



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

## Notice of Decision

Decision Date: August 8, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000017870

[REDACTED]

Dear [REDACTED]

On July 27, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's March 29, 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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## Decision

Decision Date: August 8, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000017870

[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 you do not qualify to enroll in a qualified health plan outside of the open enrollment period for 2017?

## Procedural History

On March 28, 2017, NYSOH received your application for health insurance.

On March 29, 2017, NYSOH issued an eligibility determination notice stating that you were eligible to receive an advance premium tax credit of up to \$282.00 per month and cost sharing reductions, for a limited time because more information was needed to confirm the information in your application. This eligibility was effective May 1, 2017. The notice further stated that you do not qualify to select a health plan outside of the open enrollment period for 2017.

On April 7, 2017, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination notice insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On July 27, 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.

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## Findings of Fact

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

- 1) You testified that you arrived in the United States on January 26, 2017.
- 2) According to your NYSOH account and your testimony, you attempted to submit an application for health insurance on March 27, 2017, but could not complete it because of identity proofing failure.
- 3) You testified that you were told by a NYSOH customer service representative on March 27, 2017, that you were at your 59th day of 60 days within which to enroll and still had time to enroll in a health plan.
- 4) According to your NYSOH account and your testimony, on March 28, 2017, you saw a navigator with the [REDACTED] for identity proofing.
- 5) According to your NYSOH account and your testimony, on March 28, 2017, you submitted an application for health insurance.
- 6) You testified that, on March 28, 2017, after going through the enrollment process with a NYSOH customer service representative, that the system would not allow you to enroll in a qualified health plan.
- 7) You testified that since filing your application on March 28, 2017, there have been no other major changes to your household.
- 8) You testified that you want to enroll in health insurance going forward and that you are concerned about a tax penalty for not having health insurance during part of 2017.

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 QHP, and an enrollee may change their enrollment to another plan. This is generally permitted in instances when the following triggering event occurs:

- (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, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange; or a non-Exchange entity providing enrollment assistance or conducting enrollment activities (45 CFR § 155.420(d)(4)).

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)).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined that you do not qualify to enroll in a qualified health plan outside of the open enrollment period as of March 28, 2017.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. The record indicates that on March 27, 2017, you initiated an application for health insurance with a NYSOH customer service representative. You were not able to complete that application and make a plan selection because of identity proofing failure. On March 28, 2017, you again spoke with a NYSOH customer service representative and submitted an application for health insurance and requested to enroll in a qualified health plan. On March 29, 2017, NYSOH issued a notice stating that you do not qualify to enroll in a qualified health plan outside of the open enrollment period for 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. In this case, you testified that you arrived in the United States on January 26, 2017. When a triggering life event

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occurs, the qualified individual has 60 days from the date of that event to select a qualified health plan. In your case, you arrived in the United States on January 27, 2017 and attempted to complete a new application on March 27, 2017.

Since 60 days from January 26, 2017 is March 27, 2017; you would have qualified to select a qualified health plan outside of the open enrollment period until March 27, 2017.

Further, 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.

The credible evidence of record indicates that on March 27, 2017, you contacted a NYSOH representative in order to set up an account for the purpose of applying for and enrolling in a health insurance plan. However, you were unable to complete the application that day due to identity proofing issues. March 27, 2017 was the 60-day mark from your arrival in the United States on January 26, 2017. You credibly testified that the customer service representative advised you on March 27, 2017, that you were at the 59<sup>th</sup> day and still had another day in which to complete your application. You testified that you relied on this representation and your NYSOH account confirms that, on March 28, 2017, you went to a navigator at the [REDACTED] for identity proofing. You then contacted NYSOH on that same day, March 28, 2017, and completed the application process with the assistance of a NYSOH customer service representative, but were advised that you were outside of the 60-day window; specifically, you were one day past March 27, 2017.

Since the record indicates that you attempted to submit an application within 60 days of your entry into the United States, but were unable to complete the process because of identity proofing failure, your non-enrollment was unintentional, inadvertent or erroneous and was the result of error, misrepresentation, or inaction of an agent of the NYSOH, you should have been granted a special enrollment period of your March 28, 2017 application.

Therefore, NYSOH's March 29, 2017, eligibility determination notice that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to state that you are eligible for a special enrollment period to enroll in a qualified health plan outside of the open enrollment period and have 60 days from the date of this decision to select and confirm your health plan selection for the remainder of 2017.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan within 60 days from the date of this decision.

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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.

## **Decision**

The March 29, 2017 eligibility determination notice stating that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to state that you are eligible for a special enrollment period until 60 days from the date of this decision.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan for 2017 health coverage.

**Effective Date of this Decision:** August 8, 2017

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

By this decision, you are found to qualify for a special enrollment period.

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).

Your case is being sent back to NYSOH to help you enroll into coverage. You must select and confirm your health plan enrollment within 60 days from the date of this decision.

### **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:

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- 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 29, 2017 eligibility determination notice stating that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to state that you are eligible for a special enrollment period until 60 days from the date of this decision.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan for 2017 health coverage.

By this decision, you are found to qualify for a special enrollment period.

Your case is being sent back to NYSOH to help you enroll into coverage. You must select and confirm your health plan enrollment within 60 days from the date of this decision.

## **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 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&etumi ama wo obi a okyer& 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.

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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