

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

### Notice of Decision

Decision Date: September 21, 2017

NY State of Health Account ID: Appeal Identification Number: AP00000019554



On September 5, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's November 27, 2016 disenrollment notice, and verbal denial of a special enrollment period.

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.



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

### Decision

Decision Date: September 21, 2017

NY State of Health Account ID:

Appeal Identification Number: AP000000019554



### Issues

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

Did NY State of Health properly determine that you were disenrolled from your qualified health plan, effective December 31, 2016 in

Did NY State of Health properly determine that you do not qualify to enroll in a qualified health plan outside of the open enrollment period, effective July 1, 2017 in

# Procedural History

### Account #:

On October 21, 2016, NY State of Health (NYSOH) issued a renewal notice stating that based on the information from federal and state data sources, NYSOH was unable to make a decision about whether or not you would qualify for financial help paying for your health insurance or what coverage you could enroll in next year. This notice further directed you to update your NYSOH account between November 16, 2016 and December 15, 2016 or the financial assistance you were receiving now may end.

On November 27, 2016, NYSOH issued a plan disenrollment notice confirming your disenrollment from your qualified health plan, effective December 31, 2016.

No update was made to your account between November 16, 2016 and December 15, 2016.

On December 19, 2016, NYSOH issued an eligibility determination notice stating that you were newly eligible to purchase a qualified health plan at full cost through NYSOH, effective January 1, 2017. This notice further stated that this was because you did not respond to the renewal notice and did not complete your renewal within the required timeframe.

On May 25, 2017, NYSOH received your updated application for financial assistance with health insurance.

On May 26, 2017, NYSOH issued an eligibility determination notice stating that you were eligible to purchase a qualified health plan at full cost through NYSOH, effective July 1, 2017. This notice also stating that you must confirm your health plan selection by July 24, 2017.

On August 5, 2017, NYSOH issued a discontinuance notice stating that you were no longer eligible for health insurance through NYSOH, effective September 1, 2017. This notice stated that this was because you no longer want to receive coverage.

### Account #:

On May 25, 2017, NYSOH received your updated application for financial assistance with health insurance in a different account with you as the primary account holder.

On May 26, 2017, NYSOH issued an eligibility determination notice stating that you were eligible to receive an advance premium tax credit of \$0.00 per month, effective July 1, 2017. This notice further stated that you may be eligible to enroll into a qualified health plan outside of the open enrollment period, if you qualified for a special enrollment period.

On June 5, 2017, you spoke to NYSOH's Account Review Unit and appealed that insofar as you were not able to enroll into a qualified health plan outside of the open enrollment period.

On September 5, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and the record was closed at the end of the hearing.

# **Findings of Fact**

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

- 1) You testified, and the record indicates, that you have multiple NYSOH accounts.
- 2) The record indicates that the account holder for spouse, and you were listed as a household member. You had coverage in this account through December 31, 2016.
- You testified that you did not know that your coverage was going to end, and that you needed to renew your account between November 16, 2016 and December 15, 2016.
- 4) You testified that you may have received an email indicating that you needed to renew your coverage.
- 5) You testified that you contacted your health plan in December 2016 to be enrolled into automatic payments, but you were never informed that you needed to renew your coverage.
- 6) You testified that you cannot remember if you asked them about renewing your coverage when you called in December 2016 because you were mainly concerned with enrolling into automatic payments.
- 7) The record indicates that was set up to receive alerts in the form of email notifications, and the email address listed in this account is
- 8) You testified that this is your spouse's work email and that you do not regularly check this email account.
- 9) On May 25, 2017, in NYSOH received your updated application for financial assistance with health insurance.
- 10) On May 26, 2017, NYSOH issued a notice in that you qualified to enroll in a qualified health plan outside of the open enrollment period and that you needed to select a health plan by July 24, 2017.
- 11) The record indicates that you did not enroll into a qualified health plan in and that this account is now inactive.
- 12) You testified that every time you contacted NYSOH to discuss your health insurance, the NYSOH representative would not speak with you because you were not the account holder.

- 13) You testified, that in January 2016 another NYSOH account was created and you were named the account holder on the account. (See Account #
- 14) You testified that you contacted NYSOH and requested that your eligibility be run in an account that you are account holder on because you were receiving conflicting information on how to go about becoming an authorized representative in and you did not want to bother your spouse when calling about your or your children's health insurance.
- 15) On May 25, 2017, in grant and an application for financial assistance with health insurance.
- 16) You testified that you attempted to enroll into a qualified health plan in but you were unable to do so.
- 17) You testified that you are appealing because you would like to be able to enroll into a qualified health plan with financial assistance outside of the open enrollment period.

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

### **Applicable Law and Regulations**

### Annual Eligibility Redetermination

Generally, NYSOH must conduct annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, such as tax credits and cost-sharing reductions, Medicaid, or Child Health Plus. In such cases, NYSOH is required to request that the qualified individual provide updated income and family size information for use in an eligibility redetermination for the upcoming year (see 45 CFR § 155.335(a) and (b)).

NYSOH must send an annual renewal notice that contains the information by which NYSOH will use to redetermine a qualified individual's projected eligibility for that year (45 CFR § 155.335(c)(3)). If a qualified individual does not respond to the notice after a 30-day period, NYSOH must redetermine that individual's eligibility using the projected eligibility provided in the annual renewal notice (45 CFR § 155.335(g), (h)). NYSOH must ensure this redetermination is effective on the first day of the coverage year or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)). The rules specified in 45 CFR § 155.330(f) are not pertinent here.

