



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

Notice of Decision

Decision Date: September 29, 2017

NY State of Health Account ID [REDACTED]
Appeal Identification Number: AP000000019641

[REDACTED]

Dear [REDACTED],

On September 19, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's June 6, 2017 disenrollment notice and NYSOH's subsequent 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.

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DEPARTMENT OF HEALTH
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Decision

Decision Date: September 29, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000019641



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 as of June 8, 2017?

Procedural History

On November 30, 2016, NYSOH received your non-financial updated application for health insurance.

On December 1, 2016, NYSOH issued an eligibility determination notice stating you were eligible to purchase a QHP at full cost, effective January 1, 2017.

Also on December 1, 2016, NYSOH issued a notice confirming enrollment in a full cost QHP, effective January 1, 2017.

On June 6, 2017, NYSOH issued a disenrollment notice stating your QHP enrollment was terminated, effective April 30, 2017, because your health plan had not received your premium payment by the payment deadline.

Also on June 6, 2017, you contacted NYSOH and requested reenrollment in your QHP. Your request was not granted, purportedly because it was outside the open

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enrollment period; you were advised that you must file an appeal. No application was submitted at that time, and no written denial of your request for a special enrollment period was issued.

On June 8, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you were disenrolled from coverage and not eligible to reenroll in a health plan outside of the open enrollment period.

On July 11, 2017, NSYOH received an application for financial assistance submitted on your behalf.

On July 12, 2017, NYSOH issued an eligibility determination notice stating you were eligible to receive up to \$281.00 per month in advance payments of the premium tax credit (APTC), effective August 1, 2017.

Also on July 12, 2017, NYSOH issued an enrollment notice, based on your July 11, 2017 plan selection, confirming you were enrolled in a QHP with APTC applied, effective August 1, 2017.

On September 19, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. 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 submitted a non-financial application for health insurance and you were enrolled in a full cost QHP with Fidelis Care, effective January 1, 2017.
- 2) You testified that you set up automatic payments with the health plan where your monthly premium was supposed to be automatically deducted by the health plan each month by the payment due date.
- 3) You testified you made the first premium payment online and the rest were supposed to be automatically deducted.
- 4) You testified you checked your bank account in February 2017 and discovered your premium payment was not properly deducted so you had to go online again and make a manual payment to the health plan. You testified this issue occurred several times. You testified the health plan advised you that they may have your account number wrong.
- 5) You testified your bank statements show that the premium payments were made each month.

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- 6) You testified in May 2017 your bank statement shows a payment for the full amount of your premium was deducted on May 1, 2017.
- 7) You testified you learned from your doctor while seeking treatment on [REDACTED] that your coverage had been cancelled.
- 8) You testified you went online that day and made another payment to the health plan.
- 9) You testified you subsequently spoke to the health plan and they advised your coverage had already been cancelled and they were unwilling to reinstate you. You testified you were subsequently refunded the amount of the second premium payment from May 2017.
- 10) You testified you subsequently contacted NYSOH to reenroll and you were told you had to file an appeal. NYSOH did not process an application for you at that time, nor did it issue a denial of any request for a special enrollment period.
- 11) Notes in your account from June 8, 2017 include:
 - a. "appellant contacted the Marketplace to attempt to re-enroll in coverage. The appellant has been unable to enroll back into coverage due to it being outside of Open Enrollment and not having a qualifying life event."
- 12) You were disenrolled from your QHP, effective April 30, 2017.
- 13) According to your account, you submitted an application for financial assistance on July 11, 2017 and NYSOH determined you eligible to receive advance payments of the premium tax credit (APTC), effective August 1, 2017. You were granted a special enrollment period to enroll in a QHP with APTC and you selected a plan on July 11, 2017. Coverage through that plan became effective August 1, 2017.
- 14) You testified you are seeking reinstatement or a special enrollment period to reenroll into a QHP, effective May 1, 2017, because you have outstanding medical bills from that month.

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; 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 presence, 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. NYSOH has decided not to accept this option.

(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

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(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, effective April 30, 2017.

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 June 6, 2017 disenrollment notice is **DISMISSED** as a non-appealable issue.

