



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

Notice of Decision

Decision Date: February 6, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000024763

[REDACTED]

[REDACTED]

On January 8, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's 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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DEPARTMENT OF HEALTH
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Decision

Decision Date: February 6, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000024763



Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NY State of Health (NYSOH) properly deny you the ability enroll in a qualified health plan outside of the open enrollment period, effective November 1, 2017?

Procedural History

On November 23, 2016 NY State of Health (NYSOH) issued a notice of eligibility determination, based on your November 21, 2016 application, stating that you were eligible for up to \$462.00 per month in advance payments of the premium tax credit (APTC), effective January 1, 2017. You enrolled in a silver-level qualified health plan with an effective start date of January 1, 2017.

On November 22, 2017, you spoke to NYSOH's Account Review Unit and appealed the disenrollment from your qualified health plan, and inability to enroll in coverage due to a defect existing on your account.

On January 8, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

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

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- 1) You were enrolled in a silver-level qualified health plan, effective January 1, 2017.
- 2) You testified you were disenrolled from your silver-level qualified health plan, effective October 31, 2017, without your knowledge.
- 3) You testified that you are appealing the denial of a special enrollment period to enroll into a health plan through NYSOH as of November 1, 2017.
- 4) According to your NYSOH account, on November 3, 2017, a NYSOH representative filed an incident indicating you were supposed to provide immigration documents, but NYSOH never sent out notices requesting such documents be provided ([REDACTED]).
- 5) According to your NYSOH account, on November 7, 2017, a NYSOH representative granted a special enrollment period for you to enroll into coverage, but a "We are sorry message [REDACTED]" appeared.
- 6) According to your NYSOH account, on November 7, 2017, you were told that a special enrollment period was granted and someone would reach out as soon as the technical issue was resolved ([REDACTED]).
- 7) You testified at the time of your hearing that you had not heard from NYSOH representatives about the defect on your account being corrected.
- 8) According to your NYSOH account, no notices were issued granting you a special enrollment period.
- 9) According to your NYSOH account, there are no eligibility determination notices, disenrollment notices, or request for documents viewable in your NYSOH account for the year of 2017.
- 10) According to your NYSOH account, a renewal notice, dated October 24, 2017, indicated that, based on federal and state sources, a decision about whether you qualify for financial help paying for your health insurance in the upcoming coverage year could not be made. The notice directed you to update the information in your NYSOH account by December 15, 2017, so a decision could be made and, if you missed this deadline, you would be at risk of losing your health insurance coverage and any financial assistance.
- 11) You testified you were pregnant at the time of your disenrollment on October 31, 2017. You gave birth in the [REDACTED].

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12) You testified that you now have outstanding medical bills for the delivery of your child [REDACTED], because you had no health insurance.

13) You testified that you are seeking to be re-enrolled in your silver-level qualified health plan, effective November 1, 2017.

14) You testified that you are also appealing because you do not want to be responsible for tax penalty when you file your 2017 tax return for being without coverage.

15) According to your NYSOH account, you reside in [REDACTED], NY.

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

Applicable Law and Regulations

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 qualified health plan and enrollees may change qualified health plans (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 qualified health plan, 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:

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- (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 qualified health plan 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 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.

(5) The enrollee or, his or her dependent adequately demonstrates to NYSOH that the qualified health plan in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;

(6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions.

(7) The qualified individual or enrollee, or his or her dependent, gains access to new qualified health plan 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 qualified health plan 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 qualified health plan; 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 qualified health plan (45 CFR § 155.420(c)(1)).

Legal Analysis

The issue under review is whether NYSOH properly denied you the ability to enroll in a qualified health plan outside of the open enrollment period, effective November 1, 2017.

You testified that you are appealing the 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 or its denial. The only documentation of NYSOH addressing your disenrollment effective November 1, 2017, shows that a NYSOH representative had granted a special enrollment period to allow you to reenroll in coverage, but you were unable due to a defect on your account. A defect was filed as [REDACTED], and a NYSOH representative indicated they would reach out to you as soon as the technical issue was resolved. You credibly testified that, as of the date of the hearing, NYSOH has not reached out to you regarding resolution of the defect.

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 Incident filed on November 3, 2017 and appeal request formally filed on November 22, 2017 on the issue of a special enrollment period permits an inference that NYSOH never granted a special enrollment period in this case.

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.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered in NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

The record shows you were enrolled in a silver-level qualified health plan effective January 1, 2017. You testified and the record supports you were disenrolled from your qualified health plan effective October 31, 2017. NYSOH notes indicate the disenrollment may have been related to a request for immigration documentation. However, there are no notices that can be viewed in your NYSOH directing you to provide proof of your immigration status. Further, there is no record of any notice being issued to you notifying you of your disenrollment from your qualified health plan for any reason.

Your NYSOH account indicates that you attempted to contact NYSOH on November 3, 2017 and November 22, 2017. The result of your request on November 3, 2017 to re-enroll into your qualified health plan was that you were going to be granted a special enrollment period due to NYSOH failing to provide notices to you. It further shows that NYSOH representatives attempted to allow you to enroll back into your qualified health plan. This attempted re-enrollment was not successful as you encountered a computer defect on your account. The defect was identified by NYSOH as [REDACTED]. The defect remains unresolved and NYSOH representatives told you they would reach out to you when the defect was fixed on your account. As of the date of your hearing no such response was received by you.

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.

Since you were a qualified and enrolled individual who was disenrolled from your coverage without proper notice or reason for your disenrollment, a special enrollment period should have been granted effective November 1, 2017, the date you lost your coverage. The credible evidence of record indicates that NYSOH granted a special enrollment period to resolve the matter, but a defect was encountered which prevented your re-enrollment in a health plan.

Therefore, NYSOH's failure to resolve the defect on your account so that the special enrollment period, as granted, would allow you to select a health plan outside of the open enrollment period for 2017, constitutes an unintended error

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and inaction. Your enrollment request should have been processed as of November 1, 2017, but for this unresolved defect.

Therefore, your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan with APTC as of November 1, 2017 through December 31, 2017. You will be responsible for any premium payments owed to your health plan for any months in which you are enrolled.

NYSOH's inability to resolve a defect on your NYSOH account so that you could select a qualified health plan for coverage to resume November 1, 2017, 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/2016/details/eligible-based-on-appeal>. You can also call 1-800-318-2596.

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

NYSOH's failure to resolve the defect on your account so that the special enrollment period, as granted, would allow you to select a health plan outside of the open enrollment period for 2017, constitutes an unintended error and inaction. Your enrollment request should have been processed as of November 1, 2017, but for this unresolved defect, your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan with APTC as of November 1, 2017 through December 31, 2017.

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).

Effective Date of this Decision: February 6, 2018

How this Decision Affects Your Eligibility

NYSOH failed to resolve the defect on your account to allow you to enroll in a qualified health plan as of November 1, 2017.

Your case is being sent back to NYSOH to allow you to enroll into coverage as of November 1, 2017 through December 31, 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)

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
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- By fax: 1-855-900-5557

Summary

NYSOH's failure to resolve the defect on your account so that the special enrollment period, as granted, would allow you to select a health plan outside of the open enrollment period for 2017, constitutes an unintended error and inaction. Your enrollment request should have been processed as of November 1, 2017, but for this unresolved defect, your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan with APTC as of November 1, 2017 through December 31, 2017.

Your case is being sent back to NYSOH to allow you to enroll into coverage as of November 1, 2017 through December 31, 2017.

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

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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&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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