



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: AP000000019165

[REDACTED]

Dear [REDACTED] and [REDACTED],

On August 28, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's March 14, 2017 eligibility determination notice and March 14, 2017 disenrollment notice.

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

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

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

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

Legal Authority

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

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

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Issues

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

Was your appeal of NY State of Health's March 14, 2017 eligibility determination notice and March 14, 2017 disenrollment notice timely?

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

Procedural History

On December 7, 2016, NY State of Health (NYSOH) issued a notice of eligibility determination stating that you were eligible to enroll in the Essential Plan for a limited time, effective January 1, 2017, and that your spouse was eligible to enroll in the Essential Plan, effective January 1, 2017. This notice directed you to provide documentation confirming your citizenship status before March 6, 2017, in order to confirm your eligibility for financial assistance.

On December 13, 2016, you updated your household's application for financial assistance.

On December 14, 2016, NYSOH issued a notice of eligibility determination, based on your December 13, 2016 application, stating that you were eligible to receive up to \$530.00 per month in advance payments of the premium tax credit (APTC) to be shared with your spouse and cost-sharing reductions if you

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enrolled in a silver level qualified health plan for a limited time, effective January 1, 2017, and that your spouse was eligible to receive up to \$530.00 per month in APTC to be shared with yourself and cost-sharing reductions if you enrolled in a silver level qualified health plan, effective January 1, 2017. This notice directed you to provide documentation confirming your citizenship status before March 6, 2017, in order to confirm your eligibility for financial assistance.

On January 24, 2017, you updated your household's application for financial assistance.

On January 25, 2017, NYSOH issued a notice of eligibility determination, based on your January 24, 2017 application, stating that you were eligible for a limited time to receive up to \$630.00 per month in APTC to be shared with your spouse and cost-sharing reductions if you enrolled in a silver level qualified health plan for a limited time, effective March 1, 2017, and that your spouse was eligible to receive up to \$630.00 per month in APTC to be shared with yourself and cost-sharing reductions if you enrolled in a silver level qualified health plan, effective March 1, 2017. This notice directed you to provide documentation confirming your citizenship status before March 6, 2017, in order to confirm your eligibility for financial assistance.

On January 25, 2017, NYSOH issued a notice confirming your and your spouse's enrollment in couple qualified health plan with a plan enrollment start date of March 1, 2017.

On March 14, 2017, NYSOH issued an eligibility determination notice stating that you were 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. You also could not enroll in a qualified health plan at full cost because you had not confirmed your citizenship status within the required timeframe. Your eligibility for coverage ended effective March 31, 2017.

Also on March 14, 2017, NYSOH issued a notice of eligibility determination stating that your spouse was eligible for up to \$177.00 per month in APTC and cost-sharing reductions if she enrolled in a silver level qualified health plan, effective April 1, 2017. This notice also stated that your spouse may be able to enroll in coverage if she qualified for a special enrollment period.

Additionally, on March 14, 2017, NYSOH issued a notice of disenrollment stating that you and your spouse's coverage in your qualified health plan would end on March 31, 2017. This was because you were no longer eligible to enroll in health insurance through NYSOH and your spouse was no longer eligible to enroll in her current plan.

On May 22, 2017, NYSOH received your household's application for financial assistance. That day, a preliminary eligibility determination was prepared stating

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that you and your spouse were eligible to receive up to \$536.00 in APTC and eligible to receive cost-sharing reductions if you enrolled in a silver level qualified health plan, effective July 1, 2017. You also attempted to reenroll yourself and your spouse into a qualified health plan but were unable to select a plan for enrollment.

Also on May 22, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you and your spouse had been disenrolled from your qualified health plan and you could not reenroll yourself and your spouse into a qualified health plan outside of the open enrollment period.

On May 23, 2017, NYSOH issued an eligibility determination notice, based on the May 22, 2017 application for financial assistance, stating that you and your spouse were eligible to receive up to \$536.00 in APTC and eligible to receive cost-sharing reductions if you enrolled in a silver level qualified health plan for a limited time, effective July 1, 2017. It further stated that you and your spouse do not qualify to select a health plan outside of the open enrollment period for 2017.

