



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

## Notice of Decision

Decision Date: January 10, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000023012

[REDACTED]

On January 5, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's August 4, 2017 eligibility determination and August 4, 2017 disenrollment notices.

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: January 10, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000023012

[REDACTED]

## 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 eligibility for and enrollment in the Essential Plan ended effective August 31, 2017?

## Procedural History

On May 1, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible to enroll in the Essential Plan for a limited time, effective June 1, 2017. The notice further directed you to provide documentation confirming your household's income before July 29, 2017.

Also on May 1, 2017, NYSOH issued a notice confirming your enrollment in an Essential Plan, effective June 1, 2017.

On May 3, 2017, you uploaded income documentation to your NYSOH account.

On May 5, 2017, NYSOH invalidated the income documentation you submitted on May 3, 2017, as insufficient proof of your household income.

On May 5, 2017, NYSOH issued a notice stating the documentation you submitted did not confirm the information provided in your application. The notice directed you to provide additional documentation confirming your household income by July 29, 2017, to continue your eligibility for the Essential Plan.

On August 4, 2017, NYSOH issued an eligibility determination notice stating that you may be eligible to purchase a qualified health plan at full cost if you qualified for a special enrollment period. The notice stated that you were not eligible to enroll in the Essential Plan because NYSOH did not receive the income documentation needed to verify the income listed in your application. This eligibility was effective September 1, 2017.

Also on August 4, 2017, NYSOH issued a disenrollment notice stating that your enrollment in the Essential Plan would end as of August 31, 2017, because you were no longer eligible to remain in your plan.

On October 2, 2017, you updated your application for financial assistance. That day, a preliminary eligibility determination was prepared stating that you were eligible to enroll in the Essential Plan and you selected a plan for enrollment.

Also on October 2, 2017, you spoke to NYSOH's Account Review Unit and appealed the termination of your Essential Plan for the month of September 2017.

On October 3, 2017, NYSOH issued a notice of eligibility determination, based on your October 2, 2017 application, stating that you were eligible to enroll in the Essential Plan, effective November 1, 2017.

Also on October 3, 2017, NYSOH also issued a notice of enrollment confirmation, based on your plan selection on October 2, 2017, stating that you were enrolled in an Essential Plan effective November 1, 2017.

On October 19, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible for Medicaid, effective October 1, 2017. NYSOH also issued a notice of enrollment confirmation stating that you were enrolled in a Managed Care plan would be effective December 1, 2017. You remained in fee-for-service Medicaid from October 1, 2017, until your enrollment in your Medicaid Managed Care plan on December 1, 2017.

Also on October 19, 2017, NYSOH issued a disenrollment notice stating that your enrollment in the Essential Plan would end as of November 1, 2017, because you were no longer eligible to remain in your plan.

On January 5, 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:

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- 1) You testified, and your NYSOH account confirms, that you receive all of your notices from NYSOH by electronic mail.
- 2) You testified that you received an electronic alert notifying you that your eligibility for the Essential Plan was only conditional and that you needed to provide documentation of your income.
- 3) You testified, and your NYSOH account reflects, that you uploaded income documentation to your NYSOH account.
- 4) You testified that you did not receive any electronic alerts notifying you of any notice in your NYSOH account stating that the income documentation you submitted was insufficient and that additional income was required in order to confirm your eligibility.
- 5) You testified that you did not know that you needed to submit documentation of your income until October 2, 2017.
- 6) Your NYSOH account indicates that on August 3, 2017 your application was run and you were found no longer eligible for the Essential Plan as of August 31, 2017.
- 7) You testified that you are seeking reinstatement of your Essential Plan for the month of September 2017 only.
- 8) NYSOH uploaded an evidence packet to your NYSOH account. Contained within that evidence packet under the heading of “electronic notice requirement” is a three-page memorandum dated August 21, 2017. The memorandum sets forth the federal requirements regarding use of electronic communications and asserts that NYSOH is in compliance with federal regulation and guidance on the use of electronic notices. The memorandum asserts that “the electronic notification rules do not require that exchanges track and monitor consumers actual receipt of electronic notices”.
- 9) NYSOH has submitted no evidence that an electronic alert was sent to you regarding the May 5, 2017 notice of invalid documentation.

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

## **Applicable Law and Regulations**

### Verification of Eligibility for the Essential Plan

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NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

NYSOH must verify the eligibility of an applicant for the Essential Plan consistent with the standards set in 45 CFR § 155.315 and § 155.320 (New York's Basic Health Plan Blueprint, pgs. 16-17, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>; 42 CFR § 600.345(a)(2)).

An applicant is required to attest to their household's projected annual income. (45 CFR § 155.320(c)(3)(ii)(B)). For all individuals whose household income is needed, NYSOH must request tax return data from the Secretary of the Treasury and data regarding Social Security benefits from the Commissioner of Social Security in order to confirm that the information the applicant is attesting to is accurate (45 CFR § 155.320(c)(1)(i); 45 CFR § 155.320(c)(3)(ii)(A)).

