



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: AP000000017863

[REDACTED]

Dear [REDACTED],

On July 24, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's February 28, 2017 eligibility determination and disenrollment notices and the March 23, 2017 enrollment confirmation 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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## Decision

Decision Date: September 6, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000017863

[REDACTED]

## Issues

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

Did NY State of Health (NYSOH) properly determine that your eligibility for and enrollment in your Essential Plan ended effective March 31, 2017?

Did NYSOH properly determine that your subsequent enrollment in an Essential Plan was effective no earlier than May 1, 2017?

## Procedural History

On November 8, 2016, NYSOH received your initial application for financial assistance with health insurance.

On November 9, 2016, NYSOH issued a notice of eligibility determination stating you were eligible to enroll in the Essential Plan for a limited time, effective December 1, 2016. The notice directed you to provide documentation confirming your household income before February 6, 2017 or you might lose your insurance or receive less help paying for your coverage. The notice also included a "Documentation List" which provided acceptable forms of documentation to prove different types of income.

On December 7, 2016, NYSOH issued a notice indicating the documentation received was insufficient to confirm the income information in your application. You were directed to submit additional documentation of your household's income by February 21, 2017. The notice also included a "Documentation List"

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which provided acceptable forms of documentation to prove different types of income.

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

On February 28, 2017, NYSOH issued a notice of eligibility redetermination stating you were newly eligible to purchase a qualified health plan at full cost, effective April 1, 2017. The notice stated you were not eligible to enroll in the Essential Plan because NYSOH did not receive the income documentation needed to verify the income listed in your application.

Also on February 28, 2017, NYSOH issued a disenrollment notice stating your enrollment in the Essential Plan would end as of March 31, 2017, because you were no longer eligible to remain in your plan.

On March 22, 2017, you updated your application for financial assistance.

On March 23, 2017, NYSOH issued a notice of eligibility determination stating you were eligible to enroll in the Essential Plan, for a limited time, effective May 1, 2017. The notice directed you to provide documentation confirming your household income before June 19, 2017 or you might lose your insurance or receive less help paying for your coverage.

Also on March 23, 2017, NYSOH issue a notice of enrollment confirmation, based on your plan selection on March 22, 2017, stating you were enrolled in an Essential Plan effective May 1, 2017.

On April 7, 2017, you spoke to NYSOH's Account Review Unit and appealed the termination of your Essential Plan for the month of April 2017.

On July 24, 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 your appeal only involves your coverage for the month of April 2017.
- 2) NYSOH received your initial application for financial assistance with health insurance on November 8, 2016. That application indicated that you would file your 2017 tax return with a tax filing status of married filing jointly and you would claim three dependents.

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- 3) In your application, you attested to self-employment income, your spouse attested to income from five separate employers, and one of your dependents, [REDACTED], attested to income from three separate employers.
- 4) You testified that you used to receive your notices from NYSOH by electronic mail, but that you changed your preference in March 2017 and now receive communications by regular mail.
- 5) You testified that you must have signed up to receive electronic notices from NYSOH when you initially applied in November 2016. You testified that you do not know if you ever received any email alerts from NYSOH.
- 6) You testified that you did not remember whether you received any email alerts notifying you of any notice in your NYSOH account indicating your eligibility was only conditional and that you needed to provide documentation of your household's income.
- 7) You testified that you knew you had to submit income documentation to NYSOH, because you were asked for documentation at the time you applied online on November 8, 2016.
- 8) The eligibility determination notice issued by NYSOH on November 9, 2016 directed you to submit proof of your household income by February 6, 2017. That notice included a "Documentation List" which provided acceptable forms of documentation to prove different types of income. The list indicated that to prove wages an applicant must submit paystubs for the last four weeks or a signed and dated letter from their employer(s). The list further indicated that to prove self-employment income an applicant must submit detailed records of earnings and expenses for the last three months, business payrolls and records for the last three months, or a signed and dated filed tax return from the previous year if representative of attested income.
- 9) Your account confirms that on November 18, 2016, NYSOH received a copy of a Schedule C form from your 2015 tax return. That documentation was invalidated on December 6, 2017, because it did not comply with the document request and because there was no income documentation from your spouse or any other household members attesting to income in the application.
- 10) On December 7, 2016, NYSOH issued a notice indicating the income documentation you submitted was insufficient and directed you to submit additional documentation by February 21, 2017.

