



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

Notice of Decision

Decision Date: January 23, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000024040

[REDACTED]

Dear [REDACTED],

On December 28, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's November 4, 2017 eligibility determination and enrollment confirmation 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Decision

Decision Date: January 23, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000024040

[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 spouse's eligibility for financial assistance and enrollment in a qualified health plan (QHP) ended effective September 30, 2017?

Procedural History

On March 30, 2017, you updated your NYSOH account and changed your application to reflect that your spouse also needed health insurance.

On March 31, 2017, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to receive up to \$610.00 per month in advance payments of the premium tax credit (APTC), effective May 1, 2017.

On April 4, 2017, NYSOH issued a letter confirming you and your spouse's enrollment in an Affinity platinum level couple's QHP, with a monthly premium of \$739.46 after the application of your \$610.00 in APTC, beginning May 1, 2017.

On June 6, 2017, you updated your NYSOH account.

On June 7, 2017, NYSOH issued a notice stating that you and your spouse were eligible to receive up to \$610.00 per month in APTC, effective July 1, 2017. The notice stated that your spouse's eligibility was for a limited time because NYSOH was checking federal data sources to confirm your spouse's immigration status.

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).

The notice further stated that NYSOH would contact you if you needed to send in proof of her immigration status.

On June 10, 2017, NYSOH redetermined you and your spouse's eligibility.

On June 11, 2017, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to receive up to \$610.00 per month in APTC, effective July 1, 2017. The notice stated that your spouse's eligibility was for a limited time, and that you needed to provide documentation of your spouse's immigration status by September 8, 2017.

On September 13, 2017, NYSOH redetermined you and your spouse's eligibility.

On September 14, 2017, NYSOH issued a discontinuance notice stating that your spouse was no longer eligible to enroll in health insurance coverage through NYSOH, effective October 1, 2017, because NYSOH did not receive proof of her immigration status.

Also on September 14, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible to receive up to \$154.00 per month in APTC, effective October 1, 2017.

On September 15, 2017, NYSOH issued a disenrollment notice, stating that your spouse was disenrolled from her QHP as of September 30, 2017 because she was no longer eligible to enroll in health insurance through NYSOH.

Also on September 15, 2017, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in an individual Affinity platinum level QHP, with a monthly premium of \$520.73 after the application of your \$154.00 in APTC, beginning October 1, 2017.

On October 26, 2017, NYSOH issued a renewal notice, stating that it was time to renew your health insurance coverage. The notice stated that, based on information from state and federal data sources, NYSOH could not determine whether you and your spouse qualified for financial assistance. The notice directed you to update the information in your NYSOH account between November 16, 2017 and December 15, 2017, or the financial assistance you were receiving could end.

On November 3, 2017, you updated your NYSOH account and uploaded a copy of your spouse's permanent resident card. That day, NYSOH prepared a preliminary eligibility determination stating that you and your spouse were eligible to receive up to \$613.00 per month in APTC, and eligible for cost-sharing reductions, effective December 1, 2017.

Also on November 3, 2017, you spoke to NYSOH's Account Review Unit and appealed, insofar as your spouse did not have coverage for the months of October and November 2017.

On November 4, 2017, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to receive up to \$613.00 per month in APTC, and eligible to receive cost-sharing reductions if you enrolled in a silver level QHP, effective December 1, 2017.

Also on November 4, 2017, NYSOH issued a notice of enrollment confirmation, confirming you and your spouse's enrollment in a couple's Affinity platinum level QHP with a \$736.46 per month premium, after the application of your \$613.00 APTC, beginning December 1, 2017.

On November 6, 2017, NYSOH verified your spouse's immigration documentation and redetermined your eligibility.

On November 7, 2017, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to receive up to \$610.00 per month in APTC, effective December 1, 2017.

Also on November 7, 2017, NYSOH issued a notice of enrollment confirmation, confirming that you and your spouse were enrolled in a couple's Affinity platinum level QHP with a \$739.46 monthly premium, after the application of your \$610.00 in APTC, beginning December 1, 2017.

On December 28, 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 January 12, 2018 to give you time to submit supporting documentation.

On December 28, 2017, you uploaded documentation to your NYSOH account. The record is now closed.

