



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

### Notice of Decision

Decision Date: June 16, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000019302

[REDACTED]

Dear [REDACTED],

On June 9, 2017, you appeared by telephone at an expedited hearing on your appeal of NY State of Health's denial of a special enrollment period for your spouse.

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.

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: June 16, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000019302

[REDACTED]

## Issue

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

Did NY State of Health properly deny your request to change your spouse's health plan outside the open enrollment period as of May 25, 2017?

## Procedural History

On January 19, 2017, NY State of Health (NYSOH) issued an eligibility determination notice, based on your January 18, 2017 application, stating that your spouse was eligible to share in up to \$549.00 in APTC and eligible to receive cost-sharing reductions if she enrolled in a silver-level qualified health plan, effective January 1, 2017. That notice also stated that your spouse was not eligible for the Essential Plan because your household income was over the allowable income limits for that program.

Also on January 19, 2017, NYSOH issued a plan enrollment notice confirming your spouse's enrolment in a silver-level qualified health plan with a premium of \$395.96 per month, effective February 1, 2017.

On May 25, 2017, you attempted to change your spouse's health plan but were unable to select a plan for enrollment outside the open enrollment period.

Also on May 25, 2017, you spoke to NYSOH's Account Review Unit and appealed being unable to change your spouse's health plan outside of the open enrollment period.

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).

On May 26, 2017, NYSOH issued a notice to confirm your appeal request from the previous day. That notice identified your spouse as the appellant and stated that the reason for your appeal was "Denial of Special Enrollment Period (SEP)."

On May 31, 2017, NYSOH issued an eligibility determination notice, based on your May 30, 2017 application, stating that your spouse was eligible to share in an advance payment of the premium tax credit in an amount of up to \$549.00 per month and cost-sharing reductions, effective July 1, 2017. It further stated that your spouse may be able to enroll in coverage if she qualified for a special enrollment period.

On June 9, 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 to June 24, 2017, to allow you to submit supporting documents.

On June 14, 2017, you submitted a copy of your two most recent bi-weekly paystubs, a letter from your spouse's physician, and a letter of adverse determination from your spouse's health plan. This documentation was made part of the record as "[REDACTED]" and the record is now closed.

## **Findings of Fact**

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

- 1) On May 25, 2017, you applied for health insurance on behalf of your spouse through NYSOH. You attempted to change her qualified health plan that day but were unable to do so.
- 2) According to your NYSOH account, your spouse was enrolled in a silver-level qualified health plan through NYSOH since February 1, 2017.
- 3) You testified that you wanted to change your spouse's qualified health plan because her current coverage does not cover medically necessary treatment in a facility close to your home.
- 4) You testified that your income of \$61,897.72 as attested to on your January 18, 2017 application is incorrect. Specifically, you testified that you earn approximately \$1,000.00 per week and that your spouse no longer works because of her illness. Multiplying \$1,000.00 per week by 52 weeks equals an expected gross annual household income of \$52,000.00.
- 5) According to your NYSOH account and your testimony, you expect to file your 2017 income tax return as married filing jointly and will claim three dependents on that tax return.

- 6) On June 14, 2017, you submitted a copy of your two most recent bi-weekly paystubs and a letter from your spouse's physician stating that she cannot work. These document shows that you are the sole source of support for your household and that you are paid a gross salary of \$2,702.51 every other week, when multiplied by 26 pay periods equals a 2017 expected gross annual household income of \$70,265.26 ( [REDACTED] ).
- 7) Your application states that you will not be taking any deductions on your 2017 tax return.
- 8) You testified that since filing your spouse's application on January 18, 2017 there have been no other major changes to your spouse's household.
- 9) You testified that you did not rely on any statements made by NYSOH that prevented you in enrolling in a qualified health plan sooner.
- 10) According to your NYSOH account and your testimony, your family lives in [REDACTED], NY.

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

## **Applicable Law and Regulations**

### Advance Payments of Premium Tax Credit

Advance payments of the premium tax credit (APTC) are generally available to a person who is eligible to enroll in a qualified health plan (QHP) and (1) expects to have a household income between 138% and 400% of the applicable federal poverty level (FPL), (2) expects to file a tax return and claim a personal exemption deduction for a person who meets the eligibility requirements to enroll in a QHP, and (3) is not otherwise eligible for minimum essential coverage except through the individual market (see 45 CFR § 155.305(f), 42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

The maximum amount of APTC that can be authorized equals:

- 1) the cost of the health insurance premium for the taxpayer's coverage family in the second lowest cost silver plan offered through NY State of Health in the county where the taxpayer resides

*minus*

## 2) the taxpayer's expected contribution amount

(see 26 USC § 36B, 26 CFR § 1.36B-3).

The taxpayer's expected contribution amount is the amount that the taxpayer is expected to spend on health insurance premiums. The expected contribution for 2017 is set by federal law at 2.04% to 9.69% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc.2016-24).

