



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

Notice of Decision

Decision Date: September 20, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000019334

[REDACTED]

[REDACTED]

On August 31, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's March 28, 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).

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Decision

Decision Date: September 20, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000019334

[REDACTED]

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 outside of the open enrollment period?

Procedural History

On October 18, 2016, NYSOH issued a renewal and eligibility determination notice stating that you remained qualified to purchase a health plan at full cost, effective January 1, 2017.

On November 19, 2016, NYSOH issued an enrollment notice confirming your selection of Empire BlueCross BlueShield HMO 1000 X, Gold, NS, INN, Pediatric Dental, Dep 25, a Multi-State Plan (Empire BCBS) as your health plan on November 18, 2016, with a monthly premium of \$699.85, effective January 1, 2017.

On March 27, 2017, NYSOH received an update to your application for health insurance.

On March 28, 2017, NYSOH issued an eligibility determination notice based on the information contained in the March 27, 2017 application. The notice stated that you remained eligible to enroll in a qualified health plan (QHP) at full cost, effective May 1, 2017. It further stated that you did not qualify to select a health plan outside of the open enrollment period for 2017.

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).

Also on March 28, 2017, NYSOH issued an enrollment notice confirming your enrollment in Empire BCBS as of March 27, 2017, with a monthly premium of \$699.85, effective January 1, 2017.

On May 27, 2017, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you believed your insurance carrier had disenrolled you from your Empire BCBS plan, and you were seeking to have your coverage under this plan reinstated.

On August 31, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and remained open as the Hearing Officer directed you to provide as additional evidence to corroborate your testimony: a letter issued by your insurance carrier, dated July 23, 2017, confirming that your Empire BCBS plan coverage had been cancelled as of January 1, 2017. The record was to be closed at 5:00 p.m. ET on September 4, 2017, or upon the receipt of the above referenced document, whichever occurred earlier.

On September 1, 2017, you provided to the Appeals Unit through facsimile a Certificate of Creditable Coverage issued by your insurance carrier reflecting that your Empire BCBS plan coverage had been cancelled, effective January 1, 2017.

Accordingly, the record was closed on September 1, 2017.

Findings of Fact

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

- 1) On October 18, 2016, you were redetermined eligible for health insurance.
- 2) On November 18, 2016, you were reenrolled in your Empire BCBS plan for coverage beginning effective January 1, 2017.
- 3) You testified that you never received a mailing from your insurance carrier containing an invoice for coverage during January 2017.
- 4) You testified that you did not receive a disenrollment notice from either your insurance carrier or NYSOH reflecting that your coverage had been cancelled effective January 1, 2017, until you were issued a Certificate of Creditable Coverage from Empire BCBS, dated July 23, 2017.
- 5) On September 1, 2017, you provided to NYSOH a copy of the Certificate of Creditable Coverage from Empire BCBS, dated July 23, 2017, reflecting that your coverage had been cancelled effective January 1, 2017.

- 6) You testified that you did not realize that your coverage had been cancelled until you unsuccessfully attempted to refill a prescription on or about March 27, 2017.
- 7) You testified, and your NYSOH account reflects, that you updated your application on March 27, 2017.
- 8) On March 27, 2017, you attempted to reenroll in a QHP. However, your enrollment details through NYSOH reflect that you did not experience a loss of coverage under your Empire BCBS plan.
- 9) You testified that while you were shown to be enrolled in a plan through NYSOH, your insurance carrier would not take your premium payments or cover your claims.
- 10) You testified that you were seeking to reenroll in your health plan as of January 1, 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 qualified health plan and enrollees may change qualified health plans (45 CFR § 155.410(a)(1)).

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

Special Enrollment Periods

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

- (1) The qualified individual or his or her dependent either:
 - (i) Loses minimum essential coverage.

(ii) Is enrolled in any non-calendar year group health plan or individual health insurance coverage, even if the qualified individual or his or her dependent has the option to renew such coverage.

(iii) Loses pregnancy-related coverage.

(iv) Loses medically needy coverage as described under section 1902(a)(10)(C) of the Social Security Act only once per calendar year.

(2)(i) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care, or through a child support order or other court order.

(ii) the enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation as defined by State law in the State in which the divorce or legal separation occurs, or if the enrollee, or his or her dependent, dies.

(3) The qualified individual, or his or her dependent, becomes newly eligible for enrollment in a qualified health plan because he or she gains citizenship, status as a national, or lawful present or is no longer incarcerated.

(4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities.

(5) The enrollee or, his or her dependent adequately demonstrates to NYSOH that the qualified health plan in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;

(6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions.

