



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

## Notice of Decision

Decision Date: October 30, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000023320

[REDACTED]

Dear [REDACTED],

On October 25, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's October 11, 2017 disenrollment notice and October 12, 2017 denial of a special enrollment period.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the Account ID at the top of this notice.

### Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

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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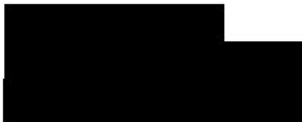


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## Decision

Decision Date: October 30, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000023320



## Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did NY State of Health properly terminate your qualified health plan for non-payment of premium, effective September 1, 2017?

Did NY State of Health properly determine that you did not qualify to enroll in a qualified health plan outside of the open enrollment period as of October 12, 2017?

## Procedural History

On August 4, 2017, NY State of Health (NYSOH) issued an eligibility determination notice, based on your August 3, 2017 application, stating that you were eligible to enroll in a full priced qualified health plan (QHP), effective September 1, 2017.

On September 14, 2017, NYSOH issued a plan enrollment notice confirming that you were enrolled in a platinum-level QHP with a premium of \$987.78 per month, effective September 1, 2017. That notice also stated that you must pay the monthly premium to start and keep your coverage.

On October 11, 2017, NYSOH issued a disenrollment notice stating that your enrollment in your platinum-level QHP was terminated, effective September 1, 2017, because you did not pay your insurance bill by the payment deadline. The notice directed you to contact your health plan directly if you felt this was in error.

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On October 12, 2017, NYSOH denied your request to change the enrollment start date of your platinum-level QHP to October 1, 2017.

That same day, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you were not eligible to re-enroll in a health plan outside of the open enrollment period.

On October 13, 2017, NYSOH issued an eligibility determination notice, based on your October 12, 2017 updated application, stating in relevant part that you might be able to enroll in a full price QHP if you qualify for a special enrollment period, effective November 1, 2017.

Also on October 13, 2017, NYSOH issued a notice to confirm your appeal request from the previous day. That notice identified you as the appellant and stated that the reason for your appeal was "Denial of Special Enrollment Period (SEP)."

On October 25, 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 to October 29, 2017, to allow you to submit supporting documentation.

On October 25, 2017, you submitted a letter written by your former [REDACTED] [REDACTED] and a copy of your September 2017 and October 2017 premium bills. These documents were made part of the record as "Appellant's Exhibit A." and the record closed that day.

## **Findings of Fact**

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

- 1) You submitted an application to NYSOH for financial assistance on August 2, 2017 through a facilitator. This is because your health coverage outside of NYSOH was due to terminate on August 31, 2017.
- 2) You testified that when you selected your health insurance with your facilitator on September 14, 2017, you had selected the option of your health plan enrollment beginning on September 1, 2017. You testified that this was acceptable to you because of your health issues.
- 3) You testified that you contacted your health plan in late September 2017 to inquire on the status of your coverage and were not advised that you needed to pay your premium.
- 4) You testified, and submitted documentation to show, that two bills dated September 28, 2017 for September 2017 and October 2017 were sent to

you via regular mail. You further testified you received these bills on or about October 5, 2017 (see Appellant's Exhibit A, pp. 1 -2).

- 5) You testified, and submitted documentation to show, that your employer-sponsored health insurance terminated effective August 31, 2017(see Appellant's Exhibit A, p. 3).
- 6) You testified that you had forgotten your facilitator had selected the September 1, 2017 start date option and called your health plan on October 12, 2017 to find out why you were being billed for September 2017. You further testified that, during the telephone call, you were told to contact NYSOH if you wanted to change your start date from September 1, 2017 to October 1, 2017.
- 7) You testified that you contacted NYSOH on October 12, 2017 and were told that your insurance had already been cancelled for non-payment of premium. You attempted to re-enroll in a QHP that same day, but were unable to do so.
- 8) According to your NYSOH account, you were disenrolled from your platinum-level QHP, effective September 1, 2017.
- 9) You testified that you never paid your premiums for September 2017 and October 2017, because you were not given sufficient time to make the payments after the invoices were received. Your insurance was cancelled before you attempted to make payment.
- 10) You testified that you never spoke to the health plan about reinstating your coverage because you believed that only NYSOH could do that.
- 11) According to your NYSOH account and your testimony, there have been no other major changes to your household since filing your application on August 2, 2017.

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

## **Applicable Law and Regulations**

### Appealable Issues

An applicant has the right to appeal to NYSOH's Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of

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cost-sharing reductions; (3) a failure by NYSOH to provide timely notice of an eligibility determination 45 CFR § 155.505; and (4) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

### 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 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 a triggering events occur, such as:

- (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.

(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 first issue under review is whether NYSOH properly terminated your platinum-level QHP for non-payment of premium effective, September 1, 2017.

On September 14, 2017, you were enrolled in a QHP for the 2017 coverage year with a monthly premium of \$987.78, effective September 1, 2017.

You testified that you never paid your September 2017 and October 2017 premiums because you were not given sufficient time to make the payments after the invoices were received. Your insurance was cancelled before you attempted to make payment.

On October 11, 2017, NYSOH issued a notice stating that you were disenrolled from your health plan for non-payment of the premium, effective September 1, 2017.

NYSOH Appeals Unit only has the authority to review issues related to the following: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) a failure to provide timely notice of an eligibility determination, and (4) a denial of a special enrollment period.

