



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

## Notice of Decision

Decision Date: January 29, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000024917

[REDACTED]

Dear [REDACTED]

On January 22, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's December 16, 2015 eligibility determination notice, October 17, 2016 renewal notice, November 18, 2017 eligibility determination notice, and November 18, 2017 disenrollment 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).

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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: January 29, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000024917

[REDACTED]

## Issues

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

Was your appeal of NY State of Health's December 16, 2015 eligibility determination notice and October 17, 2016 renewal notice timely?

Did NY State of Health properly determine that your eligibility for Medicaid was effective November 1, 2017 and that your enrollment in your qualified health plan ended effective November 30, 2017?

## Procedural History

On December 16, 2015, NY State of Health (NYSOH) issued a notice of eligibility determination stating that you were eligible to purchase a qualified health plan at full cost through NYSOH, effective January 1, 2016.

Also on December 16, 2015, NYSOH issued a notice of enrollment confirmation stating that you were enrolled in a qualified health plan with a plan enrollment start date of January 1, 2016.

On October 17, 2016, NYSOH issued a renewal notice stating that you were still qualified to purchase a qualified health plan at full cost through NYSOH, effective January 1, 2017.

On November 18, 2016, NYSOH issued a notice of enrollment confirmation stating that you were enrolled in a qualified health plan with a plan enrollment start date of January 1, 2017.

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On October 24, 2017, NYSOH issued a notice that it was time to renew your health insurance for the upcoming coverage year. That notice stated that, based on information from federal and state sources, NYSOH could not make a decision about whether you would qualify for financial help paying for your health coverage, and that you needed to update your account between November 16, 2017 or you might lose your health insurance coverage and if applicable, any financial assistance.

On November 17, 2017, income information in your NYSOH account was updated.

On November 18, 2017, NYSOH issued an eligibility determination notice stating that you were eligible for Medicaid, effective November 1, 2017.

Also on November 18, 2017, NYSOH issued a disenrollment notice indicating that coverage in your qualified health plan would end effective November 30, 2017.

On November 28, 2017, you contacted the NYSOH Account Review Unit and appealed the date you were disenrolled from your qualified health plan, requesting the disenrollment be made effective October 31, 2017.

On January 22, 2017, you had a telephone hearing with a Hearing Officer from the NYSOH's Appeals Unit. The record was developed during the hearing and closed at the end of the proceeding.

## **Findings of Fact**

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

- 1) The record reflects that you were first enrolled in a qualified health plan through NYSOH and that your coverage was effective as of January 1, 2016.
- 2) Your eligibility was renewed, and you were reenrolled in a qualified health plan through NYSOH with a plan enrollment start date of January 1, 2017.
- 3) You testified that you paid premiums to your health plan for each of the months you had coverage. You testified that you paid your premium for November 2017 and December 2017. You went on to testify that you were refunded your December 2017 premium.
- 4) The record indicates that you updated your application on November 17, 2017, and you were found eligible for Medicaid.

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- 5) You testified that you are seeking an earlier disenrollment date because you had Medicaid coverage in November 2017 when you were still enrolled in your qualified health plan.
- 6) You testified you did not use your insurance through your qualified health plan during the month of November 2017.
- 7) You testified that when you filed your 2016 tax return in October 2017, you discovered that you had been reporting your gross income to NYSOH rather than your adjusted gross income. You further explained that, as you are an [REDACTED], your gross income did not take into account various business expense deductions. You explained that, based on this, you believe you should have been eligible for Medicaid throughout 2016 and 2017.
- 8) You testified that you first contacted NYSOH in order to update your income at some point in October 2017, but were not permitted to do so until after November 15, 2017.
- 9) During the hearing, you gave permission for the Hearing Officer to listen to recordings of phone calls you had with NYSOH.
- 10) On October 30, 2017, you placed a call to NYSOH. A review of the recording of that phone call reflects that you were calling to update your income from your gross income to your adjusted gross income. The NYSOH representative indicated that when it was time for renewal, you could update the income in your application. You explained that your income had been reported to NYSOH incorrectly, and that you were seeking to update your account in the hope that you could correct your coverage prior to the 2018 coverage year. The NYSOH representative was adamant that you could not update the income in your account until November 16, 2017. You requested to speak to a supervisor, your request was denied, and you were again advised to update your account after November 15, 2017.

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

## **Applicable Law and Regulations**

### Valid Appeal Requests

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

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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) an eligibility determination for an exemption; (4) a failure by the Exchange to provide timely notice of an eligibility determination 45 CFR § 155.505; and (5) 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)).