- 11) You testified that you do not remember if you received an email alert regarding the December 7, 2016 notice.
- 12) Your account confirms that the December 7, 2016 notice posted to your NYSOH account has been opened.
- 13) No additional documentation was received by NYSOH by February 21, 2017.
- 14) Your account indicates that on February 27, 2017, NYSOH systematically redetermined your eligibility, you were found no longer eligible for the Essential Plan, and you were disenrolled from your Essential Plan, effective March 31, 2017.
- 15) You testified you did not receive the February 28, 2017 eligibility determination or disenrollment notices and that you learned your coverage was terminated from your doctor's office.
- 16) Your account confirms that the February 28, 2017 electronic eligibility determination notice posted to your account stating that you were no longer eligible for the Essential Plan, because you failed to submit sufficient documentation to confirm your household income, has been opened.
- 17) Telephone records indicate that you contacted NYSOH on March 9, 2017 to confirm the income documentation you claimed you submitted on March 7, 2017 had been received. You were advised that the documents had not yet posted to your account and that you could upload the documents to expedite the verification process.
- 18) According to your account, NYSOH received copies of your signed joint 2015 tax return on March 9, 2017 and on March 14, 2017. No documentation of wages from any of your spouse's or dependent's attested employers was received at that time.
- 19) On March 22, 2017, an updated application was submitted on your behalf. You were again determined conditionally eligible to enroll in the Essential Plan pending receipt of income documentation to verify the information listed in your application. A new enrollment in an Essential Plan was submitted on your behalf that day. Coverage through that plan became effective May 1, 2017.
- 20) You testified, and your account confirms, you were without coverage for the month of April 2017.

- 21) You testified that you had a doctor's appointment on [REDACTED] and that a NYSOH representative assured you over the phone on March 22, 2017 that your reenrollment in an Essential Plan would be effective on April 1, 2017.
- 22) You testified that you have outstanding bills from April 2017 and you are seeking reinstatement in your Essential Plan for that month.

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

## **Applicable Law and Regulations**

### Verification of Eligibility for the Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

NYSOH must verify the eligibility of an applicant for the Essential Plan consistent with the standards set in 45 CFR § 155.315 and § 155.320 (New York's Basic Health Plan Blueprint, pgs. 16-17, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>; 42 CFR § 600.345(a)(2)).

An applicant is required to attest to their household's projected annual income. (45 CFR § 155.320(c)(3)(ii)(B)). For all individuals whose household income is needed, NYSOH must request tax return data from the Secretary of the Treasury and data regarding Social Security benefits from the Commissioner of Social Security in order to confirm that the information the applicant is attesting to is accurate (45 CFR § 155.320(c)(1)(i); 45 CFR § 155.320(c)(3)(ii)(A)).

If income data is unavailable, or if an applicant's attestation is not reasonably compatible with the income data NYSOH obtains, NYSOH must request additional information from the applicant to resolve the inconsistency (45 CFR § 155.320 (c)(3)(iii), (iv)).

NYSOH must provide the applicant with notice of the inconsistency in their account and 90 days to provide satisfactory documentary evidence to resolve the inconsistency (45 CFR § 155.315 (f)(2)). If NYSOH remains unable to verify the attestation of the applicant, NYSOH must redetermine the applicant's eligibility based on the information available from the data sources unless the applicant demonstrates that they are unable to provide the required documentation (45 CFR § 155.315(f)(2), (g)).

Upon making an eligibility redetermination, NYSOH must notify the applicant and implement any updates in eligibility to the Essential Plan effective the first day of the following month for changes received by NYSOH from the first to the fifteenth of any month (45 CFR § 155.420(b)(1)(i); *see also* 42 CFR § 600.320(c)). For updates received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR § 155.420(b)(1)(ii); *see also* 42 CFR § 600.320(c)).

### Electronic Notices

Applicants may choose to receive notices and information from NYSOH either by electronic alerts or by regular mail. If the applicant elects to receive electronic notices, NYSOH must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant's account (42 CFR § 600.330(e); 42 CFR § 435.918(b)(4)).

Additionally, if an electronic alert regarding a notice in an individual's NYSOH account fails, NYSOH must send out the notice by regular mail within three days of the failed alert (42 CFR § 435.918(b)(5)).

## **Legal Analysis**

The first issue under review is whether NYSOH properly determined your eligibility for and enrollment in your Essential Plan ended effective March 31, 2017.

NYSOH received your initial application for financial assistance with health insurance on November 8, 2017. That application indicated that you would file your 2017 tax return with a tax filing status of married filing jointly and you would claim three dependents. In your application, you attested to self-employment income, your spouse attested to income from five separate employers, and one of your dependents, [REDACTED], attested to income from three separate employers.

An individual requesting financial assistance to help pay for the cost of coverage provided through NYSOH is required to attest to his or her household's projected annual income. For individuals seeking enrollment in the Essential Plan, NYSOH

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must request income data from federal data sources to verify an individual's income attestation.

If NYSOH cannot verify an individual's attestation, it must provide the individual with notice of the inconsistency and provide a period of 90 days from the date notice is received to resolve the inconsistency.