If income data is unavailable, or if an applicant's attestation is not reasonably compatible with the income data NYSOH obtains, NYSOH must request additional information from the applicant in order to resolve the inconsistency (45 CFR § 155.320 (c)(3)(iii), (iv)).

NYSOH must provide the applicant with notice of the inconsistency in their account and 90 days to provide satisfactory documentary evidence to resolve the inconsistency (45 CFR § 155.315 (f)(2)). If NYSOH remains unable to verify the attestation of the applicant, NYSOH must redetermine the applicant's eligibility based on the information available from the data sources unless the applicant demonstrates that they are unable to provide the required documentation (45 CFR § 155.315(f)(2), (g)).

Upon making an eligibility redetermination, NYSOH must notify the applicant and implement any updates in eligibility to the Essential Plan effective the first day of the following month for changes received by NYSOH from the first to the fifteenth of any month (45 CFR § 155.420(b)(1)(i); see also 42 CFR § 600.320(c)). For updates received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR § 155.420(b)(1)(ii); see also 42 CFR § 600.320(c)).

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## Electronic Notices

Applicants may choose to receive notices and information from NYSOH either by electronic alerts or by regular mail. If the applicant elects to receive electronic notices, NYSOH must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant's account (42 CFR § 600.330(e); 42 CFR § 435.918(b)(4)).

Additionally, if an electronic alert regarding a notice in an individual's NYSOH account fails, NYSOH must send out the notice by regular mail within three days of the failed alert (42 CFR § 435.918(b)(5)).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined that your eligibility for and enrollment in the Essential Plan ended effective August 31, 2017.

An individual requesting financial assistance to help pay for the cost of coverage provided through NYSOH is required to attest to his or her household's projected annual income. For individuals seeking enrollment in the Essential Plan, NYSOH must request income data from federal data sources in order to verify an individual's income attestation.

If NYSOH cannot verify an individual's attestation, it must provide the individual with notice of the inconsistency and provide a period of 90 days from the date notice is received to resolve the inconsistency.

In the eligibility determination issued on May 1, 2017, you were advised that you were eligible for the Essential Plan for a limited time, and that you needed to confirm your household's income before July 29, 2017.

On May 3, 2017, you uploaded income documentation to your NYSOH account. However, when NYSOH reviewed this documentation they determined that it was insufficient.

On May 5, 2017, NYSOH issued a notice stating the documentation was invalid, and directed you to provide documentation confirming your household income by July 29, 2017, to continue your eligibility for the Essential Plan.

The record reflects that NYSOH did not receive the requested income documentation before the deadline.

However, you testified and the record reflects that you elected to receive alerts regarding notices from NYSOH electronically. Although NYSOH contends that it complied with federal mandates regarding electronic notices, there is no evidence in the file that NYSOH sent you an electronic alert notifying you of a new notice available in your account on May 5, 2017. You credibly testified that you did not receive an electronic alert regarding the notice, which directed that you needed to submit additional documentation to confirm the household income in your application. There is also no evidence in your account documenting that any email alert was sent to you regarding the notice, that any such electronic alert failed, or that the notice was later sent to you by regular mail.

NYSOH is required to send applicants proper notice in order for applicants to take appropriate action. Since there is no evidence that NYSOH sent you an email alert, and you testified that you did not receive one, there is insufficient evidence in the record that NYSOH provided you by electronic means with proper notice that you needed to submit documentation of your household income.

Since you were not made aware of and did not receive proper notice that there was an inconsistency in your NYSOH account, the August 3, 2017 eligibility determination and August 5, 2017 disenrollment notices, stating that you are no longer eligible for the Essential Plan because you failed to submit documentation are RESCINDED.

On October 19, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible for Medicaid, effective October 1, 2017. Individuals who are eligible for Medicaid, are not eligible for the Essential Plan since they are considered eligible for other minimum essential coverage. Therefore, you would not be eligible for enrollment in the Essential Plan as of October 1, 2017.

Accordingly, your case is RETURNED to NYSOH to reinstate your coverage in your Essential Plan for the month of September 2017 only.

## **Decision**

The August 4, 2017 notice of eligibility determination is RESCINDED.

The August 4, 2017 notice of disenrollment is RESCINDED.

Your case is RETURNED to NYSOH to reinstate your coverage in your Essential Plan for the month of September 2017 only.

**Effective Date of this Decision:** January 10, 2018



## **How this Decision Affects Your Eligibility**

NYSOH erred in terminating your Essential Plan effective August 31, 2017, without the proper notice.

Your case is being sent back to NYSOH to reinstate your coverage in your Essential Plan for the month of September 2017.

## **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 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 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 August 4, 2017 notice of eligibility determination is RESCINDED.

The August 4, 2017 notice of disenrollment is RESCINDED.

NYSOH erred in terminating your Essential Plan effective August 31, 2017, without the proper notice.

Your case is RETURNED to NYSOH to reinstate your coverage in your Essential Plan for the month of September 2017 only.

## **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 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&btumi 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.

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