



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

Notice of Decision

Decision Date: August 18, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000017855

[REDACTED]

Dear [REDACTED],

On July 20, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's April 8, 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
P.O. Box 11729
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Decision

Decision Date: August 18, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000017855

[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 that your husband did not qualify to enroll in a qualified health plan outside of the open enrollment period, effective May 1, 2017?

Procedural History

On November 21, 2016, NYSOH received your husband's application for health insurance.

On November 23, 2016, NYSOH issued eligibility determination notices stating that your husband was eligible to receive an advance premium tax credit of up to \$107.00 per month, as well as cost sharing reductions if you enrolled in a silver level qualified health plan, effective January 1, 2017.

You submitted additional applications for financial assistance for your husband on November 28, December 20, 2016, and January 23, and 30, 2017.

No enrollments were submitted on his behalf.

On April 7, 2017, NYSOH received your husband's application for financial assistance. That day, a preliminary eligibility determination was prepared stating that he was eligible to receive up to \$0.00 in APTC and eligible to receive cost-sharing reductions if he enrolled in a silver level qualified health plan, effective

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May 1, 2017. You also attempted to enroll him into a qualified health plan but were unable to select a plan for enrollment.

Also on April 7, 2017, you spoke to NYSOH's Account Review Unit and appealed your husband's inability to enroll into a qualified health plan outside of the open enrollment period.

On April 8, 2017, NYSOH issued an eligibility determination notice based on your April 7, 2017, stating that your husband was eligible to receive an advance premium tax credit of up to \$0.00 per month, as well as cost sharing reductions if he enrolled in a silver level qualified health plan, effective May 1, 2017. It further stated that your husband does not qualify to select a health plan outside of the open enrollment period for 2017.

On July 20, 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 proceeding.

Findings of Fact

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

- 1) On November 21, 2016, you submitted an application for your husband for financial assistance with his health insurance.
- 2) You testified that due to an error in NYSOH's system you were unable to enroll your husband in a health plan.
- 3) On December 27, 2016, a complaint was submitted to NYSOH which stated that a plan was unable to be confirmed and checked out due to an error message. See Incident [REDACTED].
- 4) The incident filed on December 27, 2016, was closed stating your request could not be addressed until the defect was resolved. A NYSOH representative added an additional entry on March 20, 2017, stating you had called to inquire about the defect. See Incident [REDACTED].
- 5) You testified you have been unable to choose a health plan for your spouse since November 2016.
- 6) You testified you were told by NYSOH to continue to call back every two to three weeks to follow up on the submission of the defect.

- 7) On April 7, 2017, you attempted to enroll your husband into a qualified health plan with the aid of a NYSOH representative. You testified this was not successful.
- 8) You testified that you are appealing because you do not want to be responsible for a tax penalty when you file your 2017 tax return for being without coverage, you are also seeking to have your husband enrolled in coverage for 2017 going forward.
- 9) You testified that the information in your application on April 7, 2017 was correct, that you have an annual expected household income of \$69,999.79.
- 10) You testified that your husband expects to file his 2017 taxes as married filing jointly and will claim four dependents on that filing.
- 11) Since your telephone hearing your NYSOH account indicates you changed your mailing address from [REDACTED] to [REDACTED].

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

Applicable Law and Regulations

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:
 - (i) Loses minimum essential coverage.

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(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 your husband does not qualify to enroll in a qualified health plan outside of the open enrollment period, effective May 1, 2017.

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.

A special enrollment period can be granted if a qualified individual'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.

You testified and the record confirms you had submitted an application for your husband on November 21, 2016, but were unable to enroll your husband into a health plan due to an error with your account.

On December 27, 2016, a complaint was submitted to NYSOH which stated that a plan was unable to be confirmed and checked out due to an error message. This incident filed on December 27, 2016, was closed stating your request could not be addressed until the defect was resolved. There is no indication in the record that you have ever been properly notified that the defect was resolved and that your husband could enroll into a qualified health plan.

On April 7, 2017, you attempted to enroll your husband into a qualified health plan with the aid of a NYSOH representative. You testified that this attempt was not successful.

Since the record indicates that your husband's non-enrollment into a qualified health plan was the direct result of an error you experienced with the NYSOH's computer system for which you had sought out a resolution of, but were not provided an adequate response to, your husband should have been granted a special enrollment period as of your April 7, 2017 application.

Therefore, NYSOH's April 8, 2017 eligibility determination notice stating that your husband does not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that your husband is eligible for a special enrollment period as of the date of his April 7, 2017 application.

Your case is RETURNED to NYSOH to assist your husband in enrolling into a qualified health plan and resolve the defect in your account or create a new account. You may choose to enroll your husband into a qualified health plan as of April 7, 2017, In the alternative, he may elect to enroll into coverage within 60 days from the date of this decision.

NYSOH's failure to grant you a special enrollment period resulted in you being without insurance coverage for part of the 2017 coverage year. During the hearing, you testified that you are concerned about receiving a tax penalty as a result of being without coverage.

Sometimes after an appeal decision, an appellant can claim an exemption from the requirement to have health insurance. You might qualify for a health coverage exemption in 2017 if you did not have health coverage while you were waiting for an appeal decision about coverage eligibility or savings and your appeal was eventually successful.

You must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, NYSOH does not accept hardship exemption applications.

You will find the information you need to claim the exemption due to an appeal decision at <https://www.healthcare.gov/exemptions-tool/#/results/2016/details/eligible-based-on-appeal>. You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word "pending" in column "c" and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

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).

Decision

The April 8, 2017, eligibility determination notice stating your husband does not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that he is eligible for a special enrollment period as of the date of his April 7, 2017, application.

Your case is RETURNED to NYSOH to assist your husband in enrolling into a qualified health plan and resolve the defect in your account or create a new account. You may choose to enroll your husband into a qualified health plan as of April 7, 2017, In the alternative, he may elect to enroll into coverage within 60 days from the date of this decision.

Effective Date of this Decision: August 18, 2017

How this Decision Affects Your Eligibility

NYSOH improperly denied your husband a special enrollment period.

Your case is being sent back to NYSOH to allow your husband to enroll into coverage as of April 7, 2017, if he so chooses. In the alternative, he may elect to enroll into coverage within 60 days from the date of this decision.

He will be responsible for any premium payments for any months he enrolled into coverage.

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

If you 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 April 8, 2017, eligibility determination notice stating your husband does not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that he is eligible for a special enrollment period as of the date of his April 7, 2017, application.

Your case is RETURNED to NYSOH to assist your husband in enrolling into a qualified health plan and resolve the defect in your account or create a new account. You may choose to enroll your husband into a qualified health plan as

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of April 7, 2017, In the alternative, he may elect to enroll into coverage within 60 days from the date of this decision.

NYSOH improperly denied your husband a special enrollment period.

Your case is being sent back to NYSOH to allow your husband to enroll into coverage as of April 7, 2017, if he so chooses. In the alternative, he may elect to enroll into coverage within 60 days from the date of this decision.

He will be responsible for any premium payments for any months he enrolled into coverage.

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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