



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

Notice of Decision

Decision Date: July 19, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000019715

[REDACTED]

Dear [REDACTED],

On July 18, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's June 13, 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: July 19, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000019715



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 do not qualify to enroll in a qualified health plan outside of the open enrollment period, effective July 1, 2017?

Procedural History

On April 29, 2017, NYSOH received your application for health insurance.

On April 30, 2017, NYSOH issued a notice stating that your application for health insurance had been reviewed but more information was needed to make a determination. The income information in your application did not match what NYSOH had obtained from State and Federal data sources and NYSOH was unable to make a determination until you submitted additional income documentation. You had until May 14, 2017 to submit income documentation for your household.

Also on April 30, 2017, NYSOH issued a plan enrollment notice confirming your enrollment in a platinum-level qualified health plan with a monthly premium responsibility of \$635.65, effective May 1, 2017.

Also on April 30, 2017, NYSOH issued a disenrollment notice stating that your platinum-level qualified health plan would end on May 31, 2017. This was because you were no longer eligible to enroll in a qualified health plan.

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On May 25, 2017, NYSOH issued an eligibility determination notice stating that you may be able to enroll in coverage if you qualify for a Special Enrollment period. It further stated that, if you qualified for a special enrollment period, you were eligible to purchase a qualified health plan at full cost through NYSOH, effective July 1, 2017.

On June 4, 2017, June 8, 2017 and June 11, 2017, NYSOH issued eligibility determination notices, based on your updated applications of June 3, 2017, June 7, 2017 and June 10, 2017, all of which stated that you do not qualify to select a health plan outside of the open enrollment period for 2017.

On June 12, 2017, NYSOH received an updated application for financial assistance. That day, a preliminary eligibility determination was prepared finding you eligible to purchase a qualified health plan at full cost through NYSOH, effective July 1, 2017. You also attempted to enroll into a qualified health plan but were unable to select a plan for enrollment.

On June 13, 2017, NYSOH issued an eligibility determination notice, based on the June 12, 2017 updated application for financial assistance, stating that you may be able to enroll in coverage if you qualify for a Special Enrollment period. It further stated that if you qualify for a Special Enrollment Period you are eligible to purchase a qualified health plan at full cost through NYSOH, effective July 1, 2017.

Also on June 13, 2017, your authorized representative spoke to NYSOH's Account Review Unit and appealed your inability to enroll into a qualified health plan outside of the open enrollment period. The authorized representative stated that she incorrectly entered your income on one of the April 29, 2017 applications.

On June 14, 2017, NYSOH issued a letter confirming that, on June 13, 2017, your authorized representative appealed the denial of a special enrollment period.

On July 11, 2017, your request for an expedited telephone hearing due to medical urgency was granted.

On July 18, 2017, you had an expedited telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Under oath, you agreed to waive formal written notice of the hearing because it had been granted on an expedited basis. The record was developed during the hearing and held open until August 1, 2017, to allow you to submit income documents.

Upon further review of the record, the Hearing Officer determined that the submission of income documents is not necessary for a determination of the issue of whether you qualify for a special enrollment period. Further, as this was

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an Expedited Hearing, the Hearing Officer will base this decision on the record as developed at the time of the hearing.

Findings of Fact

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

- 1) On April 29, 2017, you submitted an application for health insurance.
- 2) According to your NYSOH account and your testimony, you used the services of a certified application counselor (CAC) to submit your application and for subsequent updates to your application.
- 3) You testified that you previously had health insurance through your domestic partner's employer-sponsored health plan. You testified and provided documentary evidence that the employer-sponsored health insurance ended on March 31, 2017 (see Document [REDACTED]).
- 4) You testified that you are self-employed and receive a regular weekly paycheck from your business corporation in the amount of \$1,425.00.
- 5) According to your NYSOH account, in the April 29, 2017 application submitted on your behalf by the CAC showed an income of \$74,099.99, and you were found eligible to purchase for a full cost qualified health plan.
- 6) You testified that the CAC told you on April 29, 2017 that you were eligible for a full cost health plan and she suggested a policy and asked you if you wanted to select it. You testified that you told her it was too expensive and you needed time to think about what plan to select. You testified that you did not select a plan on April 29, 2017, and did not request of nor authorize the CAC to make a plan selection for you. You testified that the CAC said she would show you other policy options a few days later when you returned.
- 7) Accord to your NYSOH account, on April 29, 2017, the CAC made a plan selection for you and enrolled you in a platinum-level qualified health plan.
- 8) According to your NYSOH account, on April 29, 2017, the CAC submitted an updated application on your behalf, listing a household income of \$9,900.00. You were placed in a pending Medicaid status with proof of household income needed by May 14, 2017 and your plan enrollment was to be terminated.

