



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

## Notice of Decision

Decision Date: October 4, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000019513

[REDACTED]

Dear [REDACTED],

On September 11, 2017, you and your father appeared by telephone at a hearing on your appeal of NY State of Health's April 21, 2017 cancellation notice and the May 7, 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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: October 4, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000019513

[REDACTED]

## 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 the termination of your coverage in your qualified health plan (QHP) for failure to pay your premium by the payment deadline?

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

## Procedural History

On March 30, 2017, NYSOH received your initial application for health insurance.

On March 31, 2017, NYSOH issued an eligibility determination notice stating you were eligible to receive advance payments of the premium tax credit (APTC) of up to \$310.00 per month, effective May 1, 2017.

On April 2, 2017, NYSOH issued an enrollment confirmation notice, based on your April 1, 2017 plan selection, stating you were enrolled in a QHP, with a \$124.23 monthly premium after APTC was deducted, beginning April 1, 2017.

On April 21, 2017, NYSOH issued a cancellation notice stating your enrollment in your QHP was terminated, effective April 1, 2017, because your health plan had not received your premium payment by the payment deadline.

On May 6, 2017, NYSOH received your updated application for health insurance.

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On May 7, 2017, NYSOH issued an eligibility determination notice stating you were eligible to receive up to \$310.00 per month in APTC, 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.

NYSOH received another updated application for health insurance submitted on your behalf on June 1, 2017.

On June 2, 2017, NYSOH issued an eligibility determination notice stating you were eligible to receive up to \$310.00 per month in APTC, effective July 1, 2017. It further stated that you did not qualify to select a health plan outside of the open enrollment period for 2017.

Also on June 2, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On September 11, 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 allow you to submit supporting documentation.

On September 19, 2017, the Appeals Unit received the requested documents and it was incorporated into the record as Appellant's Exhibit #1. The record closed thereafter.

## **Findings of Fact**

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

- 1) Your initial application, submitted on March 30, 2017, indicated you were losing your dependent insurance coverage on March 31, 2017, because you [REDACTED].
- 2) You submitted a letter from your previous health plan confirming the end date of your prior coverage was March 31, 2017.
- 3) According to your account you were granted a special enrollment period to enroll into a QHP outside the open enrollment period for 2017 and you enrolled into a QHP, with coverage effective April 1, 2017.
- 4) Your father testified that your mother enrolled you into the plan online and the health plan's website instructed not to send a payment until you received an invoice.

- 5) Your father testified that you received an invoice from the health plan on April 10<sup>th</sup> or 11<sup>th</sup> and that he mailed out a check for the premium payment the next day.
- 6) Your father testified that the check for the April premium payment was cashed by the health plan, but later reimbursed.
- 7) According to your account, the health plan initiated termination of your enrollment for non-payment of the premium on April 19, 2017. Your enrollment was retroactively terminated back to April 1, 2017.
- 8) According to your account, an updated application was submitted on your behalf on May 6, 2017. You were determined eligible to receive APTC, but NYSOH denied you a special enrollment period to reenroll into a health plan outside of the open enrollment period.
- 9) You reapplied again on June 1, 2017 and, again, you were denied a special enrollment period by NYSOH.
- 10) You and your father testified that you are seeking special enrollment period to reenroll into a health plan for 2017.
- 11) You and your father testified there have been no significant changes in your household since applying for health insurance.

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 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 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.

(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 QHP properly terminated your coverage for failure to pay your premium by the payment deadline.

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Your enrollment in your QHP was terminated, effective April 1, 2017, for non-payment of the April 2017 premium.

Pursuant to the regulations, the 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 April 21, 2017 cancellation notice is DISMISSED as a non-appealable issue.

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

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period to enroll in, or change to another health plan offered in NYSOH. To qualify for a special enrollment period, a person must experience a triggering event.

Your initial application was filed on March 30, 2017, after the end of the open enrollment period for 2017. That application indicated that you were losing your dependent insurance coverage on [REDACTED], because you turned [REDACTED]. You submitted documentation corroborating this. Pursuant to the regulations, loss of prior third-party insurance coverage is considered a triggering event. When a triggering life event occurs, the qualified individual has 60 days from the date of that event to select a qualified health plan.

Your account confirms that NYSOH determined you eligible to receive APTC, and granted you a 60-day special enrollment period, based on your March 31, 2017 loss of prior health coverage. The end date of this special enrollment period was May 30, 2017. The evidence establishes that you selected a QHP on April 1, 2017 and that you elected to have your coverage through that plan begin on April 1, 2017. According to your account, this enrollment was subsequently terminated for non-payment of the premium.

