



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

## Notice of Decision

Decision Date: September 01, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000018730

[REDACTED]

Dear [REDACTED],

On August 18, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's March 17, 2017 cancellation notice and April 29, 2017 eligibility determination notice.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the Account ID at the top of this notice.

### Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

This page intentionally left blank.



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

## Decision

Decision Date: September 01, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000018730



## Issues

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

Does the Appeals Unit of NY State of Health (NYSOH) have the authority to review whether your enrollment in your qualified health plan (QHP) was properly terminated for non-payment of premium, effective March 1, 2017?

Did NYSOH properly determine that you did not qualify to enroll in a QHP outside of the 2017 open enrollment period?

## Procedural History

On January 27, 2017, NYSOH received your updated application for health insurance.

On January 28, 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 \$315.00 per month, and eligible to receive cost-sharing reductions if you enrolled in a silver level QHP, effective March 1, 2017.

Also on January 28, 2017, NYSOH issued an enrollment confirmation notice stating that you were enrolled in a HealthFirst silver level QHP with a monthly premium of \$138.55, after the application of your APTC, beginning March 1, 2017.

On March 17, 2017, NYSOH issued a cancellation notice stating that your enrollment in your QHP was terminated, effective March 1, 2017, because a

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).

premium payment had not been received by the health plan by the payment deadline.

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

On April 29, 2017, NYSOH issued an eligibility determination notice stating that you were eligible to receive up to \$315.00 per month in APTC, and eligible for cost-sharing reductions, effective June 1, 2017. It further stated that you did not qualify to select a health plan outside of the open enrollment period for 2017.

On May 5, 2017, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On August 18, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open through September 5, 2017, to allow you to submit supporting documents.

On August 25, 2017, the Appeals Unit of NYSOH received a two-page fax submitted on your behalf. The record is now closed.

## **Findings of Fact**

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

- 1) You were enrolled in a QHP beginning March 1, 2017, with a monthly premium of \$315.00 after the application of your APTC.
- 2) You testified that you waited to receive an invoice so that you could make your first premium payment, but that you did not receive an invoice for the month of March.
- 3) You testified that you called NYSOH in late February 2017, when you had not yet received an invoice, and were told that you should be receiving a bill soon.
- 4) You testified that you did not receive a bill until later in March 2017, when you received an invoice that asked for payment by of \$138.00 by April 15, 2017, and that showed a previous balance of \$0.00.
- 5) You testified that you paid this bill by check.

- 6) On March 17, 2017, NYSOH issued a notice stating that your coverage was cancelled, effective March 1, 2017, for failure to pay your premium by the payment deadline.
- 7) You testified that you did not receive another bill for May 2017, so you called NYSOH and were told that your coverage had been cancelled for nonpayment.
- 8) You testified that you called HealthFirst and were informed that there was nothing that they could do, and that you needed to contact NYSOH.
- 9) You testified that you explained to HealthFirst that you had not received a bill for March, and that they acknowledged that they could not find an earlier invoice for your account.
- 10) On April 28, 2017, you contacted NYSOH to try to reenroll into a QHP, but were unable to do so.
- 11) You testified that, since filing your application on January 27, 2017, there have been no other major changes to your household.
- 12) You testified that you are looking to enroll in coverage through NYSOH for the remainder of the 2017 coverage year.
- 13) After the hearing, you faxed a two-page document to the Appeals Unit consisting of a fax cover sheet and an invoice from HealthFirst. The invoice is dated March 10, 2017 and states that it is for the March 2017 billing period. The invoice shows a \$0.00 previous balance, and indicates a tax credit of \$315.00 has been applied to the current amount due, leaving a balance of \$138.55. The bill states in three different places that payment is due by April 15, 2017. This document is marked and entered into the record as "Appellant's Exhibit One."

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

## **Applicable Law and Regulations**

### Appealable Issues

An applicant has the right to appeal to NYSOH's Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) a failure by NYSOH to provide timely notice of an

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).

eligibility determination 45 CFR § 155.505; and (4) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

### 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 a 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)).

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

(1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or

(2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128” such as failure to comply with other requirements (45 CFR § 147.128(b))

(45 CFR § 155.420(e)).

## Legal Analysis

The first issue under review is whether the Appeals Unit of NYSOH has the authority to review whether your enrollment in your QHP was properly terminated for non-payment of premium, effective March 1, 2017.

On January 27, 2017, you were enrolled into a QHP for the 2017 coverage year with a monthly premium of \$138.55, effective March 1, 2017.

