



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

Notice of Decision

Decision Date: January 12, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000023203

[REDACTED]

[REDACTED]

On December 14, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's October 1, 2017 eligibility determination notice.

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).

This page intentionally left blank.



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

Decision

Decision Date: January 12, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000023203

[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 you did not qualify to enroll in a qualified health plan (QHP) outside of the open enrollment period?

Procedural History

On September 29, 2017, NYSOH received your non-financial application for health insurance.

On September 30, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible to purchase a QHP at full cost through NYSOH, effective November 1, 2017. The notice also stated that you had until November 28, 2017 to select a QHP for enrollment.

On September 30, 2017, NYSOH processed your updated application for health insurance, which requested financial assistance.

On October 1, 2017, NYSOH issued an eligibility determination notice stating that you were eligible to receive advance payments of the premium tax credit of up to \$67.00 per month, effective November 1, 2017. It further stated that you did not qualify to select a health plan outside of the open enrollment period for 2017.

On October 6, 2017, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination, insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On December 14, 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 through December 29, 2017 to allow you to submit supporting documents.

As of January 2, 2018, the Appeals Unit did not receive any documents from you and none were viewable in your NYSOH account. Therefore, the record was closed that same day and this decision is based on the record as developed at the time of the hearing.

Findings of Fact

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

- 1) On September 29, 2017, you submitted an application for health insurance.
- 2) You testified that you lost prior health insurance coverage through your employer as of July 31, 2017.
- 3) You testified that you knew you had 60 days to either select COBRA coverage, or to apply for coverage through NYSOH.
- 4) You testified that, on the 60th day, you decided to apply for coverage through NYSOH.
- 5) Your NYSOH account confirms that you completed a non-financial application for health insurance on September 29, 2017.
- 6) You testified that, when you saw the cost of the health plans, you decided to restart your application and find out whether you qualified for a subsidy.
- 7) You testified that you went back and began to redo your application, but that the website crashed partway through, and you were not able to select a QHP for enrollment on that day.
- 8) You testified that you did not call NYSOH on September 29, 2017 because it was after 8:00 PM on a Friday.
- 9) You testified that you called NYSOH the next day and spoke to someone in the Account Review Unit who could see that you had successfully completed an application on the prior day. You testified that you informed

that individual that you had tried to complete a second application, but were unable to do so because the website crashed.

- 10) You testified that you went back into your account that same day and completed your application for financial assistance, but that you could not enroll in a plan.
- 11) Your NYSOH account reflects that you began a second application on September 29, 2017, requesting financial assistance, and that the application was not processed until September 30, 2017.
- 12) After the hearing, NYSOH technical staff verified that your September 29, 2017 application for financial assistance was not processed by NYSOH's system until September 30, 2017; it was confirmed that two applications were submitted on September 29, 2017, and that it was possible you were prevented from selecting a plan on September 29, 2017 because of a technical problem.
- 13) You testified that, since filing your application on September 30, 2017, there have been no other major changes to your household.
- 14) You testified that you are aware that you waited until the last day that you could enroll in coverage, but that you feel that you should not have been denied a special enrollment period because you completed an application that day, and it should be obvious that you would have selected a plan if you had been able to, and the website had not crashed.
- 15) You testified that you are no longer concerned with enrolling in coverage, but are concerned with incurring a tax penalty for not having coverage for part of 2017.

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)).

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).

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 has a change in eligibility for cost-sharing reductions.

(7) The qualified individual or enrollee, or his or her dependent, gains access to a new QHP 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 you did not qualify to enroll in a QHP outside of the open enrollment period.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On September 29, 2017, you submitted an application for non-financial assistance. In an eligibility determination notice dated September 30, 2017, NYSOH stated that you were eligible to enroll in a QHP at full cost, effective November 1, 2017. You were found eligible for a special enrollment period in that notice, and advised that you had until November 28, 2017 to select a health plan for enrollment. However, on September 30, 2017, a second application apparently created on September 29, 2017 - this time requesting financial assistance - was processed by NYSOH's system on your behalf. On October 1, 2017, NYSOH issued a notice stating that you were eligible to receive up to \$67.00 per month in APTC, but you did not qualify to enroll in a QHP outside of the open enrollment period.

