



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

## Notice of Decision

Decision Date: September 15, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000018197



Dear [REDACTED]

On August 2, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's March 9, 2017 eligibility determination and disenrollment notices and the effective date of your subsequent Essential Plan enrollment.

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.

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## Decision

Decision Date: September 15, 2017

NY State of Health Account ID: [REDACTED]  
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## Issues

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

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

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

## Procedural History

On December 3, 2016, NYSOH issued a notice of eligibility determination, based on your December 2, 2016 updated application, stating you were eligible to enroll in the Essential Plan with a \$20.00 monthly premium, for a limited time, effective January 1, 2017. The notice directed you to provide documentation confirming your income before March 2, 2017 or you might lose your insurance or receive less help paying for your coverage.

Also on December 3, 2016, NYSOH issued a notice confirming your enrollment in an Essential Plan.

On March 9, 2017, NYSOH issued an eligibility determination notice, based on a March 8, 2017 systematic eligibility redetermination, stating you were newly eligible to purchase a qualified health plan at full cost, effective April 1, 2017. The notice stated that you were not eligible to enroll in the Essential Plan or to receive financial assistance, because NYSOH did not receive the income documentation needed to verify the income listed in your application.

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Also on March 9, 2017, NYSOH issued a disenrollment notice stating your enrollment in the Essential Plan would end on March 31, 2017, because you were no longer eligible to remain in your plan.

On April 6, 2017, NYSOH received your updated application. You were determined eligible to enroll in the Essential Plan with a \$20.00 monthly premium, effective May 1, 2017 and you selected a plan for enrollment the same day.

On April 20, 2017, you spoke to NYSOH's Account Review Unit and appealed the termination of your Essential Plan for the month of April 2017.

On August 2, 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, and your NYSOH account confirms, that you receive all your notices from NYSOH by electronic mail.
- 2) You testified that you received notification of the December 3, 2016 eligibility determination notice posted to your account. You testified you read that notice and you were aware that you had to submit income documentation to confirm your eligibility.
- 3) You testified that you "just forgot to send" your income documentation to NYSOH by the March 2, 2017 deadline.
- 4) You testified that NYSOH should have sent you more than one notice reminding you of the need to submit documentation prior to terminating your coverage.
- 5) Your account confirms that no documentation was received by NYSOH before the March 2, 2017 deadline.
- 6) On March 8, 2017, NYSOH systematically redetermined your eligibility and you were found ineligible for financial assistance because NYSOH did not receive the documentation necessary to confirm the income information in your application.
- 7) You were disenrolled from your Essential Plan, effective March 31, 2017.

- 8) You testified that you received an email alert regarding the March 9, 2017 disenrollment notice and contacted NYSOH immediately.
- 9) You testified the NYSOH representative told you all you had to do was submit your paystubs and your insurance would not be cancelled.
- 10) The Appeals Unit reviewed the recording of a March 10, 2017 telephone call and concluded the following:
  - a. You stated that you received a notice indicating you were no longer eligible for the Essential Plan.
  - b. The representative advised you that you needed to submit income documentation.
  - c. You asked the representative “once I send that, I should be OK then?”
  - d. The representative responded “yeah, absolutely.”
  - e. You asked “so I should go ahead and pay my bill for April and not have to worry about it?”
  - f. The representative responded “yeah, absolutely.”
- 11) Your application was not updated on March 10, 2017 and no new enrollments were submitted that day.
- 12) You uploaded three biweekly paystubs on March 10, 2017. There is no evidence that NYSOH ever verified this documentation.
- 13) On March 21, 2017, your account [REDACTED] was marked inactive by NYSOH and an old account from 2014 was marked active [REDACTED].
- 14) Telephone records indicate that you contacted NYSOH on March 31, 2017 and attempted to update your account and enroll into a plan, but you were unable to do so, because your account was inactive. A request to reactivate account [REDACTED] was submitted.
- 15) Account [REDACTED] was reactivated on April 6, 2017 and an updated application was submitted on your behalf. You were determined eligible to enroll in the Essential Plan with a \$20.00 monthly premium, effective May 1, 2017. According to your account, you selected a plan the same day and your enrollment became effective on May 1, 2017.

- 16) There have been no notices issued on either of your accounts since March 2017.
- 17) Incident # [REDACTED] was created regarding your request to backdate your enrollment start date to April 1, 2017. Notes related to that incident indicate NYSOH denied your request on April 19, 2017, because "Consumer does not meet the criteria for EP backdating based on the justification provided."
- 18) A formal appeal was filed on your behalf on April 20, 2017.
- 19) You testified the misinformation you received from the NYSOH representative on March 10, 2017 and the error in deactivating the wrong account causes a delay in your enrollment.
- 20) You testified you have outstanding medical bills for the month of April 2017 and you are seeking to have your Essential Plan coverage backdated to April 1, 2017.

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)).

### Essential Plan Effective Date

For individuals seeking enrollment in an Essential Plan, New York State has elected to follow the same rules that NYSOH uses in determining effective dates for individuals seeking enrollment in qualified health plans (NY Social Services

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Law § 369-gg(4)(c); New York's Basic Health Plan Blueprint, p. 16, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

The effective date of coverage by an Essential Plan is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment, NYSOH must generally ensure that coverage is effective the first day of the following month for selections received by NYSOH from the first to the fifteenth of any month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(i); see also 42 CFR § 600.320). For selections 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 §§ 155.410(f)(2), 155.420(b)(1)(ii)).

