



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

Notice of Decision

Decision Date: November 29, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000022130

[REDACTED]

On November 9, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's verbal denial of a special enrollment period for your domestic partner.

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

Decision Date: November 29, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000022130

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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 your domestic partner (DP) did not qualify to enroll in a qualified health plan (QHP) outside of the 2017 open enrollment period?

Procedural History

On May 19, 2017 NYSOH received your updated application for health insurance.

On May 20, 2017, NYSOH issued an eligibility determination notice stating that your DP was eligible to receive advance payments of the premium tax credit (APTC) of up to \$214.00 per month, effective July 1, 2017. It further stated that he had until July 18, 2017 to select a health plan for enrolment.

Also on May 20, 2017, NYSOH issued a disenrollment notice, stating that your DP's enrollment in his Essential Plan coverage was ending, effective June 30, 2017, because he was no longer eligible to enroll in the Essential Plan.

That same day, NYSOH issued a notice of enrollment confirmation confirming that you and your children were enrolled in health plans, and advising your DP to pick a health plan, as his coverage would not begin until a plan was selected.

On July 3, 2017, you updated your NYSOH account.

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).

On July 4, 2017, NYSOH issued a notice of eligibility determination stating that your spouse was eligible to receive up to \$275.00 per month in APTC, effective August 1, 2017. The notice stated that he might be able to enroll in coverage if he qualified for a Special Enrollment Period, and that he should sign into your NYSOH account to answer the questions for a 2017 special enrollment period.

On September 5, 2017, you contacted NYSOH and tried to enroll your DP into a QHP, but were unable to do so.

That same day, you spoke to NYSOH's Account Review Unit and appealed, insofar as your DP was unable to enroll in a QHP for 2017 outside of the 2017 open enrollment period.

On November 9, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. 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) On May 19, 2017, you submitted an updated application for health insurance on behalf of yourself, your DP, and your children.
- 2) On May 20, 2017, NYSOH issued a notice informing you that your DP had been found eligible to receive up to \$214.00 per month in APTC as of July 1, 2017, and that he had until July 18, 2017 to select a health plan for enrollment.
- 3) Your NYSOH account contains no indication that a plan was selected on your DP's behalf by July 18, 2017.
- 4) You testified that your DP was previously enrolled in the Essential Plan, and your NYSOH account confirms that he had coverage in an Essential Plan that ended on June 30, 2017 because he was newly eligible to receive APTC as of July 1, 2017.
- 5) You testified that you updated your account on May 19, 2017 by phone with a NYSOH representative, and that you recall being told that your DP was eligible for a "different kind of coverage."
- 6) You testified that you believe you chose a plan that day that for your DP that was through MVP, and that was going to cost \$58.00 per month and have a \$7,000.00 deductible.

- 7) You testified that you do not recall receiving the May 20, 2017 eligibility determination notice that advised you that your DP needed to select a health plan for enrollment.
- 8) You testified, and your NYSOH account confirms, that you receive notices from NYSOH by regular mail.
- 9) No notices sent to you by NYSOH have been returned to NYSOH as undeliverable.
- 10) You testified that you never received any insurance card for your DP, but you thought he would just continue to use his MVP Essential Plan card.
- 11) Your NYSOH account reflects that you updated your account again on July 3, 2017.
- 12) You testified that you believe you called NYSOH on that day because you were being asked for income information. You testified that you believe you were again told that he was enrolled in a plan with a \$58.00 monthly premium and a \$7,000.00 deductible.
- 13) You testified that, in September 2017, you called NYSOH because you never received any bills for your DP's premium. You testified that you were informed that he was not enrolled in any coverage.
- 14) You testified that you were told he could not enroll in a plan at that time, and that you would need to file an appeal.
- 15) You testified that you are filing this appeal because your DP is concerned about incurring a tax penalty for not having health insurance.
- 16) You testified that there have been no major changes in your household since you last updated your application.
- 17) After the hearing, the Hearing Officer listened to the recordings of your telephone calls with NYSOH's Customer Service on May 19, 2017 and July 3, 2017. The following findings of fact are taken from those calls:
 - a. May 19, 2017:
 - i. You informed the NYSOH agent that you needed to update your address and to apply for insurance for your older son, as he had coverage outside of NYSOH that was terminated;
 - ii. The NYSOH agent went through the entire application for financial assistance with you;

