



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

Notice of Decision

Decision Date: November 3, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000020296

[REDACTED]

Dear [REDACTED]

On September 22, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's July 7, 2017 eligibility determination.

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: November 3, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000020296



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 and your spouse did not qualify to enroll in a qualified health plan outside of the open enrollment period, effective August 1, 2017?

Procedural History

On July 5, 2017, NYSOH received your application for health insurance.

On July 6, 2017, NYSOH issued an eligibility determination notice that stated that you were newly eligible to receive up to \$562.00 per month in advance premium tax credits (APTC), effective August 1, 2017.

Also on July 6, 2017, NYSOH issued a plan enrollment notice confirming your July 5, 2017 selection of a bronze-level qualified health plan with a monthly premium responsibility of \$318.80 after your APTC of \$562.00 was applied, both effective August 1, 2017.

Also on July 6, 2017, you attempted to update your NYSOH account with a different household income, but were unable to do so.

Also on July 6, 2017, you spoke to the NYSOH Account Review Unit and requested an appeal insofar as you could not select a different qualified health plan outside of the open enrollment period.

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On July 7, 2017, NYSOH issued an eligibility determination notice that stated you and your spouse were eligible to share in an advance premium tax credit of up to \$562.00 per month if you qualified for a special enrollment period. It further stated that you might be able to enroll in coverage outside of the open enrollment period for 2017. You were directed to log on to your NYSOH account to see if you qualified for a special enrollment period.

On August 22, 2017, NYSOH issued a disenrollment notice stating that your and your spouse's enrollment in your bronze-level qualified health plan was terminated, effective August 1, 2017, because a premium payment had not been received by the health plan.

On September 22, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open up to October 9, 2017, to allow you to submit supporting documentation.

On October 4, 2017, NYSOH received via secure facsimile your 10 page submission consisting of a cover document, a two page statement signed by you and your spouse, dated October 4, 2017, the first page of your 2016 income tax return, your earnings statement, dated 7/14/2017, from the [REDACTED], 3 pages of documents titled [REDACTED], [REDACTED], dated May 16, 2017, June 21, 2017 and July 11, 2017, [REDACTED] dated 7/1/2017 and 8/2/2017, and [REDACTED] statement for [REDACTED] for August 2017 and September 2017. Collectively these documents were made part of the record as Appellant's Exhibit # 1. The record was then closed.

Findings of Fact

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

- 1) You testified that you are appealing the denial of a special enrollment period to enroll into a qualified health plan through NYSOH for you and your spouse.
- 2) You testified that you and your spouse lost health insurance coverage through your spouse's employer on June 30, 2017.
- 3) You testified that on July 6, 2017 you contacted a NYSOH customer service representative to update your account so as to change your household income to reflect that you and your spouse were unemployed.

- 4) According to your NYSOH account and your testimony, on July 6, 2017, you and the customer service representative were unable to update your income in the account due to a system error.
- 5) You testified that on July 6, 2017, you also attempted to select a qualified health plan for you and your spouse, but were unable to do so.
- 6) You testified that your spouse obtained new employment and that you were both be eligible for employer sponsored insurance effective October 8, 2017.
- 7) You testified that you and your spouse have no outstanding medical bills that are pending.
- 8) You testified that you are appealing because you do not want to be responsible for a tax penalty for being without health coverage when you and your spouse file your 2017 tax return.

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).

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)).

Length of Special Enrollment Period

As a general rule, a 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)). A qualified individual or their dependent, who loses health insurance that is

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considered to be minimum essential coverage, has 60 days before or after the loss of coverage to select a qualified health plan (45 CFR §155.420 (c)(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 and your spouse 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 qualified 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's failure to timely issue an eligibility determination notice as you are to appeal an adverse eligibility determination notice. Your credible testimony, along with the entries in your NYSOH account, confirm that you were unable to select a different qualified health plan and were denied a special enrollment period to do so.

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 July 6, 2017, you submitted an updated application for health insurance but were unable to update your household income to reflect that both you and your spouse were unemployed. Also on July 6, 2017, you attempted to enroll you and your spouse in a qualified health plan but were unable to do so.

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 that your and your spouse's previous insurance coverage through your spouse's employer ended on June 30, 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 before and after the date of that event to select a qualified health plan.

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

According to your NYSOH account and your credible testimony, your updated application for health insurance was submitted on July 6, 2017, prior to the expiration of the active special enrollment period you and your spouse had because of loss of employer-sponsored insurance. In addition, due to system error, your July 6, 2017 application could not be properly processed, within that 60-day special enrollment period.

Therefore, it is concluded that due to the documented system error, your July 6, 2017 updated application was not properly processed, and had that application been processed you and your spouse should have been allowed to change qualified health plans, effective August 1, 2017. Through no fault of your own, you were not able to change qualified health plans for coverage to be effective August 1, 2017.

As such, the July 7, 2017 eligibility determination notice is MODIFIED to state that you and your spouse qualified for a special enrollment period as of July 1, 2017 through August 30, 2017.

You testified that your spouse obtained employment since your July 6, 2017 application and that you are both eligible for employer sponsored health insurance, effective October 8, 2017. You further testified that you and your spouse have not incurred any medical expenses during the period you have been without health insurance.

Your case is RETURNED to NYSOH and, at your option, NYSOH will assist you in enrolling in a qualified health plan, effective August 1, 2017. You will be responsible for premium payments for any months you are enrolled into coverage.

NYSOH's failure to honor your active special enrollment period resulted in you and your spouse 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 **and** your appeal was eventually successful. (emphasis added).

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 July 7, 2017 eligibility determination notice is MODIFIED to state that you and your spouse qualified for a special enrollment period as of July 1, 2017 through August 30, 2017.

Your case is RETURNED to NYSOH and at your option, NYSOH will assist you in enrolling in a qualified health plan, effective August 1, 2017. You will be

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

Effective Date of this Decision: November 3, 2017

How this Decision Affects Your Eligibility

NYSOH improperly disallowed you the opportunity to change qualified health plans during your active special enrollment period from July 1, 2017 through August 30, 2017.

Your case is being sent back to NYSOH to contact you regarding whether you and your spouse want to enroll in a qualified health plan as of August 1, 2017, if you so choose.

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.

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).

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):

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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 July 7, 2017 eligibility determination notice is MODIFIED to state that you and your spouse qualified for a special enrollment period as of July 1, 2017 through August 30, 2017.

Your case is RETURNED to NYSOH and at your option, NYSOH will assist you in enrolling in a qualified health plan, effective August 1, 2017. You will be responsible for premium payments for any months you are enrolled into coverage.

NYSOH improperly disallowed you the opportunity to change qualified health plans during your active special enrollment period from July 1, 2017 through August 30, 2017.

Your case is being sent back to NYSOH to contact you regarding whether you and your spouse want to enroll in a qualified health plan as of August 1, 2017, if you so choose.

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

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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.

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)

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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।

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 bɛtumi ama wo obi a okyerɛ 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 דאלמענטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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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