



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

Notice of Decision

Decision Date: April 4, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000025728

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

On March 1, 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.

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Appeal Identification Number: AP000000025728

[REDACTED]
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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 platinum-level qualified health plan was effective no earlier than January 1, 2018?

Procedural History

On August 15, 2017, NYSOH issued eligibility determination and plan enrollment notices, based on your August 14, 2017 application, stating respectively that you were eligible to purchase a qualified health plan at full cost and were enrolled in a bronze-level qualified health plan with a monthly premium of \$358.71 and an annual deductible of \$4,000.00, effective September 1, 2017.

On December 11, 2017 and December 13, 2017, you contacted NYSOH's call center and requested information about a special enrollment period to be granted an earlier enrollment start date in a higher-level plan.

On December 12, 2017, NYSOH issued an eligibility determination notice, based on your December 11, 2017 updated application for health insurance, stating that you were eligible to purchase a qualified health plan at full cost, effective January 1, 2018.

On December 13, 2017, you updated your application and selected a platinum-level health plan for enrollment. That day, a preliminary eligibility determination was issued stating that you were enrolled in your platinum-level health plan, effective January 1, 2018.

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Also on December 13, 2017, you spoke to NYSOH's Account Review Unit and requested an appeal insofar as you were denied a special enrollment period to allow you to change to a platinum-level health plan as of December 1, 2017.

On December 14, 2017, a plan enrollment notice was issued, based on your December 13, 2017 plan selection, confirming your enrollment in a platinum-level qualified health plan with a monthly premium of \$676.83, effective January 1, 2018.

Also on December 14, 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 March 1, 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:

- 1) You testified that you are appealing the denial of a pregnancy-related special enrollment period to allow you to change the start date of your platinum-level qualified health plan through NYSOH to an earlier date.
- 2) You testified that, in July 2017 or August 2017, you called NYSOH and were told that if you became pregnant, that is considered a qualifying life event and you would be eligible for a special enrollment period to change your health plan. You further testified that, because of this statement, you decided initially to choose a bronze-level qualified health plan.
- 3) According to your Events Tab in your NYSOH account, you updated your plan selection online on August 14, 2017 using the user id "██████████".
- 4) A review of the telephone recordings, dated July 12, 2017 and July 18, 2017, shows that in July 2017 you called NYSOH with questions regarding reinstatement of your health plan as of May 2017 and within what timeframe you had to update your account to show that you were newly married. There were no questions regarding the selection your health plan.
- 5) According to your call record logs dated August 14, 2017, NYSOH attempted only two phone calls to the telephone number you had on file. During the first phone call, there was "no answer" and the representative

“left a message.” In the second phone call that day, there was a “busy signal” and the NYSOH representative was “unable to reach consumer” (see Incidents [REDACTED]).

- 6) You testified that since filing your application on August 14, 2017, there have been no other major changes to your household, other than your pregnancy.
- 7) According to your NYSOH account and testimony, you updated your application for financial assistance on December 11, 2017, and indicated that you were pregnant. You selected a platinum-level qualified health plan for enrollment on December 13, 2017, which was effective January 1, 2018.
- 8) You testified that you have medical bills in December 2017, that are not being covered by your bronze-level qualified health plan and you want to backdate the start date of your platinum-level qualified health plan, which has no deductible, to cover these expenses.

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, 2018, the annual open enrollment period began on November 1, 2017, and extended through December 15, 2017 (45 CFR § 155.410(e)(3)). However, in New York State the open enrollment dates were extended beyond the federal deadline to January 31, 2018 (see “*NYSOH Announces Open Enrollment Date for 2018 Qualified Health Plan coverage*,” DOH Press Release dated September 2017).

The effective date of coverage by a qualified health plan is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment, NYSOH must generally ensure that coverage is effective the first day of the following month for selections received by NYSOH from the first to the fifteenth of any month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(i)). For selections received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(ii)).

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 a triggering life event occurs, 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)).

In New York, pregnancy triggers a special enrollment period for individuals without insurance allowing them to enroll in a qualified health plan through NYSOH's Exchange (NYS Insurance Law § 4328(b)(4)(A)). However, this law does not allow individuals who have already enrolled in qualified health plans and later become pregnant to change to a different qualified health plan.

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)).

If one person in the household is eligible for an SEP, everyone in the household that is eligible for or enrolled in a QHP through NYSOH gets an SEP (see <http://info.nystateofhealth.ny.gov/sites/default/files/FAQs> re: Special Enrollment Periods).

Effective Date of Coverage

If a qualified individual is granted special enrollment period due to pregnancy, NYSOH must ensure that the new plan is effective on the first date of the month in which the health care professional certifies that the individual is pregnant,

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unless the individual elects to have coverage be made effective on the first date of the month following the date pregnancy was certified (NY INS § 4328(b)(4)(A)).

Legal Analysis

The issue under review is whether NYSOH properly determine that your platinum-level qualified health plan was effective no earlier than January 1, 2018.