On August 28, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, your spouse acted as your authorized representative. 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 that you previously received all of your notices from NYSOH by electronic mail. You testified that you updated your preference from receiving electronic mail from NYSOH to regular mail after you learned of your and your spouse's disenrollment from your qualified health plan.
- 2) On May 22, 2017, you contacted the NYSOH Account Review Unit and an incident (██████████) was created. A note within that incident indicates that on May 22, 2017 your account was updated to reflect that you wanted to receive notices via regular mail, rather than electronic mail.
- 3) You testified that you did not receive any electronic alerts notifying you of any notice in your NYSOH account stating that your eligibility was only conditional and that you needed to provide documentation of your citizenship status.

- 4) You testified that you did not receive any electronic alerts notifying you of any notice in your NYSOH account stating that you were no longer eligible to enroll through NYSOH and that you and your spouse were disenrolled from your qualified health plan.
- 5) You testified that after learning that you had been disenrolled from your qualified health plan, you reviewed your e-mail account for alerts from NYSOH. You testified that the last e-mail alert you received from NYSOH was from September 2016. Your spouse further testified that she reviewed the trash folder and junk mail folder in your e-mail account, and no e-mail alerts from NYSOH were in either of those folders.
- 6) Your spouse testified that you did not know that you needed to submit documentation of your citizenship status until May 2017. She called your qualified health plan to find out what your out-of-pocket expenses would be for an upcoming procedure, and was informed that your coverage had been cancelled.
- 7) Your spouse testified that you had continued to pay, and your qualified health plan continued to accept, your premium payments through May 2017.
- 8) The record reflects that on May 24, 2017 NYSOH received documentation of your citizenship status.
- 9) Your spouse testified that you and your spouse are seeking reinstatement in your qualified health plan as of April 1, 2017.

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

Applicable Law and Regulations

Valid Appeal Requests

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) an eligibility determination for an exemption; (4) a failure by the Exchange to provide timely notice of an eligibility determination 45 CFR § 155.505; and (5) 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)).

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Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH (45 CFR §155.520(b)(2); 18 NYCRR 358-3.5(b)(1)).

However, where an appeal request is untimely, the appeal request may be considered valid if the applicant or enrollee sufficiently demonstrates within a reasonable timeframe as determined by NYSOH that failure to timely submit the appeal was due to exceptional circumstances and should not preclude the appeal (45 CFR §155.520(d)(2)(i)(D)).

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)).

Electronic Notices

Applicants may choose to receive notices and information from NYSOH by either electronic or 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 (45 CFR §155.230(d); 42 CFR §435.918(b)(4)).

Legal Analysis

The first issue is whether your appeal of NYSOH's March 14, 2017 eligibility determination notice and March 14, 2017 disenrollment notice was timely.

The record reflects that you first contacted NYSOH to file a formal appeal regarding your and your spouse's disenrollment from your qualified health plan on May 22, 2017.

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH.

For an appeal to have been valid on the issue of your and your spouse's disenrollment from your qualified health plan, an appeal should have been filed by May 13, 2017. The record reflects that you filed your appeal on May 22, 2017, which is beyond the 60-day deadline.

Although your appeal was untimely on its face, your NYSOH account reflects that you elected to receive alerts regarding notices from NYSOH electronically. You credibly testified that you did not receive an electronic alert regarding the March 14, 2017 eligibility determination and March 14, 2017 disenrollment notice. There is no indication that either of these notices were sent to you via regular mail. There is no evidence in your account documenting that any email alerts were sent to you regarding the eligibility determination or disenrollment notice.

As you did not receive the March 14, 2017 eligibility determination or the March 14, 2017 disenrollment notice, there is no indication that NYSOH ever made you aware of your and your spouse's disenrollment from your qualified health plan or your appeal rights.

Your spouse testified that you became aware that you and your spouse had been disenrolled from your qualified health plan in May 2017 when she attempted to find out what your out-of-pocket expenses would be for an upcoming procedure and was advised by the plan regarding your disenrollment.