### **Electronic Notices**

If the individual elects electronic communications, NYSOH must send an email or other electronic communication alerting the individual that a notice has been posted to his or her account and send a notice by regular mail within three business days if the electronic communication cannot be delivered (45 CFR § 155.230(d); 42 CFR § 435.918(b)(4), (5)).

#### 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:

- (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 nonenrollment 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 first issue under review is whether NYSOH properly determined that your enrollment in a qualified health plan ended effective December 31, 2016 in

NYSOH must redetermine a qualified individual's eligibility for health insurance and financial assistance to help pay for that health insurance annually. NYSOH must issue a renewal notice that contains the individual's projected eligibility. If an individual does not respond to this notice, NYSOH must issue an eligibility determination for the upcoming coverage year based on the information contained in the renewal notice.

On October 21, 2016, NYSOH issued an annual renewal notice in your case. That notice stated that based on information from federal and state sources, NYSOH could not make a decision about whether or not you qualify for financial help with paying for your health coverage or what coverage you can have next year. You were asked to update the information in your account between November 26, 2016 and December 15, 2016 or the financial help you were receiving might end.

Because there was no timely response to this notice, your enrollment in a qualified health plan was terminated effective December 31, 2016.

The record reflects that you elected to receive alerts regarding notices from NYSOH electronically. You testified that you may have received an electronic alert regarding the renewal notice, which directed you to update the information in your NYSOH account. You further testified that the email address in is your spouse's work email address, and this email address is not checked regularly. You also testified that in December 2016 you called your health plan to enroll into automatic payments and you were never informed that you needed to renew your coverage.

Since your testimony is not consistent, and there is no additional evidence in the record which indicates that you did not receive notice that you needed to update your account, it is concluded that NYSOH gave you the proper notice that you needed to update your account.

Therefore, the November 27, 2016 plan disenrollment notice in AFFIRMED.

The second issue under review is whether NYSOH properly determined that you do not qualify to enroll in a qualified health plan outside of the open enrollment period in

You testified that you are appealing the denial of a special enrollment period to enroll into a 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 testimony along with the June 6, 2017 appeal confirmation notice stating that the reason for your appeal was "denial of Special Enrollment Period (SEP)", permits an inference that NYSOH did deny your 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.

On May 25, 2017, in procession, you submitted an application for health insurance. On May 26, 2017, NYSOH issued an eligibility determination stating that you qualified to enroll in a qualified health plan outside of the open enrollment period and that you needed to select a health plan by July 24, 2017. However, you never requested to enroll in a qualified health plan on this account and this account is now inactive.

You further testified that you requested that your and your children's eligibility and enrollment be in an account in which you were the account holder so that you would be able to speak with NYSOH without bothering your spouse. On May 25, 2017, an application was submitted over the phone in attempted to enroll into a qualified health plan in this account which you are the primary account holder on, but you were unable to enroll into a plan through this account.

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 in order to enroll in, or change to another health plan offered in NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

A special enrollment period can be granted to an enrollee if a qualified individual's enrollment or non-enrollment into a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error,

misrepresentation, or inaction of an officer, employee, or agent of NYSOH or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities.

The record indicates that you were granted a special enrollment period in

. However, you testified, and the record reflects that you did not enroll into a qualified health plan through this account. You testified that you requested that your family's eligibility be determined and enrollment be made in an account in which you were the account holder. As such, you did not enroll into a plan in through no fault of NYSOH or its instrumentalities.

Further, there is also no indication in the record that a triggering event had occurred which would have qualified you for a special enrollment period through

Since the record does not indicate that NYSOH, by action or inaction, made an error or misrepresented information, a special enrollment period cannot be granted.

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 you for a special enrollment period.

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

### **Decision**

The November 27, 2016 plan disenrollment notice in AFFIRMED.

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

Effective Date of this Decision: September 21, 2017

# **How this Decision Affects Your Eligibility**

NYSOH properly disenrolled you from your qualified health plan in effective December 31, 2016.

You do not qualify for a special enrollment period in 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 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:

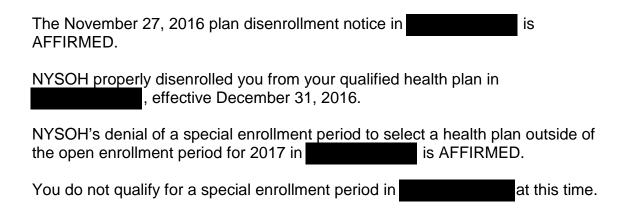
- By calling the Customer Service Center at 1-855-355-5777
- By mail at:

NY State of Health Appeals P.O. Box 11729

Albany, NY 12211

• By fax: 1-855-900-5557

# **Summary**



## **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.

### (Arabic)العربية

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

### **□□□□□ (Bengali)**

#### 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 महत्त्वपूर्ण कागजात हो। यसलाई बुझ तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई नि:शुल्क 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. yebetumi ama wo obi a okyere kasa a woka no ase ama wo kwa a wontua hwee.

#### اردو(Urdu)

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم5777-355-485-1 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 vi.

#### אידיש (Yiddish)

ן, ביטע רופט 3-355-355. מיר קענען אייך	דאס איז א וויכטיגער דאקומענט. אויב איר דארפט הילף עס צו פארשטיי געבן א דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.