However, given your testimony that you have bank statements confirming a payment for the full amount of your monthly premium was automatically deducted from your account on May 1, 2017, your case is **REFERRED** to Plan Management to investigate whether you were properly terminated for your coverage for non-payment of the May 2017 premium.

The second issue under review is whether NYSOH properly determined you did not qualify to enroll in a QHP outside of the open enrollment period as of your June 8, 2017 call.

Your account confirms that you contacted NYSOH on June 8, 2017 to request reenrollment in your QHP. Although there is no record that NYSOH issued an eligibility determination denying you a special enrollment period, notes in your account on that date acknowledge that you were “unable to enroll back into coverage due to it being outside of Open Enrollment and not having a qualifying life event.” However, there is no evidence that you had been advised by NYSOH to reapply for health insurance prior to directing you to file an appeal.

The record confirms that you subsequently submitted an application for financial assistance on July 11, 2017 and were determined eligible to receive APTC,

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effective August 1, 2017; you were also granted a special enrollment period in which to enroll into a new QHP.

Given the evidence that NYSOH determined you eligible for a special enrollment period on July 11, 2017, pursuant to your updated application, it is concluded it was improper on the part of the NYSOH representative on June 8, 2017 to direct you to file an appeal, rather than reapply for health insurance. Instead, the representative should have processed a new application, answering all questions regarding any life status changes.

It is further concluded that this error prevented you from reapplying for insurance on June 8, 2017.

Had you been properly directed to reapply for insurance on June 8, 2017, rather than being advised your only option was to file an appeal after receiving an oral denial of a special enrollment period, it must be presumed that the application would have contained the same information as provided in your July 11, 2017 application and resulted in the same outcome. Thus, it is presumed that your eligibility would have been the same and NYSOH would have similarly granted you a special enrollment period. Had you been allowed to reenroll into a QHP at that time, your coverage could have become effective as early as July 1, 2017.

Thus, based on the errors by NYSOH on June 8, 2017, pursuant to the regulations, you are entitled to a special enrollment period. You may choose to enroll into a QHP for the month of July 2017, when your coverage could have started but for the errors by NYSOH. You have 60 days from the date of this decision in which to do so.

It is noted that the July 12, 2017 eligibility determination notice is not properly under review. Thus, the Appeals Unit will not address the merits of that determination at this time.

Decision

Your appeal on the issue of the termination of your coverage due to nonpayment of premium is dismissed.

Your case is REFERRED to Plan Management to investigate whether you were properly disenrolled from your QHP given your testimony you have documentary evidence establishing the May 2017 premium payment was timely deducted.

You and are entitled to a special enrollment period due to the errors by NYSOH and may choose to enroll into a QHP for the month of July 2017.

Effective Date of this Decision: September 29, 2017

How this Decision Affects Your Eligibility

You make choose to have your enrollment in your QHP with APTC effective July 1, 2017.

You have 60 days from the date of this decision in which to make your selection.

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.
London, KY 40750-0061
- By fax: 1-877-369-0129

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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):

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- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
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- By fax: 1-855-900-5557

Summary

Your appeal on the issue of the termination of coverage due to nonpayment of premium is dismissed.

You and are entitled to a special enrollment period due to the errors by NYSOH and may choose to enroll into a QHP for the month of July 2017.

Your case is REFERRED to Plan Management to investigate whether you were properly disenrolled from your QHP given your testimony you have documentary evidence establishing the May 2017 premium payment was timely deducted.

You make choose to have your enrollment in your QHP with APTC effective July 1, 2017.

You have 60 days from the date of this decision in which to make your selection.

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.

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Getting Help in a Language Other than English

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

Español (Spanish)

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

中文 (Traditional Chinese)

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

Kreyòl Ayisyen (Haitian Creole)

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

中文 (Simplified Chinese)

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

Italiano (Italian)

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

한국어 (Korean)

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

Русский (Russian)

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

العربية (Arabic)

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

বাংলা (Bengali)

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

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Français (French)

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

हिंदी (Hindi)

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

日本語 (Japanese)

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

नेपाली (Nepali)

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

Polski (Polish)

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

Twi (Twi)

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

(Urdu) اردو

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

Tiếng Việt (Vietnamese)

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

אידיש (Yiddish)

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

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