



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

## Notice of Decision

Decision Date: July 21, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000017697

[REDACTED]

Dear [REDACTED],

On July 18, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's March 18, 2017 cancellation notice and March 25, 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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STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
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Albany, NY 12211

## Decision

Decision Date: July 21, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000017697

[REDACTED]

## 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 [REDACTED] coverage with [REDACTED] qualified health plan (QHP) for non-payment of premium, effective March 1, 2017?

Did NYSOH properly determine that your [REDACTED] does not qualify to enroll in a QHP outside of the 2017 open enrollment period, effective May 1, 2017?

## Procedural History

On January 30, 2017, NYSOH received your household's updated application for health insurance.

On January 31, 2017, NYSOH issued an eligibility determination notice stating that your oldest [REDACTED] was eligible to receive advance payments of the premium tax credit (APTC) of up to \$247.00 per month, effective March 1, 2017.

Also on January 31, 2017, NYSOH issued an enrollment confirmation notice stating that your [REDACTED] was enrolled in a Fidelis Care silver-level QHP with a monthly premium of \$199.10, beginning March 1, 2017.

On March 18, 2017, NYSOH issued a cancellation notice stating that your [REDACTED] enrollment in [REDACTED] QHP was terminated, effective March 1, 2017, because a premium payment had not been received by the health plan by the payment deadline.

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On March 24, 2017, NYSOH received your updated application for health insurance.

On March 25, 2017, NYSOH issued an eligibility determination notice stating that your oldest son was eligible to receive APTC of up to \$247.00 per month, effective May 1, 2017. It further stated that he did not qualify to select a health plan outside of the open enrollment period for 2017.

On April 4, 2017, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination, insofar as your [REDACTED] was not eligible to enroll in a health plan for 2017 outside of the open enrollment period.

On July 18, 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) You testified that you called to enroll you [REDACTED] in a QHP on January 30 or January 31, 2017.
- 2) Your NYSOH account reflects that you selected a Fidelis QHP with a \$199.10 monthly premium for your [REDACTED] on January 30, 2017, and that [REDACTED] enrollment began on March 1, 2017.
- 3) You testified that you expected to receive a welcome packet or other correspondence from Fidelis explaining how to make the first month's premium payment.
- 4) You testified that March 1, 2017 came and went, and you realized that you never received anything from Fidelis.
- 5) You testified that you called Fidelis to find out why you had not received anything in the mail and, on that same day, you received a cancellation notice from Fidelis stating that your [REDACTED] coverage was cancelled because no premium payment was made.
- 6) You testified that you called Fidelis to ask why you did not receive a welcome packet or letter, and that the representative you spoke with told you that Fidelis does not send out any packet or letter until the first premium payment is made.

- 7) You testified that you spoke to a different Fidelis representative after that who told you that Fidelis does send welcome packets, but did not confirm whether you/your [REDACTED] had actually been sent one after you enrolled.
- 8) You testified that you contacted NYSOH, and they contacted Fidelis in an attempt to resolve the matter.
- 9) You testified that the NYSOH representative you spoke with told you that Fidelis stated they sent you a welcome packet on January 30, 2017, the same day you enrolled.
- 10) You testified that this did not make sense to you, as you have been informed that it takes 48-72 hours for a health plan to receive enrollment information from NYSOH, and you enrolled your [REDACTED] in [REDACTED] health plan between 6:00 and 8:00 PM on January 30<sup>th</sup>.
- 11) Notes entered by a NYSOH representative in Incident [REDACTED] on April 3, 2017 stated, "per fidelis: The member was set to become active on 03/01/2017, and the premium notification letter was sent on 01/30/2017. The member was allotted a 10 day grace period, but failed to make payment on time."
- 12) You testified that Fidelis declined to reinstate your [REDACTED] in coverage.
- 13) On March 24, 2017, you contacted NYSOH to reenroll your [REDACTED] into a QHP.
- 14) You testified that you were informed by NYSOH that your [REDACTED] did not have any special circumstances that would qualify [REDACTED] to enroll in coverage.
- 15) You testified that your [REDACTED] does not have any outstanding medical bills.
- 16) You testified that you are looking to be able to enroll your [REDACTED] in coverage, and that you are worried about a potential tax penalty.
- 17) You testified that there have been no other major changes to your [REDACTED] 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. 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 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

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(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 NYSOH has the authority to review the termination of your [REDACTED] coverage with his QHP for non-payment of premium, effective March 1, 2017.

On January 30, 2017, your [REDACTED] was enrolled in a QHP for the 2017 coverage year with a monthly premium of \$199.10, beginning March 1, 2017.

