REDACTED].

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

## **Applicable Law and Regulations**

### Qualified Health Plan

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 in order 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)).

Lawfully presence is defined to mean in part an alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission (45 CFR § 152.2(2)).

### State Residency Requirement

To be eligible for enrollment in a qualified health plan and eligible to receive an advance premium tax credit through NYSOH, an applicant must be a resident of New York State (45 CFR § 155.305(a)(3), (f)(1)(ii)(A)).

For an individual who is aged 21 or older, not living in an institution, and able to indicate intent, that individual is deemed to be a resident of the Exchange service area in which or she lives and either a) intends to reside, even without a fixed address, or b) has entered with a job commitment or is seeking employment. (45 CFR § 155.305(a)(3)(i)).

Temporary non-immigrants will be required as a condition of their eligibility to answer residency questions. An applicant must answer “Yes” to at least one of the questions in order to pass residency review (Office of Health Insurance Programs, GIS 16 MA/02).

### Redetermination During a Benefit Year

If NYSOH identifies updated information regarding factor of eligibility they must notify the enrollee regarding the updated information as well as the enrollee’s projected eligibility after considering such information and allow the enrollee to notify NYSOH that such information is inaccurate (45 CFR § 155.330(e)(2)).

Any notice that is required to be sent by NYSOH in writing and include an explanation of the action reflected in the notice, including the effective date of the action, factual findings relevant to the action, citations to, or identification of, the relevant regulations supporting the action, contact information for available customer service resources, and an explanation of appeal rights, if applicable (45 CFR § 155.230(a)).

## **Legal Analysis**

The only issue under review is whether NYSOH properly determined that you were not eligible to enroll in a qualified health plan at full cost effective April 1, 2017, because NYSOH could not verify your immigration status.

On February 23, 2017, NYSOH received your updated application for health insurance. As a result of this application, you were found conditionally eligible to purchase a qualified health plan at full cost. Your eligibility was conditioned on NYSOH checking federal data sources to confirm you have an eligible immigration status. You subsequently enrolled into a full pay qualified health plan, effective April 1, 2017.

On March 1, 2017, NYSOH issued an eligibility redetermination notice stating that you were no longer eligible for health insurance through NYSOH because your immigration status could not be verified. You were disenrolled from your full pay qualified health plan as of April 1, 2017.

To enroll in a qualified health plan through NYSOH, an applicant must be a citizen 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.

The February 23, 2017 application states that you are a Non-Immigrant Visa Holder. You testified, and the record confirms, that you have a B-2 “Co-Habiting Partner” Visa. You submitted a copy of your B-2 Visa which shows an issue date

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of [REDACTED] and an expiration date of September 2, 2025. You testified that your current visa is valid until December 31, 2017.

Lawful presence is defined to mean in part an alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission.

Since your February 23, 2017 application indicated that you had a valid non-immigrant status and there is nothing in the record that indicates that as of the March 1, 2017 eligibility redetermination notice that the terms or validity of that status had changed, NYSOH improperly disenrolled you from your qualified health plan for your immigration status.

However, one of the conditions of enrollment into a qualified health plan through NYSOH is for the applicant to be a resident of NY State. According to Department of Health Medicaid policy, temporary non-immigrants will be required as a condition of their eligibility to answer residency questions. An applicant must answer "Yes" to at least one of the questions in order to pass residency review.

The residency section of the February 23, 2017 application states that you have not applied to become a legal permanent resident, you do not work, you do not have a child in school, you do not own your own home, and you do not rent a house or apartment.

Therefore, based on your answers to the residency questions on your NYSOH application, you would not be deemed a resident of NY State for the purposes of obtaining health coverage through NYSOH.

However, under federal regulation for the purposes of being found eligible to enroll in a qualified health plan, an individual is deemed to be a resident if they intend to reside in the state, even without a fixed address, or has entered with a job commitment or is seeking employment.

You testified that you have lived at your current address in New York since August or September 2015. You provided a copy of your current lease agreement for a condominium located at [REDACTED]. The agreement states that you are an occupant of the residence and that the lease began on [REDACTED] and ends on December 31, 2017.

Based on your credible testimony and supporting documentation, you would have passed the federal based residency requirements to enroll into a qualified health plan as of your February 23, 2017 application.

In addition, NYSOH is required to inform all enrollees in writing an explanation of any changes to eligibility and the factual findings relevant to the actions of NYSOH and to allow the enrollee to notify NYSOH that such information is

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inaccurate. The record does not contain any written notice that informs you that you were ineligible for enrollment in a qualified health plan because of your residency status.

Since you are considered lawfully present, and a resident of NY State, NYSOH improperly determined you ineligible to purchase a qualified health plan at full cost. Accordingly, the March 1, 2017 eligibility redetermination and disenrollment notices are RESCINDED.

Since NYSOH did not provide you with proper notice that the reason for your disenrollment was because of your failure to meet the residency review, your case is RETURNED to NYSOH to assist you in updating your NYSOH account in order to properly reflect that you are resident of NY State in accordance with the lease agreement you provided as proof of your residency. Once your application properly reflects your residency status, your enrollment in a qualified health plan should be reinstated as of April 1, 2017.

## **Decision**

The March 1, 2017 eligibility redetermination notice is RESCINDED.

The March 1, 2017 disenrollment notice is RESCINDED.

Your case is RETURNED to NYSOH to assist you in updating your NYSOH account in order to properly reflect that you are resident of NY State in accordance with the lease agreement you provided as proof of your residency. Once your application properly reflects your residency status, your enrollment in a qualified health plan should be reinstated as of April 1, 2017.

**Effective Date of this Decision:** August 24, 2017

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

NYSOH improperly determined that you were not eligible to enroll in a qualified health plan on the basis of your immigration status.

Your case is being sent back to NYSOH to assist you in updating your account to accurately reflect the information you provided at your hearing. Your enrollment in your qualified health plan should be reinstated as of April 1, 2017.

You will be responsible for any premiums owed to your qualified health plan.

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## **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

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Albany, NY 12211

- By fax: 1-855-900-5557

## **Summary**

The March 1, 2017 eligibility redetermination notice is RESCINDED.

The March 1, 2017 disenrollment notice is RESCINDED.

NYSOH improperly determined that you were not eligible to enroll in a qualified health plan on the basis of your immigration status.

Your case is RETURNED to NYSOH to assist you in updating your NYSOH account in order to properly reflect that you are resident of NY State in accordance with the lease agreement you provided as proof of your residency. Once your application properly reflects your residency status, your enrollment in a qualified health plan should be reinstated as of April 1, 2017.

Your case is being sent back to NYSOH to assist you in updating your account to accurately reflect the information you provided at your hearing. Your enrollment in your qualified health plan should be reinstated as of April 1, 2017.

You will be responsible for any premiums owed to your qualified health plan.

## **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 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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