



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

Notice of Decision

Decision Date: August 9, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000018323

[REDACTED]

Dear [REDACTED]

On July 20, 2017, your Authorized Representative appeared by telephone at a hearing on your appeal of NY State of Health's April 28, 2017 eligibility determination.

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 9, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000018323



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 did not qualify to enroll in a qualified health plan (QHP) outside of the 2017 open enrollment period?

Procedural History

On January 5, 2017, NYSOH issued a renewal notice stating that it was time to renew your application for health insurance through NYSOH. The notice stated that you needed to update your application between January 16, 2017 and February 15, 2017 for NYSOH to determine whether you would qualify to continue to receive financial assistance with the cost of health insurance.

On January 24, 2017, NYSOH received your updated application for health insurance.

On January 25, 2017, NYSOH issued an eligibility determination notice stating that you were eligible to receive advance payments of the premium tax credit (APTC) of up to \$246.00 per month for a limited time, effective March 1, 2017.

On January 25, 2017, NYSOH issued a disenrollment notice stating that your enrollment in your Essential Plan 1 coverage was ending effective February 28, 2017.

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On February 4, 2017, NYSOH issued a notice of enrollment confirmation stating that you were enrolled in a platinum-level QHP with a \$465.75 monthly premium, after the application of your APTC, beginning March 1, 2017.

On April 11, 2017, you attempted to enroll into a different QHP through NYSOH, but were unable to.

On April 24, 2017, you spoke to NYSOH's Account Review Unit and appealed, insofar as you were not eligible to enroll in a different QHP outside of the 2017 open enrollment period.

On April 28, 2017, NYSOH issued a notice stating that you were eligible to receive up to \$246.00 per month in APTC for a limited time, effective June 1, 2017. The notice also stated that you did not qualify to select a QHP outside of the 2017 open enrollment period.

On July 20, 2017, your mother, [REDACTED], appeared as an Authorized Representative (AR) at 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) Your authorized representative (AR) testified that you are appealing the denial of a special enrollment period to enroll into a different health plan through NYSOH.
- 2) Your AR testified that she spoke with NYSOH in January 2017 to select a plan, and explained that she needed a plan that covered your name-brand prescription medication for a chronic medical condition.
- 3) Your AR testified that your doctor is currently trying to get your QHP to authorize the name-brand medication based on your medical needs, but that this has not happened so far.
- 4) Your AR testified that the NYSOH representative she spoke with in January 2017 told her that the plan she chose for you would cover your medication.
- 5) Your AR testified that she contacted NYSOH again to try to select a new QHP on your behalf, but was told that she could not.

- 6) Your NYSOH account reflects that your Essential Plan eligibility ended as of February 28, 2017.
- 7) Your NYSOH account reflects that you updated your application and changed your income to \$0.00 on June 19, 2017, and your current QHP enrollment is ending as of July 31, 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 QHP and enrollees may change QHPs (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 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 QHP 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 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.

(5) The enrollee or, his or her dependent adequately demonstrates to NYSOH that the QHP 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 APTC, or has a change in eligibility for cost-sharing reductions.

(7) The qualified individual or enrollee, or his or her dependent, gains access to a new QHP 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 QHP 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 QHP; 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 QHP (45 CFR § 155.420(c)(1)).

Legal Analysis

The issue under review is whether NYSOH properly determined that you did not qualify to select a new QHP outside of the 2017 open enrollment period.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. However, because you were enrolled in Essential Plan coverage through February 28, 2017, you were not required to renew your NYSOH application until the period of time between January 16, 2017 and February 15, 2017. On January 24, 2017, your AR submitted an application for health insurance on your behalf, and requested to enroll you in a QHP. Your enrollment in a platinum-level QHP was subsequently confirmed by NYSOH in a notice dated January 25, 2017.

However, your AR testified that the plan she selected for you did not cover the brand-name medication that you require for your medical condition. She therefore contacted NYSOH on April 11, 2017 to try to change your enrollment to a different QHP. However, she was told by NYSOH that she could not change your enrollment because it was outside of the open enrollment period, and NYSOH issued a notice stating this on April 28, 2017.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period to enroll in, or change to another health plan offered in NYSOH. To qualify for a special enrollment period, a person must experience a triggering event.

The record reflects that your Essential Plan coverage ended on February 28, 2017. This loss of insurance coverage, which happened after the 2017 open enrollment period ended, should have been considered a triggering life event.

When a triggering life event occurs, the qualified individual has 60 days from the date of that event to select a QHP.

As such, you should have been able to select a plan for enrollment, or change your enrollment to a new plan, for a period of 60 days from February 28, 2017. Since 60 days from February 28, 2017 is April 29, 2017, you would have qualified to select a QHP outside of the open enrollment period until April 29, 2017.

The credible evidence of record indicates that your AR contacted NYSOH and attempted to change your enrollment on April 11, 2017, which was prior to the expiration of the special enrollment period.

Therefore, NYSOH's April 28, 2017 notice stating that you do not qualify to select a health plan outside of the open enrollment period for 2017 is not correct and is

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MODIFIED to state that you had until April 29, 2017 to select a QHP for enrollment.

Your case is RETURNED to NYSOH to assist you in retroactively changing your enrollment to a different QHP, beginning as early as May 1, 2017. However, as your current QHP coverage is ending as of July 31, 2017, this applied to your retroactive coverage only. NYSOH will assist you in determining your options for updating your application for health insurance going forward, should you wish to do so.

Decision

NYSOH's April 28, 2017 eligibility determination is MODIFIED to state that you had until April 29, 2017 to select or to change a QHP for enrollment.

Your case is RETURNED to NYSOH to assist you in retroactively changing your enrollment to a different QHP as of May 1, 2017, should you choose to do so. Additionally, since your current enrollment is ending as of July 31, 2017, NYSOH will assist you with updating your application for health insurance, should you wish to do so.

Effective Date of this Decision: August 9, 2017

How this Decision Affects Your Eligibility

NYSOH improperly denied you a special enrollment in its April 28, 2017 eligibility determination, as you had until April 29, 2017 to enroll in a QHP or select a new QHP for enrollment.

Your case is being sent back to NYSOH to allow you to change your QHP enrollment to a different plan as of May 1, 2017, should you choose to do so. You would be responsible for paying premiums for any retroactive months in which you enroll into a different QHP.

As your current enrollment is ending as of July 31, 2017, NYSOH will also assist you in updating your application for health insurance so that you can find out your eligibility going forward, should you wish to do so.

If You Disagree with this Decision (Appeal Rights)

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).

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
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- By fax: 1-855-900-5557

Summary

NYSOH's April 28, 2017 eligibility determination is MODIFIED to state that you had until April 29, 2017 to select a QHP for enrollment.

Your case is RETURNED to NYSOH to assist you in retroactively changing your enrollment to a different QHP as of May 1, 2017, should you choose to do so. Additionally, since your current enrollment is ending as of July 31, 2017, NYSOH will assist you with updating your application for health insurance, should you wish to do so.

NYSOH improperly denied you a special enrollment in its April 28, 2017 eligibility determination, as you had until April 29, 2017 to enroll in a QHP or select a new QHP for enrollment.

Your case is being sent back to NYSOH to allow you to change your QHP enrollment to a different plan as of May 1, 2017, should you choose to do so. You would be responsible for paying premiums for any retroactive months in which you enroll into a different QHP.

As your current enrollment is ending as of July 31, 2017, NYSOH will also assist you in updating your application for health insurance so that you can find out your eligibility going forward, should you wish to do so.

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 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 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 איר געבן א דאלמענטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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