You testified that, after you enrolled your [REDACTED] you waited for a welcome packet or invoice from Fidelis, but never received anything. You testified that the first communication that you received from Fidelis was a cancellation notice in March 2017 because you had not made a premium payment. You testified that Fidelis declined to reinstate your [REDACTED] in his coverage.

On March 18, 2017 NYSOH issued a notice stating that your [REDACTED] was disenrolled from [REDACTED] QHP for failure to make a premium payment by the payment deadline, effective March 1, 2017.

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 your [REDACTED] was properly terminated from [REDACTED] health plan for non-payment of premiums. Therefore, your appeal of the March 18, 2017 cancellation notice is DISMISSED as a non-appealable issue.

The second issue under review is whether NYSOH properly determined that your [REDACTED] does not qualify to enroll in a QHP for 2017 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 24, 2017, you submitted a request to reenroll your [REDACTED] 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 [REDACTED] household in 2017.

Although your [REDACTED] did lose health coverage as a result of the March 18, 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 [REDACTED] coverage.

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

Therefore, the March 25, 2017 eligibility determination, to the extent it denied your [REDACTED] a special enrollment period, was correct and is AFFIRMED.

However, during the hearing you testified that you never received any invoice, bill, or other correspondence from Fidelis prior to receiving the March 2017 cancellation notice. Additionally, although the notes in Incident [REDACTED], referenced above, indicate that a NYSOH representative reached out to Fidelis, the response from Fidelis does not make it clear whether Fidelis actually sent a premium notice to you or your [REDACTED] or whether they were referencing NYSOH's January 31, 2017 enrollment confirmation notice. 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 [REDACTED] Fidelis QHP, prior to NYSOH's March 18, 2017 disenrollment notice for nonpayment.

If it is determined that Fidelis Care improperly failed to issue any invoice or bill to you, prior to cancelling your [REDACTED] coverage, then your [REDACTED] will be eligible for a special enrollment period based on that error, and NYSOH will contact you to assist your [REDACTED] in enrolling in coverage, beginning as early as May 1, 2017, or a later date of [REDACTED] choosing.

## Decision

The March 25, 2017 eligibility determination, insofar as it stated that your [REDACTED] was not eligible for a special enrollment period as of March 24, 2017, is AFFIRMED.

Your case is RETURNED to NYSOH's Plan Management to investigate whether Fidelis Care issued an invoice or bill to you for your [REDACTED] March 2017 premium payment, prior to the cancellation of your coverage.

If it is determined that no invoice was ever sent, your [REDACTED] will be eligible for a special enrollment period, and NYSOH will contact you to assist your [REDACTED] in enrolling in a QHP, beginning as early as May 1, 2017, or from this point forward.

**Effective Date of this Decision:** July 21, 2017

## How this Decision Affects Your Eligibility

Your [REDACTED] does 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 Fidelis Care ever properly issued an invoice or bill to you for your [REDACTED] March 2017 premium. If no invoice or bill was issued, your [REDACTED] will be eligible to enroll in coverage outside of the 2017 open enrollment period, and can choose to have [REDACTED] coverage begin on May 1, 2017, or a later month of [REDACTED] choosing. [REDACTED] will be responsible for any retroactive premium payments if [REDACTED] enrolls 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

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Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

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

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

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

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

You can contact us in any of the following ways:

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

### **Summary**

The March 25, 2017 eligibility determination, insofar as it stated that your [REDACTED] was not eligible for a special enrollment period as of March 24, 2017, is **AFFIRMED**.

Your case is RETURNED to NYSOH's Plan Management to investigate whether Fidelis Care issued an invoice or bill to you for your [REDACTED] March 2017 premium payment, prior to the cancellation of your coverage.

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 it is determined that no invoice was ever sent, your [REDACTED] will be eligible for a special enrollment period, and NYSOH will contact you to assist your [REDACTED] in enrolling in a QHP, beginning as early as May 1, 2017, or from this point forward.

Your [REDACTED] does 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 Fidelis Care ever properly issued an invoice or bill to you for your [REDACTED] March 2017 premium. If no invoice or bill was issued, your [REDACTED] will be eligible to enroll in coverage outside of the 2017 open enrollment period, and can choose to have [REDACTED] coverage begin on May 1, 2017, or a later month of [REDACTED] choosing. [REDACTED] will be responsible for any retroactive premium payments if [REDACTED] enrolls 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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## **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. y&b&tumi 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.

## **שׂוֹדֵשׁ (Yiddish)**

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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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