

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

#### **Notice of Decision**

Decision Date: October 18, 2017

NY State of Health Account ID: Appeal Identification Number: AP00000020221





On September 26, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's 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: October 18, 2017

NY State of Health Account ID:

Appeal Identification Number: AP00000020221



#### Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

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?

# **Procedural History**

On January 20, 2017, NY State of Health (NYSOH) received your application for financial assistance with health insurance.

On January 21, 2017, NYSOH issued a notice stating that the income information on your application did not match what NYSOH received from state and federal data sources, and that more information was needed to confirm the information in your application. This notice directed you to submit income documentation by February 4, 2017.

On January 28, 2017, you uploaded two documents to your NYSOH account.

On February 7, 2017, NYSOH invalidated those documents.

On February 8, 2017, NYOSH issued a notice stating that the income documentation you provided was not sufficient to confirm the information in your application. This notice further stated that additional income documentation was due by March 6, 2017.

On February 15, 2017, you uploaded three documents to your NYSOH account.

On February 24, 2017, NYSOH invalidated that income documentation you provided.

On February 25, 2017, NYSOH issued a notice stating that the income documentation you provided was not sufficient to confirm the information listed in your application. This notice further stated that additional income documentation was due by March 6, 2017.

On March 1, 2017, NYSOH received your updated application for financial assistance with health insurance. You also uploaded one document to your NYSOH account on this date.

On March 2, 2017, NYSOH issued a notice stating that the income information on your application did not match what NYSOH received from state and federal data sources, and that more information was needed to confirm the information in your application. This notice further directed you to submit income documentation by March 6, 2017.

On March 9, 2017, NYSOH invalidated your income documentation uploaded on March 1, 2017.

On March 10, 2017, NYSOH issued a notice stating that the income documentation that you provided was not sufficient to confirm the information listed in your application. This notice directed you to submit additional income documentation by April 5, 2017.

On March 21, 2017, you uploaded four documents to your NYSOH account.

On March 28, 2017, NYSOH invalidated that income documentation.

On March 29, 2017, NYSOH issued a notice stating that the income documentation you provided was not sufficient to confirm the information listed in your application, and that more information was needed to confirm the information in your application. This notice directed you to submit additional income documentation by April 20, 2017.

On April 3, 2017, you uploaded one document to your NYSOH account.

On April 7, 2017, NYSOH invalidated that income documentation.

On April 8, 2017, NYSOH issued a notice stating that the income documentation that you provided was not sufficient to confirm the information listed in your application, and that more information was needed to confirm the information in your application. This notice directed you to submit additional income documentation by May 5, 2017.

On April 18, 2017, you uploaded three documents to your NYSOH account.

On April 20, 2017, NYSOH invalidated that income documentation.

On April 21, 2017, NYSOH issued a notice stating that the income documentation that you provided was not sufficient to confirm the information listed in your application, and that more information was needed to confirm the information in your application. This notice directed you to submit additional income documentation by May 5, 2017.

On April 27, 2017, you uploaded four documents to your NYSOH account.

Also on April 27, 2017, NYSOH invalidated that income documentation.

On April 28, 2017, NYSOH issued a notice stating that the income documentation that you provided was not sufficient to confirm the information listed in your application, and that more information was needed to confirm the information in your application. This notice further directed you to submit additional income documentation by May 20, 2017.

On May 30, 2017, you uploaded four documents to your NYSOH account.

Also on May 30, 2017, NYSOH validated your income documentation, and submitted an updated application on your behalf.

On May 31, 2017, NYSOH issued an eligibility determination stating that you were eligible for up to \$283.00 per month in advanced premium tax credits and eligible for cost sharing reductions if your enrolled into a silver-level qualified health plan, effective July 1, 2017. This notice also stated that you may be able to enroll if you qualified for a special enrollment period.

On July 3, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you were not eligible to enroll in a qualified health plan outside of the open enrollment period.

On July 4, 2017, NYSOH issued a notice to confirm your appeal request for the previous day. That notice stated that the reason for your appeal was "denial of special enrollment period (SEP)".

On September 26, 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) On January 20, 2017, you submitted an application for health insurance.
- 2) Your January 20, 2017 application listed your annual expected income to be \$2,500.00; consisting of income you earn from your employment. This application also had an end date for the employer listed.
- On January 28, 2017, you uploaded two paystubs to your NYSOH account.
- 4) On February 7, 2017, NYSOH invalidated the paystubs you uploaded on January 28, 2017 because you were attesting to a job ending, but did not provide a termination letter.
- 5) On February 15, 2017, you uploaded two paystubs, and your 2015 federal tax return.
- 6) On February 24, 2017, NYSOH invalidated the paystubs and your 2015 federal tax return because you were attesting to a job ending, but did not provide a termination letter.
- 7) Your March 1, 2017 application listed an annual expected income of \$12,000.00; consisting of income you earn from a new employer.
- 8) On March 1, 2017, you also uploaded your 2015 federal tax return.
- 9) On March 9, 2017, NYSOH invalidated the income documentation you uploaded on March 1, 2017, because you were attesting to employment on your application, but did not provide four consecutive paystubs.
- 10) On March 21, 2017, you uploaded two screenshots of your earning details; dated February 24, 2017 and March 10, 2017.
- 11) On March 28, 2017, NYSOH invalidated this income documentation because you had submitted nonconsecutive paystubs.
- 12) You testified that you are paid biweekly.
- 13) You testified that you were informed by NYSOH that you would be able to enroll into a qualified health plan outside of the open enrollment period so long as you got your income documentation in by the due date.

