

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

#### Notice of Decision

Decision Date: September 08, 2017

NY State of Health Account ID
Appeal Identification Number: AP00000018247



On September 5, 2017 you appeared by telephone at a hearing on your appeal of NY State of Health's March 16, 2017 eligibility determination notice, March 16, 2017 disenrollment notice, and April 21, 2017 verbal denial of a special enrollment period.

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 NY State of Health 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.



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

#### Decision

Decision Date: September 08, 2017

NY State of Health Account ID:

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#### Issue

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

Did NY State of Health properly determine that your spouse's eligibility for financial assistance and enrollment in a qualified health ended effective March 31, 2017?

Did NY State of Health properly determine that your spouse does not qualify to enroll in a qualified health plan outside of the open enrollment period?

# **Procedural History**

On December 9, 2016, NY State of Health (NYSOH) issued a notice of eligibility determination stating that your spouse was eligible to receive up to \$195.00 per month in advance premium tax credits (APTC) for a limited time, to be shared with your spouse, effective January 1, 2017. The notice further requested that you provide documentation confirming your spouse's citizenship status before March 8, 2017.

Also on December 9, 2016, NYSOH issued a notice confirming your spouse's enrollment in a qualified health plan.

On December 27, 2016, you updated your household's application for financial assistance.

On December 28, 2016, NYSOH issued a notice of eligibility determination stating that your spouse was eligible to receive up to \$195.00 per month in APTC for a limited time, to be shared with your spouse, effective February 1, 2017. The notice further requested that you provide documentation confirming your spouse's citizenship status before March 8, 2017.

Also on December 28, 2016, NYSOH issued a notice confirming your spouse's enrollment in a qualified health plan.

On March 16, 2017, NYSOH issued an eligibility determination notice stating that your spouse was not eligible for Medicaid, Child Health Plus, the Essential Plan, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance. Your spouse also could not enroll in a qualified health plan at full cost because you had not confirmed his citizenship status within the required timeframe. Your spouse's eligibility for coverage ended effective March 31, 2017.

Also on March 16, 2017, NYSOH issued a disenrollment notice stating that your spouse's coverage with his qualified health plan would end on March 31, 2017. This was because he was no longer eligible to enroll in health insurance through NYSOH.

On April 21, 2017, you attempted to reenroll your spouse in a qualified health plan, but were unable to.

Also on April 21, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as your spouse had been found no longer eligible to enroll in coverage through NYSOH and his enrollment in a qualified health plan on March 31, 2017, and he was unable to reenroll in a health plan outside of the open enrollment period.

In response to your communication with NYSOH's Account Review Unit, an incident was created. The notes within this incident indicate that you were appealing the inability to enroll your spouse in coverage for the remainder of 2017 and that you were requesting a special enrollment period be made available so that reenrollment could occur.

On May 6, 2017, NYSOH issued a notice of eligibility determination stating that your spouse was eligible for APTC for a limited time, effective April 1, 2017. This was because your spouse had been granted Aid to Continue until a decision was made on your appeal.

On September 5, 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:

- You testified that you submitted your household's application for financial assistance with 2017 coverage in December 2016. Your NYSOH account reflects that you submitted applications on December 8, 2016 and December 27, 2016.
- 2) You testified that you contacted NYSOH via phone in order to complete your household's application, and you were not requested to submit documentation of your spouse's citizenship at that time.
- You testified, and the record reflects, that you receive all of your notices from NYSOH via regular mail.
- 4) You testified that you did not receive any notices stating that your spouse's eligibility was limited and that you needed to provide documentation of his citizenship status.
- 5) No notices that were sent to the address listed on your NYSOH account have been returned as undeliverable.
- You testified that you did not know that you needed to submit documentation of your spouse's citizenship status until you received your April premium billing statement which indicated that your spouse was no longer covered.
- 7) You testified that your spouse is a naturalized citizen, and has been a naturalized citizen for approximately thirty years.
- 8) The record reflects that on May 5, 2017 you faxed documentation of your spouse's citizenship status to NYSOH, and this was uploaded to your NYSOH account on June 1, 2017.
- 9) You testified that you attempted to reenroll your spouse into coverage as soon as you found out that he had been disenrolled.
- 10) Your NYSOH account reflects that you contacted NYSOH on April 21, 2017 to reenroll your spouse into a qualified health plan.

- 11) You testified that since filing your application for 2017 coverage there have been no changes in your immediate household.
- 12) You testified that you are seeking reinstatement of your spouse in his qualified health plan or a special enrollment period to be able to reenroll your spouse into a health plan through NYSOH.

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

# **Applicable Law and Regulations**

#### De Novo Review

NYSOH Appeals Unit must review each appeal de novo and "consider all relevant facts and evidence adduced during the appeals process" (45 CFR § 155.535(f)). "De novo review means a review of an appeal without deference to prior decisions in the case" (45 CFR § 155.500).

#### Citizenship and Immigration Status

To enroll in a qualified health plan through NYSOH, an applicant must be a citizen or national of the United States, or a non-citizen who is lawfully present in the United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1)).

NYSOH must verify or obtain information in order to determine that an applicant is eligible for enrollment in a qualified health plan, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

If an applicant attests to citizenship, status as a national, or lawful presence, and NYSOH is unable to verify such attestation, NYSOH must provide the applicant with notice of the inconsistency. NYSOH must then provide the applicant with 90 days to provide satisfactory documentary evidence, from the date the notice of inconsistency is received by the applicant. Notice is considered received 5 days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the 5-day period. (45 CFR § 155.315(c)(3), (f)(2)(i)).