In an analysis of APTC eligibility, the determination is based on the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested (45 CFR §§ 155.300(a), 155.305(f)(1)(i)). On the date of your spouse's application, that was the 2016 FPL, which is \$28,440.00 for a five-person household (81 Federal Register 4036).

For annual household income in the range of at least 200% but less than 250% of the 2016 FPL, the expected contribution is between 6.43% and 8.21% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2016-24).

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on NYSOH application) with their actual income (stated on their federal income tax return). Those who take less tax credit in advance than they claim on the tax return may get the rest of it as an income tax refund or have their tax bill reduced. Those who take more tax credit in advance than they can claim on their tax return will owe the difference as additional income taxes (26 CFR § 1.36B-4).

### Cost-Sharing Reductions

Cost-sharing reductions are available to a person who (1) is eligible to enroll in a QHP through NYSOH, (2) meets the requirements to receive APTC, (3) is expected to have an annual household income that does not exceed 250% of the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested, and (4) is enrolled in a silver-level QHP (45 CFR § 155.300(a), 45 CFR § 155.305(g)(1)).

### Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through

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 individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

In an analysis of Essential Plan eligibility, the determination is based on the FPL in effect on the first day of the benefit year for which coverage is requested (45 CFR § 155.300(a)). On the date of your spouse's application, that was the 2016 FPL, which is \$ 28,440.00 for a five-person household (81 Fed. Reg. 4036).

### 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).

### 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:

(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.

(45 CFR § 155.420(d)(6)).

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 issue under review is whether NYSOH properly denied your request to change your spouse's health plan outside the open enrollment period as of May 25, 2017?

You testified that you are appealing being denied a special enrollment period to enroll your spouse into a different 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 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 May 26, 2017 appeal confirmation notice stating that your spouse is the appellant and the reason for your appeal was "Denial of Special Enrollment Period (SEP)," permits an inference that NYSOH did deny your spouse's 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 May 25, 2017, you requested to change your spouse's health plan. Also on May 25, 2017, a NYSOH representative verbally denied your request for a special enrollment period to enroll your spouse in a qualified health plan outside of the open enrollment period. At that time, no changes were made to your household income.

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.

Generally, when an 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, that is considered a triggering life event.

Your spouse's application states, and you testified, that you expect to file your 2017 income taxes as married filing jointly and will claim three dependents on that tax return. Therefore, for purposes of these analyses, your spouse is in five-person household.



The application that you submitted on January 18, 2017 lists an annual household income of \$61,897.72, which is 217.64% of the applicable FPL. Based on this information you provided, NYSOH found you and your spouse eligible for an advance payment of the premium tax credit and eligible for cost sharing reductions, which are available to persons whose income is less than 250% of the applicable FPL.

However, you testified that your spouse was no longer working because of her illness and that you receive \$1,000.00 per week, or \$52,000.00 annually, in earned income.

The documentation you submitted, bi-weekly paystubs, shows that your 2017 expected annual gross household income is \$70,265.26, which is 247.06% of the applicable FPL. These amounts reflect an increase in expected 2017 income, rather than a decrease. Although, these amounts are higher than what you attested to in your January 18, 2017 application, your spouse remains eligible for an advance payment of the premium tax credit and cost sharing reductions at either income level. Since, there is no change in your spouse's eligibility, a special enrollment period cannot be granted on this basis.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2017, no other triggering events have occurred that would qualify your spouse for a special enrollment period.

Therefore, NYSOH properly denied your request for a special enrollment period to change your spouse's health plan and the May 25, 2017 denial of a special enrollment period is AFFIRMED.

As to the amount of APTC to which you are entitled, at the end of a tax year, a person who elects to take the APTC to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to NYSOH and their actual gross income for that year, which may also result in a tax credit or reduction in tax liability if the full amount of APTC to which a person is entitled is not taken throughout the year. Conversely, if a person received more APTC than their maximum entitlement, based on gross income, they might owe the excess as an additional income tax liability. Therefore, the amount of APTC to which your spouse was entitled can be reconciled at the time you file your 2017 federal income tax return.

Lastly, it appears by the adverse determination letter from your spouse's health plan, that the adverse determination was an initial decision and there may be other avenues to appeal your spouse's denial of authorized services through the health plan. You may contact your health plan directly at 1-888-250-2220 or, if you need additional help, you may also contact New York State's Independent Consumer Assistance Program at 1-888-614-5400.

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).

## **Decision**

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

**Effective Date of this Decision:** June 16, 2017

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

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 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).

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**

NYSOH's denial of your request for 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 sending you this notice 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 000000000000 0000 000 00000 00000 000 000000000 00000000 00 00000,  
0000000 000 1-855-355-5777 000000 00 00000 0000 00 000000 000 0000  
0000000000 0000 000000 0000 000000 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. ye&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.

### **שׂוּדִישׁ (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).