According to your account, an updated application was submitted on your behalf on May 6, 2017. Subsequently, you were found eligible to receive APTC, effective June 1, 2017, but you were not allowed to reenroll into coverage for 2017. However, you were still within your original 60-day special enrollment

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period, based on your March 31, 2017 loss of prior coverage, to enroll in a QHP. You were entitled to use your special enrollment from April 1, 2017 continuing to May 30, 2017, either to select a plan or to change your enrollment. Your account confirms you attempted to reenroll into a plan during this period. Accordingly, it was an error on the part of NYSOH to deny you the ability to do so.

Thus, the May 7, 2017 eligibility determination notice, to the extent it denied you a special enrollment period, is not correct and must be **RESCINDED**.

Your case is **RETURNED** to NYSOH to assist you in enrolling into a new QHP to be effective as early as June 1, 2017, the date your new coverage could have become effective had you been allowed to select a new plan on May 6, 2017. In the alternative, you may elect to have your coverage begin now. In either event, you have 60 days from the date of this decision to select your plan.

Additionally, based on the testimony of you and your father that your first QHP invoice was issued to less than 10 days before your coverage was terminated for nonpayment of premium, your case is **RETURNED** to Plan Management to determine whether you were provided with the invoice in sufficient time to justify your coverage having been terminated for nonpayment.

If it is determined your health plan did not provide you with an initial invoice in a timely manner, and improperly disenrolled you from coverage, then you would be eligible for your coverage being backdated to April 1, 2017, if you so choose.

## **Decision**

Your appeal of the April 21, 2017 cancellation notice is **DISMISSED** as a non-appealable issue.

The May 7, 2017 eligibility determination, insofar as it stated that you were not eligible for a special enrollment period is **RESCINDED**.

Your case is **RETURNED** to NYSOH to assist you in enrolling into a new QHP to be effective as early as June 1, 2017, the date your new coverage could have become effective had you been allowed to select a new plan on May 6, 2017. In the alternative, you may elect to have your coverage begin now. In either event, you have 60 days from the date of this decision to select your plan. Your case is **REFERRED** to NYSOH's Plan Management to investigate whether the health plan issued a timely invoice or bill to you for your April 2017 premium payment.

If it is determined your health plan did not provide you with an initial invoice in a timely manner, and improperly disenrolled you from coverage, then you would be eligible for your coverage being backdated to April 1, 2017, if you so choose.

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**Effective Date of this Decision:** October 4, 2017

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

You should have been permitted to reenroll into a QHP on May 6, 2017.

Your case is being sent back to NYSOH to assist you in enrolling into a new QHP as of May 7, 2017, the date of your first documented attempt to reenroll into a plan, or 60 days from the date of this decision.

Your case is also being referred to NYSOH's Plan Management to investigate whether the health plan issued a timely invoice or bill to you for your April 2017 premium payment.

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
- By mail at:

Health Insurance Marketplace  
Attn: Appeals  
465 Industrial Blvd.

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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**

Your appeal of the April 21, 2017 cancellation notice is **DISMISSED** as a non-appealable issue.

The May 7, 2017 eligibility determination, insofar as it stated that you were not eligible for a special enrollment period is **RESCINDED**.

Your case is **RETURNED** to NYSOH to assist you in enrolling into a new QHP to be effective as early as June 1, 2017, the date your new coverage could have become effective had you been allowed to select a new plan on May 6, 2017. In the alternative, you may elect to have your coverage begin now. In either event, you have 60 days from the date of this decision to select your plan.

Your case is **REFERRED** to NYSOH's Plan Management to investigate whether the health plan issued a timely invoice or bill to you for your April 2017 premium payment.

If it is determined your health plan did not provide you with an initial invoice in a timely manner, and improperly disenrolled you from coverage, then you would be eligible for your coverage being backdated to April 1, 2017, if you so choose.

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 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)**

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

### **Français (French)**

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

### **हिंदी (Hindi)**

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

### **日本語 (Japanese)**

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

### **नेपाली (Nepali)**

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

### **Polski (Polish)**

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

### **Twi (Twi)**

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

### **(Urdu) اردو**

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

### **Tiếng Việt (Vietnamese)**

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

### **אידיש (Yiddish)**

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

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