In the eligibility determination issued on November 9, 2017, you were advised that you were eligible for the Essential Plan for a limited time only, and that you needed to confirm your household's income before February 6, 2017. That notice included a "Documentation List" which provided acceptable forms of documentation to prove different types of income. The list indicated that to prove wages an applicant must submit paystubs for the last four weeks or a signed and dated letter from their employer(s). The list further indicated that to prove self-employment income an applicant must submit detailed records of earnings and expenses for the last three months, business payrolls and records for the last three months, or a signed and dated filed tax return from the previous year if representative of attested income.

Your account confirms that on November 18, 2016, NYSOH received a copy of a Schedule C form from your 2015 tax return. That documentation was invalidated by NYSOH. It is concluded that the document did not comply with the document request as it was not a signed and dated tax return, but an individual tax form which is not sufficient proof of self-employment income. Additionally, the documentation submitted was insufficient, because there was no income documentation from your spouse or any other household member attesting to income in the application. On December 7, 2016, NYSOH issued a notice indicating the income documentation you submitted was insufficient and directed you to submit additional documentation by February 21, 2017.

Your account confirms that NYSOH did not receive any additional income documentation by the February 21, 2017 deadline.

However, you testified that you initially elected to receive alerts regarding notices from NYSOH electronically. Although you testified that you do not remember whether you received any email alerts regarding the November 9, 2016 notice or the December 7, 2016 notice, both of which directed you to submit proof of your household's income and notified you of the types of acceptable documentation, your account confirms that the December 7, 2017 electronic notice has been opened on your account. Furthermore, your testimony that you did not remember whether you received email alerts from NYSOH regarding those notices is insufficient to establish that email alerts were not sent. Accordingly, the totality of the evidence establishes that NYSOH provided you with adequate notice that you needed to submit additional documentation of your income to confirm your eligibility for the Essential Plan.

Since you failed to submit sufficient documentation to verify the household income information attested to in your application, despite receiving adequate notice, NYSOH properly determined you were no longer eligible for the Essential Plan.

Therefore, the February 28, 2017 eligibility determination and disenrollment notices stating your eligibility for and enrollment in an Essential Plan ended, effective March 31, 2017, are correct and must be AFFIRMED.

The second issue is whether NYSOH properly determined that your subsequent enrollment in the Essential Plan was effective no earlier than May 1, 2017.

You testified, and your account confirms, that you updated your NYSOH application on March 22, 2017. A new enrollment in an Essential Plan was submitted on your behalf that day.

The date on which enrollment in an Essential Plan can take effect depends on the day a person selects the plan for enrollment.

Pursuant to the regulations, a plan that is selected from the first day to and including the fifteenth day of a month goes into effect on the first day of the following month. A plan that is selected from the sixteenth day of the month to the end of the month goes into effect on the first day of the second following month.

Since you selected your Essential Plan on March 22, 2017, after the fifteenth day of the month, your enrollment properly took effect on the first day of the second following month; that is, on May 1, 2017.

Therefore, the April 11, 2017 enrollment confirmation notices stating your enrollment in an Essential Plan became effective May 1, 2017, is correct and must be AFFIRMED.

It is noted that although you contacted NYSOH on March 9, 2017 to inquire about income documents you had submitted, you did not submit an updated application or reenroll into a new Essential Plan that day.

It is further noted that you testified a NYSOH representative assured you over the phone, on March 22, 2017, that your reenrollment in an Essential Plan would be effective on April 1, 2017, so you sought medical treatment on April 3, 2017 and you now have an outstanding bill from that appointment. However, as the effective date of an Essential Plan is wholly governed by the above cited regulations, even if you received erroneous information from a NYSOH representative in a phone call, it is not a basis to backdate your coverage to a date in which you would not otherwise be eligible to enroll (see, e.g., Smith v

New York State & Local Retirement Sys., 199 AD2d 763 (1993); Matter of Grella v Hevesi, 38 AD3d 113, 117-118 (2007)).

## **Decision**

The February 28, 2017 notice of eligibility determination is AFFIRMED.

The February 28, 2017 notice of disenrollment is AFFIRMED.

The March 23, 2017 enrollment confirmation notice is AFFIRMED.

**Effective Date of this Decision:** September 6, 2017

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

NYSOH properly found you not eligible to enroll in the Essential Plan effective March 31, 2017, because you did not provide documentation of your household's income.

NYSOH properly found that your reenrollment in the Essential Plan was effective May 1, 2017.

You were not enrolled in an Essential Plan for the month of April 2017

## **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)).

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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  
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Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

The February 28, 2017 notice of eligibility determination is AFFIRMED.

The February 28, 2017 notice of disenrollment is AFFIRMED.

The March 23, 2017 enrollment confirmation notice is AFFIRMED.

NYSOH properly found you not eligible to enroll in the Essential Plan effective March 31, 2017, because you did not provide documentation of your household's income.

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).

NYSOH properly found that your reenrollment in the Essential Plan was effective May 1, 2017.

You were not enrolled in an Essential Plan for the month of April 2017

### **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)

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### 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 नि:शुल्क 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 नि:शुल्क 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 אייך געבן א דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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