



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

Notice of Decision

Decision Date: August 23, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000018065

[REDACTED]

Dear [REDACTED],

On July 20, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's May 6, 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 23, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000018065



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 and your oldest child do not qualify to enroll in a qualified health plan outside of the open enrollment period, effective June 1, 2017?

Procedural History

On January 19, 2017, NYSOH ran your eligibility based on updated income information received on your January 8, 2017, application for your family's health insurance.

On January 20, 2017, NYSOH issued an eligibility determination notice stating in relevant part that you and your oldest child (hereinafter referred to a "child") were eligible to share in an advance premium tax credit (APTC) of up to \$721.00 per month and to receive cost sharing reductions if you were both enrolled in a silver level qualified health plan (QHP), effective March 1, 2017.

On January 21, 2017, NYSOH issued a disenrollment notice stating that your and your child's enrollment in Essential Plan 1 Plus Vision and Dental would end on February 28, 2017. This was because you and your oldest child were no longer eligible to enroll in the Essential Plan.

Also on January 21, 2017, NYSOH issued a plan enrollment notice stating in part that your and your child's health coverage with a QHP would not begin until you picked a plan.

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On February 19, 2017, NYSOH issued an enrollment notice confirming in part that you and your child were enrolled in a silver level QHP with a \$123.80 monthly premium after application of APTC of \$721.00, with a plan enrollment start date of March 1, 2017. The notice stated your APTC would be applied to your monthly premium starting March 1, 2017.

On February 28, 2017, NYSOH issued an enrollment notice confirming in part that you and your child were enrolled in a silver level QHP with a \$123.80 monthly premium after application of APTC of \$721.00, with a plan enrollment start date, effective March 1, 2017.

On April 17, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you and your child were not eligible to change health plans outside of the open enrollment period.

On April 18, 2017, NYSOH issued a notice to confirm your appeal request from the previous day. That notice stated that the reason for your appeal was "Denial of Special Enrollment Period (SEP)."

On April 21, 2017 and April 26, 2017, NYSOH issued eligibility determination notices stating in relevant part that you and your child may be able to enroll in coverage if you qualify for a special enrollment period. If you both qualified for a special enrollment period, then you and your child would be eligible for \$721.00 in APTC and cost-sharing reductions if you enrolled in a silver-level QHP, effective June 1, 2017.

On May 6, 2017, NYSOH issued an eligibility determination notice, based on your May 5, 2017 application for financial assistance, stating in relevant part that you and your child do 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 hearing.

Findings of Fact

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

- 1) According to your NYSOH account and your testimony, on January 19, 2017, you and your child were determined eligible to share in \$721.00 in APTC and receive cost sharing reductions if you enrolled in a silver-level QHP effective March 1, 2017.

- 2) According to your NYSOH account, on February 13, 2017 you logged into your account under ID "[REDACTED]" and you selected a silver-level QHP health plan for you and your child.
- 3) According to your NYSOH account, on February 14, 2017, your and your child's enrollment in the silver-level QHP was processed as a new enrollment with an enrollment start date of March 1, 2017.
- 4) You testified that you contacted NYSOH and spoke with a customer service representative (CSR) on February 27, 2017, who assisted you in enrolling your three youngest children in a CHP plan. You testified that in addition to enrolling your three youngest children in a CHP plan, the CSR also enrolled you and your child into a silver-level QHP that you did not want.
- 5) You testified that, on February 27, 2017, the CSR stated you had 60 days to change plans. You testified that you wanted to select a different plan for you and your child, but were not allowed to do this on February 27, 2017.
- 6) A review of your NYSOH account indicates that, on February 27, 2017, the CSR did not change or otherwise modify the silver-level QHP that you had enrolled in on February 13, 2017.
- 7) You testified that since filing your application on January 8, 2017, there have been no other major changes to your household.
- 8) You testified that you want to be granted a special enrollment period so you and your child can select a different level QHP.

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)).

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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.
 - (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 you and your child do not qualify to enroll in a different QHP outside of the open enrollment period, effective June 1, 2017.

On January 20, 2017, NYSOH issued an eligibility determination notice stating in relevant part that you and your child were eligible to share in \$721.00 in APTC and receive cost sharing reductions if you enrolled in a silver-level QHP effective March 1, 2017.

According to your NYSOH account, on February 13, 2017, you logged on to your account under ID "██████████" and selected a silver-level QHP for you and your child. The February 19, 2017, the plan enrollment notice confirmed that you and your child were enrolled in a silver-level QHP with a \$123.80 monthly premium after application of APTC of \$721.00 per month, with a plan enrollment start date of March 1, 2017.

On April 17, 2017, you spoke to NYSOH's Account Review Unit and requested an appeal because you and your child were not eligible to change health plans outside of the open enrollment period. On April 21, 2017 and April 26, 2017, you submitted updated applications for health insurance and requested to enroll yourself and your child in a different QHP but were not able to change plans. On

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May 6, 2017, NYSOH issued an eligibility determination notice stating in relevant part that you and your child do not qualify to enroll in a QHP outside of the open enrollment period for 2017, effective June 1, 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 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

On February 27, 2017, you contacted NYSOH and spoke with a CSR to assist you in enrolling your three youngest children in a CHP plan. You testified that in addition to enrolling your three youngest children in a CHP plan, the CSR also enrolled you and your child into a silver-level QHP that you did not want. However, a review of your NYSOH account indicates that, on February 27, 2017, the CSR did not change or otherwise modify the silver-level QHP that you had selected on February 13, 2017 and enrolled yourself and your child into for coverage to start on March 1, 2017.

Therefore, the record indicates that, without the assistance of anyone from NYSOH, on February 13, 2017, you selected and enrolled yourself and your child in a silver-level QHP, with a plan effective start date of March 1, 2017. Since the record does not indicate that NYSOH, by action or inaction, made an error or misrepresented information, that resulted in your enrollment in a QHP a special enrollment period cannot be granted on this basis.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2017, no other triggering events have occurred that would qualify you or your child for a special enrollment period.

Therefore, NYSOH's May 6, 2017 eligibility determination notice that you and your child do not qualify to select a health plan outside of the open enrollment period for 2017 is AFFIRMED.

Decision

The May 6, 2017 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: August 23, 2017

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How this Decision Affects Your Eligibility

You and your child do not qualify for a special enrollment period at this time.

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 May 6, 2017 eligibility determination notice is AFFIRMED.

You and your child do not qualify for a special enrollment period at this time.

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)

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।

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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. ye&etumi 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.

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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