## Legal Analysis

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

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 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 December 3, 2016, 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 March 2, 2017.

You testified that you received notification of the December 3, 2016 eligibility determination notice posted to your account. You testified you read that notice and you were aware you had to submit income documentation to confirm your eligibility. Accordingly, the evidence establishes NYSOH provided you with adequate notice that you needed to submit documentation of your income to confirm your eligibility for the Essential Plan.

Although you testified that you received the December 3, 2016 eligibility determination notice and that you knew you had to submit documentation of your income to confirm your eligibility, you testified that you "just forgot to send" your income documentation to NYSOH by the deadline. The record reflects that NYSOH did not receive the requested income documentation before the March 2, 2017 deadline.

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Pursuant to the above cited regulations, for all individuals whose household income is needed to determine their eligibility for health insurance, NYSOH must request tax return data from the Secretary of the Treasury and data regarding Social Security benefits from the Commissioner of Social Security to confirm that the information the applicant is attesting to is accurate. 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. 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.

As discussed above, NYSOH provided you with adequate notice that income documentation was required to verify the income information listed in your application to confirm your eligibility to remain enrolled in the Essential Plan. The evidence establishes that no such documentation was received by the deadline. Thus, in accordance with the regulations, NYSOH redetermined your eligibility on March 8, 2017 and determined you ineligible for financial assistance, because there was insufficient information available to verify your income. Accordingly, you were no longer eligible to remain enrolled in the Essential Plan.

Therefore, the March 9, 2017 eligibility determination notice and disenrollment notice stating your eligibility for and enrollment in the Essential Plan ended, effective March 31, 2017, were correct and are AFFIRMED.

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

As discussed above, NYSOH properly disenrolled you from your Essential Plan, effective March 31, 2017, because you failed to timely submit the requested income documentation necessary to confirm your eligibility. The evidence establishes that NYSOH provided you with adequate notice of your new eligibility and disenrollment in the March 9, 2017 notices which you testified to receiving.

Telephone call recordings establish that you contacted NYSOH on March 10, 2017, following the issuance of the March 9, 2017 eligibility determination and disenrollment notices, and spoke with a NYSOH representative regarding what you needed to do to maintain your coverage. The representative advised you that you needed to submit income documentation. You asked the representative if your coverage would be ok once you submitted the documentation and the representative responded "yeah, absolutely." It is concluded that this was an error on the part of the NYSOH representative.

The evidence establishes that the deadline to submit your income documentation expired on March 2, 2017, prior to the March 10, 2017 phone call. Moreover, your eligibility had already been redetermined on March 8, 2017 and you were no longer eligible for the Essential Plan. When you called NYSOH on March 10, 2017, it was already too late to submit income documentation to verify your eligibility for the Essential Plan, because you were no longer eligible for the Essential Plan.

However, it is concluded that the misinformation from the NYSOH representative in advising you that all you had to do to ensure you were enrolled in coverage for April 2017 was submit your income documentation, prevented you from reapplying for health insurance on that date. As a result, according to your account, you did not reapply for health insurance and select a new plan until April 6, 2017, causing a gap in coverage for the month of April 2017.

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

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.

It is concluded that if you had not received misinformation from the NYSOH representative on March 10, 2017, you would have reapplied for insurance that day. There is nothing in the record to suggest that your eligibility would have been different on March 10, 2017 than it was when you reapplied on April 6, 2017; thus, it is presumed you would have been determined eligible for the Essential Plan with a \$20.00 monthly premium on March 10, 2017, and eligible to be enrolled in a plan effective April 1, 2017.

Accordingly, it is concluded that but for the misinformation given by the NYSOH representative on March 10, 2017 you would have been reenrolled in an Essential Plan, effective April 1, 2017. Therefore, your case is RETURNED to NYSOH to reinstate your coverage for the month of April 2017.

It is noted that you contended that the issues relating to NYSOH erroneously inactivating the wrong account caused the delay in your enrollment. However, the evidence establishes that this occurred after the fifteenth of the month and, thus, would not have impacted your ability to enroll in health coverage for April 2017. The delay in this case was caused by the misinformation you received on March 10, 2017.

It is further noted that there have not been any notices issued on your account since March 2017, despite there being subsequent eligibility determinations, enrollments, and appeals filed.

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## **Decision**

The March 9, 2017 notice of eligibility determination and notice of disenrollment are AFFIRMED.

Your case is RETURNED to NYSOH to reinstate your coverage in your Essential Plan for April 2017.

**Effective Date of this Decision:** September 15, 2017

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

NYSOH properly terminated your Essential Plan coverage, effective March 31, 2017.

You should have been reenrolled in an Essential Plan on March 10, 2017, with your coverage becoming effective on April 1, 2017.

Your case is being sent back to NYSOH to reinstate your coverage 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)).

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

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- 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):**

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- By mail at:  
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- By fax: 1-855-900-5557

### **Summary**

The March 9, 2017 notice of eligibility determination and notice of disenrollment are AFFIRMED.

Your case is RETURNED to NYSOH to reinstate your coverage in your Essential Plan for April 2017.

NYSOH properly terminated your Essential Plan coverage, effective March 31, 2017; however, you should have been reenrolled in an Essential Plan on March 10, 2017 and your coverage should have become effective on April 1, 2017.

### **Legal Authority**

We are issuing this determination in accordance with 45 CFR § 155.545.

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**A Copy of this Decision Has Been Provided To:**



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## 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 bεtumi ama wo obi a okyerε 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 דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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