- 9) You testified that you returned to the CAC about a week later and provided her with income documents that included 4 weekly pay statements. According to your NYSOH account, no proof of income documents to this effect have been uploaded to your account.
- 10) You testified that you received a premium invoice from a health plan, but because you knew you had not selected any plan you purposely did not pay that invoice.
- 11) According to your NYSOH account and your testimony, you and the CAC have attempted on several occasions to update your account and enroll in a qualified health plan but have been repeatedly denied a special enrollment period.
- 12) You testified that you want to enroll in a qualified health plan because you have multiple ongoing medical issues and are in need of surgery.

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 do not qualify to enroll in a qualified health plan outside of the open enrollment period, effective July 1, 2017.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On April 29, 2017, you submitted an application for health insurance.

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.

You testified and the record reflects that your previous insurance coverage through your domestic partner's employer ended on March 31, 2017. Loss of insurance coverage outside of NYSOH is considered a triggering life 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.

Since 60 days from March 31, 2017 is May 30, 2017; you would have qualified to select a qualified health plan outside of the open enrollment period until May 30, 2017.

The credible evidence of record indicates that your application for health insurance was submitted on April 29, 2017, prior to the expiration of the special enrollment period. The credible evidence of record further indicates that, on April 29, 2017, the CAC who was assisting you enrolled you in a platinum-level qualified health plan without your authority, knowledge or consent. In fact, you credibly testified that the platinum-level plan was too expensive and you wanted time to think about it.

The evidence indicates that the CAC then submitted an application on your behalf with a household income of \$9,900.00 to manipulate your eligibility, which

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resulted in you being put in a pending Medicaid status and automatically ended your eligibility for a qualified health plan, with proof of income required by May 14, 2017. This also triggered the system to disenroll you from the platinum-level qualified health plan that the CAC had enrolled you in without your consent.

Since your June 2017 applications were outside the 60-day window of the special enrollment period, NYSOH determined you ineligible for a special enrollment period as stated in the June 4, 8, 11, and 13, 2017 eligibility determination notices.

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.

Since the record indicates that your enrollment into a platinum-level qualified health plan was made by the CAC as a non-NYSOH entity providing enrollment assistance or conducting enrollment activities, and was done without your knowledge, authorization or consent, you would not be responsible for payment of the premium invoice sent out by the health plan for coverage for the month of May 2017.

Further as the record indicates that your enrollment in the platinum-level qualified health plan was without your knowledge, consent or authorization and the subsequent disenrollment for non-payment of premium is the direct result of actions by a representative of NYSOH, you should have been granted a special enrollment period as of your June 3, 2017, June 7, 2017, June 10, 2017 and June 12, 2017 applications.

Therefore, as NYSOH's most recent eligibility determination notice issued on June 13, 2017 supersedes the previous June 2017 notices, the determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of that notice.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan as of July 1, 2017, because your enrollment in a qualified health plan was unintentional, inadvertent, or erroneous and was 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. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

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NYSOH's failure to grant you a special enrollment period resulted in you being without insurance coverage for part of the 2017 coverage year. During the hearing, you testified that you are concerned about receiving a tax penalty as a result of being without coverage.

Sometimes after an appeal decision, an appellant can claim an exemption from the requirement to have health insurance. You might qualify for a health coverage exemption in 2017 if you did not have health coverage while you were waiting for an appeal decision about coverage eligibility or savings and your appeal was eventually successful.

You must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, NYSOH does not accept hardship exemption applications.

You will find the information you need to claim the exemption due to an appeal decision at <https://www.healthcare.gov/exemptions-tool/#/results/2016/details/eligible-based-on-appeal>. You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word "pending" in column "c" and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

Decision

The June 13, 2017 eligibility determination notice that states you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of that notice.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan as of July 1, 2017, if you so choose. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

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

Effective Date of this Decision: July 19, 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 July 1, 2017, if you so choose. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

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

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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:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The June 13, 2017 eligibility determination notice that states you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of that notice.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan as of July 1, 2017, if you so choose. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

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

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 July 1, 2017, if you so choose. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

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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 okyerE kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

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

Tiếng Việt (Vietnamese)

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

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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