Findings of Fact

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

- 1) You submitted an updated application to NYSOH for financial assistance on June 6, 2017.
- 2) You testified that you logged into your NYSOH account that day because you wanted to double check that your spouse's income was correct in the application, but to do that, you had to update the application.

- 3) Your NYSOH account reflects that, on June 10, 2017, your application was re-run by NYSOH's system and, on June 11, 2017, NYSOH issued a notice requesting that you submit documentation of your spouse's immigration status.
- 4) You testified that you did not receive the June 11, 2017 notice requesting immigration documentation.
- 5) You testified, and your NYSOH account confirms, that you were enrolled to receive email alerts regarding notices issued in your NYSOH account.
- 6) You confirmed that the email address you have on file with NYSOH is [REDACTED]
- 7) You testified that you used to receive emails from NYSOH informing you to check your NYSOH inbox, but that you did not receive any email from the "health benefit exchange" email address between April 5, 2017 and October 4, 2017.
- 8) You testified that it would not occur to you to log into your NYSOH account if you were not updating an application, and that your correspondence is generally with your health plan.
- 9) You testified that you have all emails that you receive in any of your email accounts copied to your [REDACTED] email account, and that you check that account regularly.
- 10) You testified that you do not recall changing any settings on any of your devices that would have affected your receipt of email from NYSOH and that, even if you had, the emails would still be collected by your server, and you would still be able to see them on your email server.
- 11) NYSOH uploaded an evidence packet to your NYSOH account on December 12, 2017. 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."
- 12) You testified that you received a letter from Affinity in late October 2017 stating that there had been a change in your coverage, and that the "following dependents" had been dropped from coverage, but that there were not actually any dependents listed.

- 13) You testified that you were not aware that your spouse had been dropped from her coverage until you noticed a change in your monthly QHP premium on November 3, 2017.
- 14) You testified that your premiums are auto-debited from your bank account, and you had not noticed that the payment had been lower in October 2017.
- 15) You testified that you called NYSOH at that point and found out that your spouse's coverage had ended. You testified, and your NYSOH account confirms, that you updated your application on November 3, 2017 and re-enrolled your spouse in coverage, effective December 1, 2017.
- 16) You testified that, on that same day, you also saw the notices in your NYSOH inbox from June and September 2017 regarding your spouse's coverage
- 17) You testified that your spouse ended up having to go to the hospital at the end of November 2017, and that you cannot afford to pay the hospital bills without insurance.
- 18) You testified that you need your spouse's coverage to be backdated to October 1, 2017 so that she does not have a gap in her coverage.
- 19) After the hearing, you uploaded documentation to your NYSOH account consisting of:
 - a. A letter summarizing the opening statement that you made during the hearing (Document [REDACTED]);
 - b. A one-page screenshot of a [REDACTED] mail account showing results from a search for "healthbenefitexchange.ny.gov," indicating that you received emails from this address in February 2017, March 2017, April 2017, and October 2017. You also made a note on this document that reads, "The following screenshot shows the results of a search performed on my [REDACTED] account, which carbon copies all of [REDACTED] emails. No emails from "healthbenefitexchange.ny.gov were received about any Exchange Inbox messages since April 5, 2017" (Document [REDACTED]).

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

Applicable Law and Regulations

Citizenship and Immigration Status

To enroll in a qualified health plan through NYSOH, an applicant must be a citizen or national of the United States, or a non-citizen who is lawfully present in the United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1)).

NYSOH must verify or obtain information to determine that an applicant is eligible for enrollment in a qualified health plan, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

If an applicant attests to citizenship, status as a national, or lawful presence, and NYSOH is unable to verify such attestation, NYSOH must provide the applicant with notice of the inconsistency. NYSOH must then provide the applicant with 90 days to provide satisfactory documentary evidence, from the date the notice of inconsistency is received by the applicant. Notice is considered received 5 days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the 5-day period. (45 CFR § 155.315(c)(3), (f)(2)(i)).

If NYSOH remains unable to verify the citizenship attestation after the 90-day period ends, it must determine the applicant's eligibility based on the information available (45 CFR § 155.315(f)(5)).

Electronic Notices

If the individual elects to receive electronic communications, NYSOH must send an email or other electronic communication alerting the individual that a notice has been posted to his or her account and send a notice by regular mail within three business days if the electronic communication cannot be delivered (45 CFR § 155.230(d); 42 CFR § 435.918(b)(4), (5)).