- iii. The NYSOH agent informed you that your DP would be eligible to receive up to \$214.00 per month in a tax credit (APTC) toward the cost of a QHP;
 - iv. The NYSOH agent gave you information on an MVP bronze level QHP and a Fidelis bronze level QHP;
 - v. You asked if there were any cheaper plans, and the NYSOH agent informed you that there was an MVP Catastrophic Plan that would cost \$58.26 per month, and that would have a \$7,150.00 annual deductible;
 - vi. The NYSOH agent asked you if you wanted her to select the MVP Catastrophic Plan, or if you wanted to wait so that your DP could review the plan and determine if it was what he wanted;
 - vii. You informed the NYSOH agent that you wanted to wait;
 - viii. The NYSOH agent confirmed that she was not going to select a plan for your DP at that time;
 - ix. The NYSOH agent informed you that your DP could come back and select a plan at a later time;
- b. July 3, 2017:
- i. You told the NYSOH agent that you were calling because your older son was supposed to have coverage as of July 1, 2017, but the payment you made went toward your other child's premium, and you were told to call NYSOH for an ET number;
 - ii. You also updated the application that day to reflect that you were going to be claiming one child as a dependent, instead of two, and your DP would claim the other child;
 - iii. The NYSOH agent updated the application with you;
 - iv. There was no discussion during the phone call of any health plans, and no discussion regarding selecting a plan for your DP.

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 QHP and enrollees may change QHPs (45 CFR § 155.410(a)(1)).

For the benefit year beginning on January 1, 2017, the annual open enrollment period began on November 1, 2016, and extended through January 31, 2017 (45 CFR § 155.410(e)(2)).

Special Enrollment Periods

After each open enrollment period ends, NYSOH provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a QHP, and an enrollee may change their enrollment to another plan. This is generally permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent either:
 - (i) Loses minimum essential coverage.
 - (ii) Is enrolled in any non-calendar year group health plan or individual health insurance coverage, even if the qualified individual or his or her dependent has the option to renew such coverage.
 - (iii) Loses pregnancy-related coverage.
 - (iv) Loses medically needy coverage as described under section 1902(a)(10)(C) of the Social Security Act only once per calendar year.
- (2)(i) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care, or through a child support order or other court order.
 - (ii) the enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation as defined by State law in the State in which the divorce or legal separation occurs, or if the enrollee, or his or her dependent, dies.
- (3) The qualified individual, or his or her dependent, becomes newly eligible for enrollment in a QHP because he or she gains citizenship, status as a national, or lawful 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 change in eligibility for cost-sharing reductions.

(7) The qualified individual or enrollee, or his or her dependent, gains access to new QHP as a result of a permanent move and either—

(i) Had minimum essential coverage for one or more days during the 60 days preceding the date of the permanent move, or

(ii) Was living outside of the United States or in a United States territory at the time of the permanent move;

(8) The qualified individual or dependent who gains or maintains status as an Indian may enroll in a QHP or change from one plan to another, once per month.

(9) The qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide;

(10) A qualified individual or enrollee—

(i) Is a victim of domestic abuse or spousal abandonment, including a dependent or unmarried victim within a household, is enrolled in minimum essential coverage and seeks to enroll in coverage separate from the perpetrator of the abuse or abandonment; or

(ii) Is a dependent of a victim of domestic abuse or spousal abandonment, on the same application as the victim, may enroll in coverage at the same time as the victim;

(11) A qualified individual or dependent—

(i) Applies for coverage through NYSOH during the annual open enrollment period or due to a qualifying event, is assessed as potentially eligible for Medicaid or Child Health Plus and is determined ineligible for Medicaid or Child Health Plus either after open enrollment has ended or more than 60 days after the qualifying event; or

(ii) Applies for coverage at their Local Department of Social Services or Human Resources Administration during the annual open enrollment period, and is determined ineligible for Medicaid or Child Health Plus after open enrollment has ended;