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH (45 CFR §155.520(b)(2); 18 NYCRR 358-3.5(b)(1)).

However, where an appeal request is untimely, the appeal request may be considered valid if the applicant or enrollee sufficiently demonstrates within a reasonable timeframe as determined by NYSOH that failure to timely submit the appeal was due to exceptional circumstances and should not preclude the appeal (45 CFR §155.520(d)(2)(i)(D)).

### Medicaid

An individual is eligible for fee-for-service Medicaid effective on the first day of the month if an individual was eligible any time during that month (42 CFR § 435.915(b), Medicaid Eligibility Changes under the Affordable Care Act (ACA) of 2010,13ADM-03(III)(F)).

Medicaid Managed Care plan enrollments received on or before the fifteenth day of the month are effective the first day of the following month. Enrollments received after the fifteenth day of the month are effective the first day of the second following month (Medicaid Managed Care Model Contract (Appendix H-6(b)(ii) & (iii), effective 3/1/2014 – 2/28/2019; see 42 USC § 1315; § 364-j(1)(c); 18 NYCRR § 360-10.3(h), Medicaid Eligibility Changes under the Affordable Care Act (ACA) of 2010,13ADM-03(III)(F)).

### Termination of a Qualified Health Plan

NYSOH must permit an enrollee to terminate his or her coverage with a qualified health plan coverage, with appropriate notice to the NYSOH or qualified health plan (45 CFR § 155.430(b)(1)(i)).

If an enrollee is newly eligible for Medicaid, the last day of coverage for the qualified health plan is the day before the Medicaid coverage begins (45 CFR § 155.430(d)(2)(iv)).

For enrollee-initiated terminations, the last day of coverage is either:

- 1) The termination date specified by the enrollee, if the enrollee provides reasonable notice (at least 14 days before the requested termination date);
- 2) Fourteen days after the enrollee requests the termination, if they do not provide reasonable notice; or
- 3) On a date on or after the date the enrollee requests the termination, if the enrollee's qualified health plan issuer and the enrollee agree to such a date

(45 CFR § 155.430(d)(2)(i)-(iii)).

NYSOH must permit an enrollee to retroactively terminate or cancel their enrollment in a qualified health plan if:

- 1) The enrollee demonstrates that they attempted to terminate their coverage and experienced a technical error that did not allow the coverage to be terminated, and requests retroactive termination within 60 days after they discovered the technical error.
- 2) The enrollment in the qualified health plan was unintentional, inadvertent, or erroneous and was the result of the error or misconduct of an officer, employee, or agent of NYSOH or HHS, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities. Such enrollee must request cancellation within 60 days of discovering the unintentional, inadvertent, or erroneous enrollment.
- 3) The enrollee was enrolled in a qualified health plan without their knowledge or consent by any third party, including third parties who have no connection with the Exchange, and requests cancellation within 60 days of discovering of the enrollment.

(45 CFR § 155.430(b)(2)(iv)(A-C)).

NYSOH permits a qualified health plan to terminate an individual's coverage if (1) the enrollee is no longer eligible for coverage or (2) non-payment of the premiums by the enrollee (45 CFR § 155.430(b)(2)(i)-(ii)).

## **Legal Analysis**

The first issue is whether your appeal of NYSOH's December 16, 2015 eligibility determination notice and October 17, 2016 renewal notice was timely.

The record reflects that you first contacted NYSOH to file a formal appeal regarding your eligibility for a qualified health plan rather than Medicaid for January 1, 2016 to December 31, 2016 and as of January 1, 2017 on November 28, 2017.

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH.

For an appeal to have been valid on the issue of your eligibility for a qualified health plan for January 1, 2016 to December 31, 2016, an appeal should have been filed by February 14, 2016.

For an appeal to have been valid on the issue of your eligibility for a qualified health plan as of January 1, 2017, an appeal should have been filed by December 16, 2016.

The record reflects that you filed your appeal on November 28, 2017, which is beyond the 60-day deadline.

As your appeal was filed more than 60-days after the December 16, 2015 eligibility determination notice and the October 17, 2016 renewal notice, your appeal of these notices is untimely and DISMISSED.

The second issue under review is whether NYSOH properly determined that your enrollment in your qualified health plan ended effective November 30, 2017.

On October 17, 2016, NYSOH issued a renewal notice stating that you were eligible to purchase a qualified health plan at full cost, effective January 1, 2017. You subsequently enrolled into a qualified health plan.