Legal Analysis

The issue under review is whether NYSOH properly determined that your spouse was no longer eligible to enroll in a QHP through NYSOH, effective October 1, 2017.

NYSOH is required to determine whether individuals are eligible to enroll in coverage through NYSOH, and must confirm, among other things, that their citizenship status is satisfactory.

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 NYSOH cannot verify an individual's citizenship status, it must provide the individual with notice of the inconsistency. NYSOH must then provide the individual with a period of 90 days from the date notice is received to resolve the inconsistency. For purposes of verifying citizenship, notice is considered received five days after the date on the notice.

In the eligibility determination issued on June 11, 2017 you were advised that your spouse's eligibility was only conditional, and that you needed to confirm her immigration status before September 8, 2017.

The record reflects that NYSOH did not receive the requested citizenship 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 June 11, 2017. You credibly testified that you did not receive an electronic alert regarding the June 11, 2017 eligibility determination notice, which directed you to submit documentation of your spouse's immigration status. 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.

Moreover, you credibly testified that you have all emails you receive at any of your email addresses carbon copied to your [REDACTED] email account. You testified that, between April 5, 2017 and October 4, 2017, you did not receive any emails from NYSOH. After the hearing, you uploaded documentation that corroborates your testimony in the form of a screenshot of search results from your [REDACTED] email account, showing that you received an email from "healthbenefitexchange.ny.gov" on April 5, 2017, and did receive another email from that address until October 4, 2017 (Document [REDACTED]).

NYSOH is required to send applicants proper notice for applicants to take appropriate action. Since there is no evidence that NYSOH sent you an email alert, and you testified and provided documentation indicating that you did not receive one, there is insufficient evidence in the record that NYSOH provided you with proper notice by electronic means that you needed to provide documentation of your spouse's immigration status to maintain her eligibility.

Since you were not made aware of and did not receive proper notice that there was an inconsistency in your NYSOH account, the September 14, 2017 eligibility determination stating that your spouse is no longer eligible for failure to submit documentation is **RESCINDED**.

Your case is RETURNED to NYSOH to assist you in reenrolling your spouse into your couple's QHP for the months of October and November 2017, with the application of your \$610.00 in APTC, if you so choose. NYSOH is directed to assist you in communicating with your plan so that the payments you made for individual coverage for October and November 2017, and the APTC that you received in those months, can be reconciled appropriately. You will be responsible for any unpaid premiums, if you choose to backdate coverage.

Decision

The September 14, 2017 eligibility determination and September 15, 2017 disenrollment notices are RESCINDED.

Your case is RETURNED to NYSOH to assist you in reenrolling your spouse in your couple's QHP coverage for the months of October and November 2017, with the application of your \$610.00 in APTC, if you so choose.

NYSOH is directed to communicate with your plan to reconcile premium payments you made, as well as the APTC you received in those months, so that you are invoiced appropriately for October and November 2017 coverage, should you choose to re-enroll your spouse.

Effective Date of this Decision: January 23, 2018

How this Decision Affects Your Eligibility

NYSOH erred in disenrolling your spouse from your couple's QHP effective, October 1, 2017, without the proper notice.

Your case is being sent back to NYSOH to assist you in reenrolling your spouse into your couple's QHP for the months of October and November 2017, if you so choose.

You will be responsible for outstanding premium payments for those months, after NYSOH and your plan reconcile the payments you already made, and the APTC you received in those months.

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.

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).

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 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

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Summary

The September 14, 2017 eligibility determination and September 15, 2017 disenrollment notices are RESCINDED.

Your case is RETURNED to NYSOH to assist you in reenrolling your spouse in your couple's QHP coverage for the months of October and November 2017, with the application of your \$610.00 in APTC, if you so choose.

NYSOH is directed to communicate with your plan to reconcile premium payments you made, as well as the APTC you received in those months, so that you are invoiced appropriately for October and November 2017 coverage, should you choose to re-enroll your spouse.

NYSOH erred in disenrolling your spouse from your couple's QHP effective, October 1, 2017, without the proper notice.

Your case is being sent back to NYSOH to assist you in reenrolling your spouse into your couple's QHP for the months of October and November 2017, if you so choose.

You will be responsible for outstanding premium payments for those months, after NYSOH and your plan reconcile the payments you already made, and the APTC you received in those months.

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।

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.

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