You testified that you waited to receive an invoice from your QHP, but never received one. You testified that you called NYSOH in late February to inquire as to what to do, and were told that you would receive an invoice. You testified that you did not receive anything from your QHP until you received a bill for April 2017. You testified that you called your QHP and made a payment, but then did not receive any further invoices. You testified that you called NYSOH and your QHP, and were told that your coverage had been terminated for nonpayment.

On March 17, 2017, NYSOH issued a notice stating that you were disenrolled from your health plan for non-payment of the premium by the payment deadline, effective March 1, 2017.

NYSOH Appeals Unit only has the authority to review issues related to the following: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) a failure to provide timely notice of an eligibility determination, and (4) a denial of a special enrollment period.

Since the Appeals Unit is not given the authority to review termination of enrollment due to non-payment of premiums, we cannot reach the merits as to whether you were properly terminated from your health plan for non-payment of premiums. Therefore, your appeal of the March 17, 2017 cancellation notice is **DISMISSED** as a non-appealable issue.

The second issue under review is whether NYSOH properly determined that you did not qualify to enroll in a QHP outside of the open enrollment period, effective June 1, 2017.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On April 28, 2017, you submitted a request to reenroll in a QHP.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period to enroll in a health plan, or change to

another health plan offered in NYSOH. 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.

Although you did lose health coverage as a result of the March 17, 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 non-payment of your premiums which NYSOH considers a voluntary action causing the termination of your coverage.

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

Therefore, the April 29, 2017 eligibility determination, to the extent it denied you a special enrollment period, was correct and is AFFIRMED.

However: After the hearing, you provided documentation indicating that your first QHP invoice was issued to you on March 10, 2017 – seven days before your coverage was terminated for nonpayment of premium. Additionally, the invoice indicates that no previous balance was due, and that the current payment was not due until April 15, 2017. Finally, the invoice indicates that this payment was intended to cover your March 2017 premium.

Therefore, your case is RETURNED to Plan Management to confirm that this was the first invoice you were sent from your QHP, HealthFirst for your 2017 QHP coverage.

If it is determined that HealthFirst did not send you an invoice prior to March 10, 2017 for your March 2017 premium, then you will be eligible for a special enrollment period based on that error, and NYSOH will contact you to assist you in enrolling in coverage, beginning as early as March 1, 2017, or a later date of your choosing

## **Decision**

The April 29, 2017 eligibility determination, insofar as it denied you a special enrollment period, is AFFIRMED.

Your case is RETURNED to NYSOH's Plan Management to confirm that the March 10, 2017 invoice issued by HealthFirst was the first invoice you were sent

for your March 2017 premium payment, and your 2017 health plan coverage generally.

If it is determined that the March 10, 2017 was the first invoice sent to you for your March 2017 premium, you will be eligible for a special enrollment period, and NYSOH will contact you to assist you in enrolling in a QHP, beginning as early as March 1, 2017, or from this point forward.

**Effective Date of this Decision:** September 01, 2017

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

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

However, your case is being sent back to NYSOH to confirm that HealthFirst did not issue a premium invoice until March 10, 2017 for your 2017 QHP coverage. If no invoice was issued prior to the March 10, 2017 invoice, you will be eligible to enroll in coverage outside of the 2017 open enrollment period, and can choose to have your coverage begin on March 1, 2017, or a later month of your choosing. You will be responsible for any retroactive premium payments if you enroll in coverage for any months in the past.

### **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

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).

- 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 April 29, 2017 eligibility determination, insofar as it denied you a special enrollment period, is **AFFIRMED**.

Your case is **RETURNED** to NYSOH's Plan Management to confirm that the March 10, 2017 invoice issued by HealthFirst was the first invoice you were sent for your March 2017 premium payment, and your 2017 health plan coverage generally.

If it is determined that the March 10, 2017 was the first invoice sent to you for your March 2017 premium, you will be eligible for a special enrollment period, and NYSOH will contact you to assist you in enrolling in a QHP, beginning as early as March 1, 2017, or from this point forward.

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

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).

However, your case is being sent back to NYSOH to confirm that HealthFirst did not issue a premium invoice until March 10, 2017 for your 2017 QHP coverage. If no invoice was issued prior to the March 10, 2017 invoice, you will be eligible to enroll in coverage outside of the 2017 open enrollment period, and can choose to have your coverage begin on March 1, 2017, or a later month of your choosing. You will be responsible for any retroactive premium payments if you enroll in coverage for any months in the past.

## **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)

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).

000 00 00000000000000 0000 000 00000 00000 000 0000000000 000000000 00 00000,  
00000000 000 1-855-355-5777 0000000 00 000000 0000 00 0000000 000 00000  
00000000000 0000 0000000 0000 0000000 0000 000000

### **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. y&b&tumi 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.

### **שׂוֹדֵשׁ (Yiddish)**

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).

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.

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).