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.

You testified that you had previous insurance coverage through your employer, and that this coverage ended on July 31, 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 from the date of that event to select a QHP for enrollment.

Since 60 days from July 31, 2017, is September 29, 2017, you would have qualified to select a QHP outside of the open enrollment period until September 29, 2017. For this reason, your first September 29, 2017 application, in which you did not request financial assistance, was approved, and you were granted a special enrollment period in which to select a QHP.

However, you testified that, as soon as you saw the cost of the plans, you decided to update your application and request financial assistance. You testified, and NYSOH's system confirms, that you changed your application to one for financial assistance on September 29, 2017. However, this application was not completed in NYSOH's system until September 30, 2017. As a result, NYSOH issued a notice of eligibility determination on October 1, 2017 stating that you did not qualify to select a QHP outside of the 2017 open enrollment period.

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

You testified that you tried to file a second application for coverage on September 29, 2017 because you wanted to find out if you were eligible for a subsidy. You testified that you were unable to complete the application on that day because NYSOH's website crashed, preventing you from selecting a QHP for enrollment. You testified that you could not contact NYSOH at that time, as it was after 8:00 PM, and NYSOH's customer service line was not open.

The Appeals Unit finds that you credibly testified that you tried to enroll in a plan on September 29, 2017, and were prevented from doing so. A representative from NYSOH was unable to say that this did not occur, and in fact conceded that two applications were submitted on September 29, 2017 and that a technical error might have prevented you from enrolling in a plan.

It must be concluded that you attempted to file a second application on September 29, 2017, within your special enrollment period, and that this application was not processed until September 30, 2017 through no fault of your own, and you were improperly prevented from enrolling in a plan within your special enrollment period.

Therefore, the credible evidence of record indicates that your non-enrollment into a QHP on September 29, 2017 was directly attributable to technical problems within NYSOH's system.

For this reason, NYSOH's October 1, 2017 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you were eligible for a special enrollment period as of your September 30, 2017 application.

Your case is RETURNED to NYSOH to assist you in enrolling in a QHP for the months of November and December 2017, with the application of your \$67.00 tax credit, should you decide that you want to enroll in coverage for those months.

NYSOH's failure to grant you a special enrollment period resulted in you 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 or savings and your appeal was eventually successful.

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/2017/details/eligible-based-on-appeal>.

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 October 1, 2017 eligibility determination is MODIFIED to state that you qualify to select a QHP outside of the 2017 open enrollment period.

Your case is RETURNED to NYSOH to assist you in enrolling in a QHP for the months of November and December 2017, with the application of your \$67.00 tax

credit toward your monthly premium, IF you decide you would like to retroactively enroll in coverage for those two months.

Effective Date of this Decision: January 12, 2018

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 in coverage as of November 1, 2017, if you so choose, with the application of your \$67.00 APTC to your monthly premium.

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

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).

- By mail at:
Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd.
London, KY 40750-0061
- By fax: 1-877-369-0129

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The October 1, 2017 eligibility determination is MODIFIED to state that you qualify to select a QHP outside of the 2017 open enrollment period.

Your case is RETURNED to NYSOH to assist you in enrolling in a QHP for the months of November and December 2017, with the application of your \$67.00 tax credit toward your monthly premium, IF you decide you would like to retroactively enroll in coverage for those two months.

NYSOH improperly denied you a special enrollment period.

Your case is being sent back to NYSOH to allow you to enroll in coverage as of November 1, 2017, if you so choose, with the application of your \$67.00 APTC to your monthly premium.

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

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

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).

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।

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&btumi ama wo obi a okyerE kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

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

Tiếng Việt (Vietnamese)

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

אידיש (Yiddish)

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