



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

Notice of Decision

Decision Date: September 19, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000019784

[REDACTED]

Dear [REDACTED],

On September 11, 2017, you appeared by telephone, along with your Authorized Representative, [REDACTED] at a hearing on your appeal of NY State of Health's verbal denial of your request to enroll in coverage outside of the 2017 open 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.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

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Decision Date: September 19, 2017

NY State of Health Account ID: [REDACTED]
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[REDACTED]

Issues

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

Did NY State of Health (NYSOH) properly determine that you were not eligible to enroll in coverage through NYSOH, effective June 1, 2017, because you did not submit requested citizenship documentation?

Did NYSOH properly determine that you do not qualify to select a health plan for enrollment outside of the 2017 open enrollment period?

Procedural History

On January 25, 2017, you filed a non-financial application for health insurance coverage through NYSOH.

On January 26, 2017, NYSOH issued a notice of eligibility determination stating that you were conditionally eligible to purchase a qualified health plan (QHP) at full cost through NYSOH, effective March 1, 2017. The notice directed you to submit documentation of your citizenship status by April 25, 2017.

Also on January 26, 2017, NYSOH issued an enrollment confirmation notice, confirming your enrollment in a bronze level QHP, beginning March 1, 2017.

No documentation was received by NYSOH.

On May 1, 2017, NYSOH reran your application for health insurance.

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On May 2, 2017, NYSOH issued a notice of eligibility determination stating that you were no longer eligible for coverage through NYSOH because you did not provide the documentation necessary to confirm your eligibility.

Also on May 2, 2017, NYSOH issued a disenrollment notice, stating that you were disenrolled from your QHP, effective May 31, 2017.

On June 15, 2017, you contacted NYSOH and attempted to re-enroll in a QHP.

That same day, you spoke to NYSOH's Account Review Unit and appealed your inability to enroll into a QHP outside of the 2017 open enrollment period.

On September 11, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, your financial planner, [REDACTED], appeared as your Authorized Representative (AR) and provided testimony on your behalf. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

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

- 1) Your AR testified that he assisted you with applying for health coverage through NYSOH on January 25, 2017 when you came to his office for an annual meeting and review. He testified that he advised you to enroll in health insurance for risk management purposes, and to avoid a tax penalty.
- 2) Your AR testified that he completed the application by phone with NYSOH that same day. Your AR testified that he recalls being told that you needed to provide a copy of your United States passport, and that he uploaded documentation to your NYSOH account.
- 3) Your NYSOH account does not contain any documentation uploaded or submitted on your behalf.
- 4) Your AR testified that neither of you thought that there was any problem with your account because you never received any further notice that there was any action required on your part, or any further documentation needed.
- 5) Your AR testified that he does not have any documentation that confirms that your US passport was uploaded on January 25, 2017.

- 6) Your AR testified that he noticed that no premium payments were being taken from your account when he was meeting with you and reviewing your financial statements on June 15, 2017.
- 7) Your AR testified that he called your health plan on your behalf while you were at his office, and was informed that NYSOH had cancelled your coverage.
- 8) Your AR testified that he called NYSOH that same day and was informed that your coverage had been cancelled because you had not satisfied the documentation requirements.
- 9) Your AR testified that NYSOH informed him that they had sent you a letter regarding your coverage, and that you stated that you did not receive any letter.
- 10) You testified that you receive notices from NYSOH through the regular mail.
- 11) No notices sent to you at the mailing address in your NYSOH account have been returned to NYSOH as undeliverable.
- 12) Your AR testified that he always emphasizes to his clients to share any correspondence that they receive regarding financial issues. He testified that, after he found out your coverage had been cancelled, he asked you if you had received anything in the mail, and you responded that you had not.
- 13) Your AR testified that, if there had been a letter, they would have done whatever was necessary to correct the situation.
- 14) Your AR testified that you are looking to re-enroll in a QHP, retroactive to June 1, 2017.
- 15) You testified that, since filing your application in January 2017, there have been no other major changes to your household.
- 16) You testified that you are still residing in [REDACTED].

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

Applicable Law and Regulations

Citizenship and Immigration Status

To enroll in a QHP through NYSOH, an applicant must be a citizen or national of the United States, or a non-citizen who is lawfully present in the United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1)).

NYSOH must verify or obtain information to determine that an applicant is eligible for enrollment in a QHP, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

If an applicant attests to citizenship, status as a national, or lawful presence, and NYSOH is unable to verify such attestation, NYSOH must provide the applicant with notice of the inconsistency. NYSOH must then provide the applicant with 90 days to provide satisfactory documentary evidence, from the date the notice of inconsistency is received by the applicant. Notice is considered received 5 days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the 5-day period. (45 CFR § 155.315(c)(3), (f)(2)(i)).