(12) The qualified individual or enrollee, or his or her dependent, adequately demonstrates to NYSOH that a material error related to plan benefits, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a QHP; or

(13) At the option of NYSOH, the qualified individual provides satisfactory documentary evidence to verify his or her eligibility for an insurance affordability program or enrollment following termination of enrollment due to a failure to verify such status within 90 days. NYSOH has 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 issue under review is whether NYSOH properly determined that your DP did not qualify to enroll in a QHP outside of the open enrollment period, as of September 5, 2017.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. During that time period, your DP was found eligible to enroll in the Essential Plan with a \$20.00 monthly premium, effective February 1, 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.

On May 19, 2017, you updated your NYSOH application. As a result of updates you made to the financial information, your DP was newly eligible to receive APTC, and no longer eligible for the Essential Plan. Though this update was outside of the open enrollment period for 2017, your DP was given a special enrollment period at that time because he was newly eligible for APTC, and had been enrolled in other coverage through NYSOH prior to this update. NYSOH then issued a notice on May 20, 2017 stating that your DP was newly eligible to

receive up to \$214.00 per month in APTC, and that he had until July 18, 2017 to select a QHP for enrollment (60 days from the date of your application update).

You testified that you do not recall receiving the notice informing you that you needed to select a QHP on behalf of your DP. You testified, and your NYSOH account confirms, that you receive notices from NYSOH by regular mail. No notices sent to you by NYSOH have been returned to NYSOH as undeliverable. Therefore, it is concluded that you were properly notified of the need to select a QHP on behalf of your DP.

You also testified that you thought you did select a plan on his behalf when you updated your application on May 19, 2017. You testified that you recalled picking an MVP plan with a \$58.00 monthly premium and a \$7,000.00 deductible.

A special enrollment period can be granted if a qualified individual'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

Although you testified that you thought you selected a plan on May 19, 2017, a review of your phone call with NYSOH on that day reveals that the NYSOH agent you spoke with provided you with information about three plans, including an MVP Catastrophic Plan with a \$58.26 monthly premium and a \$7,150.00 annual deductible. However, you declined to select that plan, and decided to wait so that your DP could review the available plans. The NYSOH agent confirmed with you that no plan was selected, and that your DP could come back and select a plan at a later time. Therefore, since the record does not indicate that NYSOH, by action or inaction, made an error or misrepresented information, a special enrollment period cannot be granted on this basis.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2017, no triggering events have occurred that would qualify you for a special enrollment period, outside of the special enrollment period you were granted from May 19, 2017 through July 18, 2017.

Therefore, NYSOH's denial of your request to select a health plan for your DP outside of the open enrollment period for 2017 is **AFFIRMED**.

Decision

NYSOH's denial of your request to enroll your DP in a QHP outside of the 2017 open enrollment period is **AFFIRMED**.

Effective Date of this Decision: November 29, 2017

How this Decision Affects Your Eligibility

Your DP does not qualify for a special enrollment period at this time.

If You Disagree with this Decision (Appeal Rights)

If applicable, if you think a portion of your appeal should not be dismissed, you can ask us to vacate, or cancel, this dismissal. You must ask us in writing within 30 days after the date on this notice, showing good cause as to why the dismissal should be vacated. NYSOH's Appeals Unit will review your request. If your request is approved, another hearing will be scheduled for you. If your request is denied, NYSOH will tell you in writing. If you do not respond to the dismissed portion of your appeal within 30 days, your appeal will remain dismissed, and NYSOH will take no further action on your appeal.

Insofar as your case was decided, the 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 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).

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 denial of your request to enroll your DP in a QHP outside of the 2017 open enrollment period is AFFIRMED.

Your DP does not qualify for a special enrollment period at this time.

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 مجانًا.

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।

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).

Français (French)

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

हिंदी (Hindi)

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

日本語 (Japanese)

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

नेपाली (Nepali)

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

Polski (Polish)

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

Twi (Twi)

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

(Urdu) اردو

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

Tiếng Việt (Vietnamese)

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

אידיש (Yiddish)

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

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).