You testified that you are appealing the denial of a pregnancy-related special enrollment period to allow you to change the start date of your platinum-level qualified health plan through NYSOH. Although the record does contain a December 12, 2017 eligibility determination and December 14, 2017 plan enrollment notice stating that your eligibility for and enrollment in your platinum-level qualified health plan is effective January 1, 2018, 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 a special enrollment period 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 December 14, 2017 appeal confirmation notice stating that your spouse is the appellant and the reason for his appeal was "Denial of Special Enrollment Period (SEP)," permits an inference that NYSOH did deny your pregnancy-related 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, 2017 until January 31, 2018. You were initially enrolled in a bronze-level health plan on September 1, 2017. On December 11, 2017, you re-applied for health insurance, indicated you were pregnant in that application, and requested to change your bronze-level health plan to a platinum-level health plan. Because this occurred during open enrollment and before the 16th of December 2017, you were able to change your health plan, however, the platinum-level health plan you selected was effective January 1, 2018, on the basis that it was for the upcoming policy year.

Generally, the date on which a qualified health plan can take effect depends on the day a person selects the plan for enrollment. A plan that is selected from the first day to and including fifteenth day of a month goes into effect on the first day

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of the following month. Likewise, a plan that is after the fifteenth day of a month goes into effect on the first day of the second following month.

However, the NYS Insurance Law provides that a qualified individual who is granted a pregnancy-related special enrollment period, may select the start date of their qualified health plan to begin on the first day of the month in which their pregnancy is certified by a physician or the first day of the month following that date.

As such, you requested a pregnancy-related special enrollment period so that that your platinum-level health plan would begin effective December 1, 2017 instead of January 1, 2018.

A health plan enrollee who is pregnant must qualify for a special enrollment period to enroll in, or change to another health plan offered in NYSOH or to change the start date of their qualified health. To qualify for a special enrollment period, a person must experience a triggering event.

Although pregnancy is a triggering life event that may qualify an individual for a special enrollment period to enroll in health coverage, the law applies to pregnant individuals who are **not** currently enrolled in health insurance (emphasis added). Therefore, the new law does not allow an individual who is already enrolled in a qualified health plan and later becomes pregnant to change their qualified health plan or to change the start date of their qualified health plan, as in your case.

Since you were already enrolled in a bronze-level qualified health plan as of your December 11, 2017 application for health insurance, you did not qualify for a special enrollment period in which you could change the start date of your qualified health plan based on your pregnancy status.

And although you testified that, in July 2017 or August 2017, you called NYSOH and were told that if you became pregnant, that is considered a qualifying life event and you would be eligible for a special enrollment period to change your health plan and that because of this statement, you decided to choose a bronze-level qualified health plan, this testimony is not supported by the evidence in the record.

In fact, a review of the telephone recordings, dated July 12, 2017 and July 18, 2017, shows that in July 2017 you called NYSOH with questions regarding reinstatement of your health plan as of May 2017 and within what timeframe you had to update your account to show that you were newly married. There were no questions regarding the selection of your health plan.

Additionally, the call record logs, dated August 14, 2017, show that only two phone calls were made by NYSOH to the telephone number you had on file. During the first phone call, there was “no answer” and the representative “left a

message.” In the second phone call that day, there was a “busy signal” and the NYSOH representative was “unable to reach consumer” (see Incidents [REDACTED]). As such, it is concluded that you did not speak to a NYSOH representative that day.

Moreover, you updated your plan selection on August 14, 2017 using the user id “[REDACTED],” which shows that you updated your plan selection online and without the assistance of NYSOH.

As such, it is concluded that you selected your bronze-level qualified health plan on your own and the record does not support that there was any misrepresentation, error, or misconduct by a NYSOH representative. Therefore, you would not be entitled to a pregnancy-related special enrollment period in which to change the start date of your health plan on this basis.

Additionally, there is nothing in the record to indicate that any other triggering events have occurred that would qualify you for a special enrollment period.

Therefore, NYSOH properly denied your request for a pregnancy-related special enrollment period for you to enroll in your platinum-level qualified health plan as of December 1, 2017, such that the December 13, 2017 denial of a special enrollment period is AFFIRMED.

Likewise, since you selected your platinum-level qualified health plan on December 13, 2017, it became effective the first day of the month following December 2017; that is, on January 1, 2018; and therefore; the December 14, 2017 plan enrollment notice is correct and must be AFFIRMED.

Decision

NYSOH’s denial of your request for a pregnancy-related special enrollment period to change the start date of your platinum-level health plan is AFFIRMED.

The December 14, 2017 plan enrollment notice is AFFIRMED.

Effective Date of this Decision: April 4, 2018

How this Decision Affects Your Eligibility

You do not qualify for a special enrollment period at this time.

Your enrollment in your platinum-level qualified health plan is effective January 1, 2018.

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 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 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

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Albany, NY 12211

- By fax: 1-855-900-5557

Summary

NYSOH's denial of your request for a pregnancy-related special enrollment period to change the start date of your platinum-level health plan is **AFFIRMED**.

You do not qualify for a special enrollment period at this time.

The December 14, 2017 plan enrollment notice is **AFFIRMED**.

Your enrollment in your platinum-level qualified health plan is effective January 1, 2018.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

[REDACTED]
[REDACTED]
[REDACTED]

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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