If NYSOH remains unable to verify the citizenship attestation after the 90-day period ends, it must determine the applicant's eligibility based on the information available (45 CFR § 155.315(f)(5)).

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 lawfully 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 advance payments of the premium tax credit, or has a change in eligibility for cost-sharing reductions.

(7) The qualified individual or enrollee, or his or her dependent, gains access to a new QHP 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 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 not elected to adopt this subsection at this time.

(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)).

Legal Analysis

The first issue under review is whether NYSOH properly determined that you were no longer eligible to enroll in a QHP through NYSOH, effective June 1, 2017.

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH, and must confirm, among other things, that their citizenship status is satisfactory.

If NYSOH cannot verify an individual's citizenship status, it must provide the individual with notice of the inconsistency. NYSOH must then provide the individual with a period of 90 days from the date notice is received to resolve the inconsistency. For purposes of verifying citizenship, notice is considered received 5 days after the date on the notice.

Your eligibility for enrollment in coverage through NYSOH was conditioned upon your submission of documentation of citizenship status by April 25, 2017, as stated in the January 26, 2017 eligibility determination notice.

Your AR testified that he assisted you with your application on January 25, 2017, and that he spoke to NYSOH on your behalf. He testified that he was told that you needed to provide a copy of your US passport. He testified that he uploaded a copy of your passport that same day. However, your NYSOH account is devoid of any documentation uploaded or otherwise submitted to NYSOH on your behalf. Nevertheless, your AR's testimony indicates that you were both aware that you were required to submit documentation of your citizenship for your eligibility to be confirmed.

If NYSOH remains unable to verify the inconsistency after the 90-day period ends, then it must determine the applicant's eligibility based on the information available in the data sources.

Since the requested citizenship documentation was not received within the 90-day period, NYSOH was required to redetermine your eligibility without verification of your citizenship status. As a result, NYSOH properly determined

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that you could not enroll in a QHP through NY State of Health, effective June 1, 2017, because you did not provide the information requested by NYSOH.

Although your AR credibly testified that he recalls uploading documentation on your behalf, the documentation does not appear in your NYSOH account, and was therefore not available to be verified. As such, NYSOH was constrained to find that you were no eligible to enroll in coverage through NYSOH.

Therefore, NYSOH's May 2, 2017 eligibility determination is correct and is **AFFIRMED**.

The second issue under review is whether NYSOH properly determined that you do not qualify to enroll in a QHP outside of the open enrollment period, as of June 15, 2017.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. You submitted a request to enroll in a QHP on January 26 2017, and you were enrolled into a QHP effective March 1, 2017. Therefore, you initially were enrolled into a QHP during the open enrollment period. However, you were disenrolled for failure to provide citizenship documentation, as stated in the notice dated May 2, 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.

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 and your spouse for a special enrollment period.

Although your AR testified that you did not receive a notice telling you that your coverage was going to be cancelled if you did not submit documentation of your citizenship, NYSOH's January 27, 2017 eligibility determination notice clearly stated that you were required to submit citizenship documentation by April 25, 2017 to confirm your eligibility. Although it is understandable that your AR believed he satisfied this requirement because he recalled uploading documentation to your account, the fact remains that no documentation was received by NYSOH. Moreover, there is no requirement that NYSOH issue a second notice informing you of the need to submit documentation prior to terminating coverage.

Additionally, you testified that you receive notices from NYSOH by regular mail. There is no indication that the May 2, 2017 notices informing you that you were no longer eligible for coverage, effective June 1, 2017, because NYSOH had not received your citizenship documentation, were returned to NYSOH as

undeliverable. Most importantly, even if you had immediately responded to these notices, you would still have had to qualify for a special enrollment period to re-enroll in coverage, as you were past the deadline for submitting documentation and it was outside of open enrollment.

Therefore, NYSOH's verbal determination that you are not eligible to enroll in a QHP outside of the 2017 open enrollment period is correct and is AFFIRMED.

Decision

The May 2, 2017 eligibility determination is AFFIRMED.

NYSOH's June 15, 2017 verbal denial of your request for a special enrollment period is AFFIRMED.

Effective Date of this Decision: September 19, 2017

How this Decision Affects Your Eligibility

You were not eligible for enrollment in coverage through NYSOH, effective June 1, 2017, because you failed to provide the requested citizenship documentation.

You do not qualify for a special enrollment period 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)).

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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

The May 2, 2017 eligibility determination is **AFFIRMED**.

NYSOH's June 15, 2017 verbal denial of your request for a special enrollment period is **AFFIRMED**.

You were not eligible for enrollment in coverage through NYSOH, effective June 1, 2017, because you failed to provide the requested citizenship documentation.

You do not qualify for a special enrollment period at this time.

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).

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:

[REDACTED]

[REDACTED]

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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