Since the Appeals Unit is not given the authority to review termination of enrollment due to non-payment of premiums, we cannot reach the merits as to whether you were properly terminated your QHP for non-payment of premiums. Therefore, your appeal of the October 11, 2017 disenrollment notice is **DISMISSED** as a non-appealable issue.

The remaining issue under review is whether NYSOH properly determined that you do not qualify to enroll in a QHP outside of the open enrollment period as of October 12, 2017.

You testified that you are appealing your denial of a special enrollment period to enroll into a health plan through NYSOH. However, the record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period.

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination.

Your credible testimony, along with the October 13, 2017 appeal confirmation notice stating that you are the appellant and the reason for your appeal was "Denial of Special Enrollment Period (SEP)," permits an inference that NYSOH did deny your special enrollment request.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to the eligibility determination notice had it been issued.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On October 12, 2017, you submitted a request to re-enroll in a QHP after being disenrolled from the QHP you had selected, effective September 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 August 3, 2017, you updated your application, and were found eligible to enroll in a full price QHP. You were also granted a special enrollment period by NYSOH so that you could enroll in a QHP, because you lost your minimum essential coverage, which was provided by your former employer, as of August 31, 2017. As such, NYSOH gave you 60 days to select a QHP for enrollment, and informed you in its August 4, 2017 eligibility determination that you had until October 30, 2017 to select a plan.

You were subsequently disenrolled for failure to pay your insurance premium. Your testimony and information in the record reflects that you tried to re-enroll in a QHP on October 12, 2017, but were unable to do so. On October 12, 2017, NYSOH issued a verbal denial of your request to enroll in a QHP outside of the 2017 open enrollment period.

Because the August 4, 2017 eligibility determination notice stated you had until October 30, 2017 to select a QHP for enrollment, and you tried to enroll within the special enrollment period you had already been granted, NYSOH had to honor that special enrollment period until October 30, 2017. Therefore, it was error on NYSOH's part that prevented you from selecting a plan on October 12, 2017.

As such, NYSOH's October 12, 2017, denial of your request to enroll in a QHP outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your October 12, 2017 application.



Your case is RETURNED to NYSOH to assist you in enrolling into a QHP. You may choose to enroll into a QHP as of November 1, 2017 because NYSOH failed to honor the special enrollment period previously granted to you. In the alternative, you may choose to select a plan during open enrollment for the 2018 insurance year, which begins November 1, 2017.

## **Decision**

Your appeal of your disenrollment from your health plan for non-payment of premium is DISMISSED as a non-appealable issue.

NYSOH's denial of your request for a special enrollment period to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your October 12, 2017 application.

Your case is RETURNED to NYSOH to assist you in enrolling into a QHP. You may choose to enroll into a QHP as of November 1, 2017 because NYSOH failed to honor the special enrollment period it had granted to you. In the alternative, you may choose to select a plan during open enrollment for the 2018 insurance year, which begins November 1, 2017.

**Effective Date of this Decision:** October 30, 2017

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

NYSOH's Appeals Unit does not have the authority to review whether you were properly dis-enrolled, effective September 1, 2017, for non-payment of your premiums. Nor does it have the authority to review contractual issues between you and the QHP.

NYSOH improperly denied you a special enrollment period.

Your case is being sent back to NYSOH to allow you to enroll into coverage as of November 1, 2017, if you so choose. In the alternative, you may choose to select a plan during open enrollment for the 2018 insurance year, which begins November 1, 2017.

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 QHP s, advance premium tax credits, and cost-sharing reductions may be appealed to the Federal Marketplace. This must be done within 30 days of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:  
Health Insurance Marketplace  
Attn: Appeals  
465 Industrial Blvd.  
London, KY 40750-0061
- By fax: 1-877-369-0129

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

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

You can contact us in any of the following ways:

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

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 fax: 1-855-900-5557

## **Summary**

Your appeal of your disenrollment from your health plan for non-payment of premium is DISMISSED as a non-appealable issue.

NYSOH's denial of your request for a special enrollment period to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your October 12, 2017 application.

Your case is RETURNED to NYSOH to assist you in enrolling into a QHP. You may choose to enroll into a QHP as of November 1, 2017 because NYSOH failed to honor the special enrollment period it had granted to you. In the alternative, you may choose to select a plan during open enrollment for the 2018 insurance year, which begins November 1, 2017.

NYSOH's Appeals Unit does not have the authority to review whether you were properly dis-enrolled, effective September 1, 2017, for non-payment of your premiums. Nor does it have the authority to review contractual issues between you and the QHP.

NYSOH improperly denied you a special enrollment period.

Your case is being sent back to NYSOH to allow you to enroll into coverage as of November 1, 2017, if you so choose. In the alternative, you may choose to select a plan during open enrollment for the 2018 insurance year, which begins November 1, 2017.

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

## **Legal Authority**

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

**A Copy of this Decision Has Been Provided To:**



## **Getting Help in a Language Other than English**

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

### **Español (Spanish)**

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

### **中文 (Traditional Chinese)**

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

### **Kreyòl Ayisyen (Haitian Creole)**

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

### **中文 (Simplified Chinese)**

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您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।

## 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 b etumi ama wo obi a okyer e kasa a woka no ase ama wo kwa a wontua hwee.

### **(Urdu)**

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.