You testified that you are seeking retroactive disenrollment from your qualified health plan effective October 31, 2017.

NYSOH must permit an enrollee to be retroactively disenroll from their qualified health plan if the enrollee demonstrates that there was a technical error that should have allowed them to terminate coverage earlier, or if their enrollment in the plan was unintentional, inadvertent, or erroneous and was the result of the error or misconduct of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities, or the enrollee was enrolled into a qualified health plan without their knowledge or consent by a third party.

On October 30, 2017, you contacted NYSOH to update the income in your application, as you discovered that you had been reporting your gross income rather than your adjusted gross income. The NYSOH representative you spoke



with denied your request to update your application and directed you to update your application between November 16, 2017 and December 15, 2017.

On November 17, 2017, you contacted NYSOH to update your application for financial assistance. As a result, you were found eligible for Medicaid effective November 1, 2017. On November 18, 2017, NYSOH issued a disenrollment notice stating that your enrollment in your qualified health would end effective November 30, 2017.

Had you been permitted to update your application on October 30, 2017, we must assume that the information you provided on November 17, 2017 is the information that would have been used.

Had the information been submitted on October 30, 2017, your eligibility for Medicaid would have begun on October 1, 2017.

Therefore, the November 18, 2017 eligibility determination is MODIFIED to state that your eligibility for Medicaid was effective as of October 1, 2017.

If an enrollee is newly eligible for Medicaid, the last day of coverage through their qualified health plan is the day before the Medicaid coverage begins. Since you should have been determined eligible for Medicaid on October 30, 2017 under the regulations your qualified health plan should have terminated that day. However, NYSOH does not allow for prorated or partial premiums based on the amount of days in a month you were enrolled in a qualified health plan and as such your plan should have terminated at the end of the calendar month in which you became eligible for Medicaid.

Therefore, the November 18, 2017 disenrollment notice is MODIFIED to state that your enrollment in your qualified health plan ended as of October 31, 2017.

Your case is RETURNED to NYSOH to enroll you in Medicaid as of October 1, 2017 and to disenroll you from your qualified health plan as of October 31, 2017.

## **Decision**

Your appeal of the December 16, 2015 eligibility determination notice and October 17, 2016 renewal notice is DISMISSED as untimely.

The November 18, 2017 eligibility determination notice is MODIFIED to state that your eligibility for Medicaid was effective as of October 1, 2017.

The November 18, 2017 disenrollment notice is MODIFIED to state that your enrollment in your qualified health plan ended as of October 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).

Your case is RETURNED to NYSOH to enroll you in Medicaid as of October 1, 2017 and to disenroll you from your qualified health plan as of October 31, 2017.

**Effective Date of this Decision:** January 29, 2018

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

The effective date of your Medicaid is October 1, 2017.

Your enrollment in your qualified health plan should have ended as of October 21, 2017.

Your case is being sent back to NYSOH to end your enrollment in your qualified health plan as of October 31, 2017.

### **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:

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 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

### **Summary**

Your appeal of the December 16, 2015 eligibility determination notice and October 17, 2016 renewal notice is **DISMISSED** as untimely.

The November 18, 2017 eligibility determination notice is **MODIFIED** to state that your eligibility for Medicaid was effective as of October 1, 2017.

The effective date of your Medicaid is October 1, 2017.

The November 18, 2017 disenrollment notice is **MODIFIED** to state that your enrollment in your qualified health plan ended as of October 31, 2017.

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Your enrollment in your qualified health plan should have ended as of October 21, 2017.

Your case is RETURNED to NYSOH to enroll you in Medicaid as of October 1, 2017 and to disenroll you from your qualified health plan as of October 31, 2017.

### **Legal Authority**

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

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



## Getting Help in a Language Other than English

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

### Español (Spanish)

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

### 中文 (Traditional Chinese)

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

### Kreyòl Ayisyen (Haitian Creole)

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

### 中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您提供相应语种的口译服务。

### Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

### 한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

### Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

### العربية (Arabic)

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 1-855-355-5777. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجاناً.

### বাংলা (Bengali)

এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

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## **Français (French)**

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

## **हिंदी (Hindi)**

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

## **日本語 (Japanese)**

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

## **नेपाली (Nepali)**

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

## **Polski (Polish)**

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

## **Twi (Twi)**

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye&btumi ama wo obi a okyerε kasa a woka no ase ama wo kwa a wontua hwee.

## **(Urdu) اردو**

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

## **Tiếng Việt (Vietnamese)**

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

## **אידיש (Yiddish)**

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

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