(7) The qualified individual or enrollee, or his or her dependent, gains access to new qualified health plan as a result of a permanent move and either—

(i) Had minimum essential coverage for one or more days during the 60 days preceding the date of the permanent move, or

- (ii) Was living outside of the United States or in a United States territory at the time of the permanent move;
- (8) The qualified individual or dependent who gains or maintains status as an Indian may enroll in a qualified health plan or change from one plan to another, once per month.
- (9) The qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide;
- (10) A qualified individual or enrollee—
 - (i) Is a victim of domestic abuse or spousal abandonment, including a dependent or unmarried victim within a household, is enrolled in minimum essential coverage and seeks to enroll in coverage separate from the perpetrator of the abuse or abandonment; or
 - (ii) Is a dependent of a victim of domestic abuse or spousal abandonment, on the same application as the victim, may enroll in coverage at the same time as the victim;
- (11) A qualified individual or dependent—
 - (i) Applies for coverage through NYSOH during the annual open enrollment period or due to a qualifying event, is assessed as potentially eligible for Medicaid or Child Health Plus and is determined ineligible for Medicaid or Child Health Plus either after open enrollment has ended or more than 60 days after the qualifying event; or
 - (ii) Applies for coverage at their Local Department of Social Services or Human Resources Administration during the annual open enrollment period, and is determined ineligible for Medicaid or Child Health Plus after open enrollment has ended;
- (12) The qualified individual or enrollee, or his or her dependent, adequately demonstrates to NYSOH that a material error related to plan benefits, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a qualified health plan; or
- (13) At the option of NYSOH, the qualified individual provides satisfactory documentary evidence to verify his or her eligibility for an insurance

affordability program or enrollment following termination of enrollment due to a failure to verify such status within 90 days.

(45 CFR § 155.420(d)).

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a qualified health plan (45 CFR § 155.420(c)(1)).

Legal Analysis

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

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On March 27, 2017, you submitted an application for health insurance and requested to enroll in a QHP. On March 28, 2017 NYSOH issued a notice stating that you did not qualify to enroll in a QHP outside of the open enrollment period.

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.

A special enrollment period can be granted if a qualified individual's enrollment or non-enrollment in a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities.

You credibly testified that on March 27, 2017, you spoke to a representative from NYSOH who told you that you were currently enrolled in Empire BCBS as your health plan as there had been no event of disenrollment. You also credibly testified that when you spoke with a representative of Empire BCBS, they were unwilling to accept your premiums or reinstate your health coverage since you had not paid your premiums.

The record reflects that NYSOH did not issue a notice of cancellation or disenrollment with respect to your Empire BCBS plan coverage. Indeed, your NYSOH enrollment details reflect that you were currently enrolled in the Empire BCBS plan from January 1, 2017 to December 31, 2017.

At the request of the Hearing Officer, on September 1, 2017, you provided a copy of the Certificate of Creditable Coverage issued by Empire BCBS, dated July 23, 2017, reflecting that your coverage had been cancelled effective January 1, 2017.

We find that had lack of notification by your insurance carrier and, by extension, NYSOH, resulted in your inability to reenroll in a health plan during the remainder of the open enrollment period.

Therefore, NYSOH's March 28, 2017 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is **RESCINDED**.

Your case is **RETURNED** to NYSOH to reinstate your coverage through your Empire BCBS. You may choose to reenroll with an effective date of January 1, 2017. In the alternative, you may elect to reenroll into coverage from this point forward. In either event you have 60 days from the date of this decision as a special enrollment period to select your plan.

Please note that if you elect to reenroll in your Empire BCBS coverage as of January 1, 2017, you will be responsible for any premiums due in connection with this reenrollment.

Decision

The March 28, 2017 eligibility determination that you did not qualify to select a health plan outside of the open enrollment period for 2017 is **RESCINDED**.

Your case is **RETURNED** to NYSOH to reinstate your coverage through Empire BCBS. You may choose to reenroll with an effective date of January 1, 2017. In the alternative, you may elect to reenroll into coverage from this point forward. In either event you have 60 days from the date of this decision as a special enrollment period to select your plan.

Effective Date of this Decision: September 20, 2017

How this Decision Affects Your Eligibility

NYSOH improperly denied you a special enrollment period.

Your case is being sent back to NYSOH to allow you to enroll into coverage as of January 1, 2017, or, in the alternative, you may elect to enroll into coverage from this point forward.

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).

You will be responsible for any premium payments for any months you are enrolled into coverage.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to the Federal Marketplace or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the Federal Marketplace. This must be done within 30 days of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:
Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd.
London, KY 40750-0061
- By fax: 1-877-369-0129

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

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 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 28, 2017 eligibility determination that you did not qualify to select a health plan outside of the open enrollment period for 2017 is **RESCINDED**.

Your case is **RETURNED** to NYSOH to reinstate your coverage through Empire BCBS. You may choose to reenroll with an effective date of January 1, 2017. In the alternative, you may elect to reenroll into coverage from this point forward. In either event you have 60 days from the date of this decision as a special enrollment period to select your plan.

You will be responsible for any premium payments for any months you are enrolled into coverage.

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 مجانًا.

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).

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 אייך געבן א דאלמענטשער 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).

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