If NYSOH remains unable to verify the citizenship attestation after the 90-day period ends, it must determine the applicant's eligibility based on the information available (45 CFR § 155.315(f)(5).

#### Enrollment in a Qualified Health Plan

NYSOH must provide annual open enrollment periods during which time qualified individuals may enroll in a qualified health plan and enrollees may change qualified health plans (45 CFR § 155.410(a)(1)).

For the benefit year beginning on January 1, 2017, the annual open enrollment period began on November 1, 2016, and extended through January 31, 2017 (45 CFR § 155.410(e)(2)).

#### **Special Enrollment Periods**

After each open enrollment period ends, NYSOH provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a qualified health plan, and an enrollee may change their enrollment to another plan. This is generally permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent either:
  - (i) Loses minimum essential coverage.
  - (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 nonenrollment 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 first issue under review is whether NYSOH properly determined that your spouse was no longer eligible to enroll in a qualified health plan through NYSOH, effective March 31, 2017.

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH, and must confirm, among other things, that their citizenship status is satisfactory.

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

inconsistency. For purposes of verifying citizenship, notice is considered received 5 days after the date on the notice.

In the eligibility determinations issued on December 9, 2016 and December 27, 2016, you were advised that your spouse's eligibility was limited, and that you needed to confirm his citizenship status before March 8, 2017.

You testified, and the record reflects, that you receive all of your notices from NYSOH via regular mail. You testified that you did not receive any notices stating that your spouse's eligibility was limited and that you needed to provide documentation of his citizenship status. No notices that were sent to the address listed on your NYSOH account have been returned as undeliverable. Therefore, NYSOH issued proper notice that your spouse's eligibility was limited and that additional documentation was needed to confirm his eligibility.

NYSOH did not receive the requested citizenship documentation before the deadline.

Therefore, NYSOH properly notified you of an inconsistency in your account and you did not submit the requested citizenship documentation before the deadline.

If NYSOH remains unable to verify the inconsistency after the 90-day period ends, then it must determine the applicant's eligibility based on the information available in the data sources.

Since the requested citizenship documentation was not received within the 90-day period, NYSOH was required to redetermine your spouse's eligibility without verification of his citizenship status. As a result, NYSOH properly determined that your spouse could not enroll in a qualified health plan through NYSOH effective March 31, 2017 because you did not provide the information requested by NYSOH.

Therefore, NYSOH's March 16, 2017 eligibility determination notice and March 16, 2017 disensollment notice are correct and are AFFIRMED.

The second issue under review is whether NYSOH properly determined that your spouse does not qualify to enroll in a qualified health plan outside of the open enrollment period.

You testified that you are appealing the denial of a special enrollment period to reenroll your spouse into a health plan through NYSOH. However, the record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period.

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of

the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH's failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Your credible testimony along with the April 21, 2017 incident ( ) stating that the reason for your appeal was in part that you were requesting a special enrollment period be made available so that enrollment could occur, permits an inference that NYSOH did deny your special enrollment request.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to the eligibility determination notice had it been issued.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On April 21, 2017, you contacted NYSOH and attempted to reenroll your spouse into a qualified health plan. Also on April 21, 2017, NYSOH issued verbal denial of your request to reenroll your spouse into a qualified health plan in that your spouse did not qualify to enroll in a qualified health plan outside of the open enrollment period.

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 the present case, there is no evidence in the record to establish grounds for a special enrollment period. You testified that there have been no changes to your household in 2017.

Though your spouse did lose health coverage as a result of the March 16, 2017 eligibility determination and the March 16, 2017 disenrollment, the loss of health insurance coverage in this case cannot be considered a triggering event for a special enrollment period, because it was a result of your failure to provide proof of your spouse's citizenship which NYSOH considers a voluntary action causing the termination of your spouse's coverage.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2017, your spouse did not experience a triggering event that would qualify him for a special enrollment period as of the date of the hearing.

Therefore, NYSOH's denial of a special enrollment period to select a health plan outside of the open enrollment period for 2017 is AFFIRMED.

## **Decision**

The March 16, 2017 notice of eligibility determination is AFFIRMED.

The March 16, 2017 disenrollment notice is AFFIRMED.

NYSOH's denial of a special enrollment period to select a health plan outside of the open enrollment period for 2017 is AFFIRMED.

Effective Date of this Decision: September 08, 2017

# **How this Decision Affects Your Eligibility**

NYSOH properly found your spouse ineligible to enroll in a qualified health plan because you did not submit proof of his citizenship status.

Your spouse does 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:

- 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 16, 2017 notice of eligibility determination is AFFIRMED.

The March 16, 2017 disenrollment notice is AFFIRMED.

NYSOH properly found your spouse ineligible to enroll in a qualified health plan because you did not submit proof of his citizenship status.

NYSOH's denial of a special enrollment period to select a health plan outside of the open enrollment period for 2017 is AFFIRMED.

Your spouse does 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.

## <u>한국어 (Korean)</u>

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.

#### (Arabic)العربية

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 5777-355-855-1. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجانًا.

#### বাংলা (Bengali)

এটি এক গুরুত্বপূর্ণ নখি। 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 निःश्ल्क 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 महत्त्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नहोस। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई नि:शुल्क दोभाषे उपलब्ध गराउन सक्छों।

## 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. yebetumi ama wo obi a okyere kasa a woka no ase ama wo kwa a wontua hwee.

#### اردو(Urdu<u>)</u>

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم5777-355-855-1 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.