As you were not properly provided notice of the March 14, 2017 eligibility determination or the March 14, 2017 disenrollment notice, you were not properly made aware of your appeal rights. You contacted NYSOH shortly after learning that you and your spouse had been disenrolled from your qualified health plan. Therefore, your failure to timely submit the appeal was due to exceptional circumstances and should not preclude the appeal.

The second issue under review is whether NYSOH properly determined that your eligibility for financial assistance and your and your spouse's enrollment in a qualified health ended 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 7, 2016, December 14, 2016, and January 25, 2017, you were advised that your eligibility was only conditional, and that you needed to confirm your citizenship status before March 6, 2017.

The record reflects that NYSOH did not receive the requested citizenship documentation before the deadline.

However, you testified and the record reflects that you elected to receive alerts regarding notices from NYSOH electronically. You credibly testified that you did not receive an electronic alert regarding these eligibility determination notices, which directed you that your eligibility was only conditional and that you needed to submit documentation to confirm your citizenship status. There is also no evidence in your account documenting that any email alert was sent to you regarding the need to submit documentation.

Therefore, it is concluded that NYSOH did not give you the proper notice that you needed to submit documentation of your citizenship.

Since you were not made aware of and did not receive proper notice that there was an inconsistency in your NYSOH account, the March 14, 2017 eligibility determination stating that you are no longer eligible for failure to submit documentation is **RESCINDED**. The March 14, 2017 disenrollment notice stating that your and your spouse's coverage in your qualified health plan was ending as of March 31, 2017 is **RESCINDED**.

Your case is **RETURNED** to NYSOH to assist you and your spouse in reenrolling into a health plan for coverage with an effective date of April 1, 2017, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate coverage.

Decision

The March 14, 2017 notice of eligibility determination is **RESCINDED**.

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).

The March 14, 2017 disenrollment notice is RESCINDED.

Your case is RETURNED to NYSOH to assist you and your spouse in re-enrolling into a health plan for coverage with an effective date of April 1, 2017, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate coverage.

Effective Date of this Decision: September 01, 2017

How this Decision Affects Your Eligibility

NYSOH erred in disenrolling you and your spouse from your qualified health plan effective March 14, 2017, without the proper notice.

Your case is being sent back to NYSOH to assist you and your spouse in reenrolling into a health plan for coverage as of April 1, 2017, if you so choose.

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.

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).

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 14, 2017 notice of eligibility determination is RESCINDED.

The March 14, 2017 disenrollment notice is RESCINDED.

Your case is RETURNED to NYSOH to assist you and your spouse in reenrolling into a health plan for coverage with an effective date of April 1, 2017, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate coverage.

NYSOH erred in disenrolling you and your spouse from your qualified health plan effective March 14, 2017, without the proper notice.

Legal Authority

We are issuing this determination in accordance with 45 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).

A Copy of this Decision Has Been Provided To:



Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

中文 (Traditional Chinese)

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您提供相应语种的口译服务。

Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

العربية (Arabic)

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

বাংলা (Bengali)

এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

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Français (French)

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

हिंदी (Hindi)

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

日本語 (Japanese)

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

नेपाली (Nepali)

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

Polski (Polish)

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

Twi (Twi)

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye&etumi ama wo obi a okyerE kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم 1-855-355-5777 پر کال کریں۔ ہم آپ کو آپ کی مادری زبان میں ایک مفت مترجم فراہم کر سکتے ہیں۔

Tiếng Việt (Vietnamese)

Đây là tài liệu quan trọng. Nếu quý vị cần trợ giúp để hiểu tài liệu này, vui lòng gọi 1-855-355-5777. Chúng tôi có thể cung cấp thông dịch viên miễn phí nói ngôn ngữ của quý vị.

אידיש (Yiddish)

דאס איז א וויכטיגער דאקומענט. אויב איר דארפט הילף עס צו פארשטיין, ביטע רופט 1-855-355-5777. מיר קענען אייך געבן א דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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