- 14) You testified that you kept submitting income documentation because NYSOH kept informing you that the documentation you submitted was not sufficient.
- 15) The record indicates that, on May 30, 2017, you were found eligible for \$283.00 in advanced premium tax credits, and cost-sharing reductions if you enrolled into a silver level qualified health plan, effective July 1, 2017, but that you were unable to enroll into a qualified health plan.
- 16) You testified that you would like to be able to enroll into a qualified health plan outside of open enrollment since you started this process during open enrollment period.

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

# **Applicable Law and Regulations**

#### 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).

#### Verification Process

For all individuals whose income is needed to calculate the household's eligibility, NYSOH must request data that will allow NYSOH to verify the household's income (45 CFR §155.320(c)(1)(i), 42 CFR § 435.945).

If NYSOH cannot verify the income information required to determine eligibility they must attempt to resolve the inconsistency including giving the applicant the opportunity to submit satisfactory documentary evidence (45 CFR §155.315(f) 42 CFR § 435.952).

#### 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 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.

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 credible testimony, along with the July 4, 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.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On January 20, 2017, you submitted an application for health insurance. Your January 20, 2017 application listed an annual expected income of \$2,500.00; consisting of income your earned from your employment between October 31, 2016 and January 30, 2017.

For all individuals whose income is needed to calculate the household's eligibility, NYSOH must request data that will allow NYSOH to verify the household's income. If NYSOH cannot verify the income information required to determine eligibility they must attempt to resolve the inconsistency including giving the applicant the opportunity to submit satisfactory documentary evidence.

The income amount that was entered into your January 20, 2017 application did not match federal and state data sources. As a result, NYOSH asked that you submit additional documentation to confirm your household income.

You uploaded multiple documents to NYSOH between January 28, 2017 and February 15, 2017. However, these documents were deemed insufficient to resolve the inconsistencies in your account because you attested to a job ending in your January 20, 2017 application, but did not provide proof of termination from your employment.

On March 1, 2017, NYSOH received your updated application for financial assistance with health insurance; which included updated income and employment information. This application listed an expected annual income of \$12,000.00; which consisted of income you earn from employment. You also uploaded a document to your NYSOH account on this day.

The income amount that was entered into this application did not match federal and state data sources. As a result, NYOSH asked that you submit additional documentation to confirm your household income by March 6, 2017.

On March 9, 2017, NYSOH invalidated the income documentation you submitted on March 1, 2017 because you had submitted a 2015 tax return, but were attesting to current income from employment.

On March 21, 2017, you uploaded two print outs of your earning details from your place of employment, dated February 24, 2017 and March 10, 2017. Subsequently, on March 28, 2017, NYSOH invalidated the income documentation because it was not four consecutive weeks' worth of paystubs.

However, after review of the record, NYSOH incorrectly invalidated this income documentation. You testified that you were paid biweekly, and submitted two consecutive earning detail printouts dated February 24, 2017 and March 10, 2017; which were from within 30 days of your March 1, 2017 application. Therefore, your application was considered complete as of March 21, 2017.

If NYSOH had properly validated the income documentation you provided on March 21, 2017, you would have been found eligible to enroll into a qualified health plan as of March 21, 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 when a qualified individual applies for health insurance through NYSOH during the open enrollment period, and is assessed as potentially eligible for Medicaid and is determined ineligible for Medicaid after open enrollment period has ended.

Therefore, NYSOH's verbal determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is incorrect, you should have been eligible for a special enrollment period as of March 21, 2017, the day your application was considered complete.

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 March 21, 2017 because NYSOH gave you incorrect information. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

#### **Decision**

NYSOH's verbal determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is incorrect, you should have been eligible for a special enrollment period as of March 21, 2017, the day your application was considered complete.

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 March 21, 2017 because NYSOH gave you incorrect information. 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: October 18, 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 March 21, 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 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**

NYSOH's verbal determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is incorrect, you should have been eligible for a special enrollment period as of March 21, 2017, the day your application was considered complete.

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 March 21, 2017 because NYSOH gave you incorrect information. 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 March 21, 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.

# **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.

1-855-355-5777

#### 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 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 yε tow krataa a ho hia. Sε wo hia εho nkyerεkyerεmu a, yε srε wo, frε 1-855-355-5777. yεbεtumi ama wo obi a okyerε 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۔

#### <u>Tiếng Việt (Vietnamese)</u>

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.