

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

## Notice of Decision

Decision Date: March 23, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000026774

[REDACTED]

Dear [REDACTED],

On March 19, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's January 5, 2018 enrollment confirmation 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: March 23, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000026774

[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 child's enrollment in his qualified health plan, was effective February 1, 2018?

## Procedural History

On October 17, 2017, NYSOH issued a notice that it was time to renew your child's 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 your child would qualify for health insurance coverage, and that you needed to update your account by December 15, 2017 or he might lose his health insurance coverage.

On December 7, 2017, you updated your child's application for health insurance.

On December 8, 2017, NYSOH issued a notice of eligibility determination stating that your child was eligible to purchase a qualified health plan at full cost through NYSOH, effective January 1, 2018.

On January 4, 2018, you selected a qualified health plan for enrollment for your child.

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Also on January 4, 2018, you spoke to NYSOH's Account Review Unit and appealed insofar as your child's enrollment in his qualified health plan began on February 1, 2018 and not January 1, 2018.

On January 5, 2018, NYSOH issued a notice of enrollment confirmation stating that your child was enrolled in his qualified health plan with a plan enrollment start date of February 1, 2018.

On March 13, 2018, you were scheduled for a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. You requested that day that the hearing be adjourned to a later date.

On March 19, 2018, you had an adjourned hearing with a Hearing Officer from NYSOH's Appeals Unit. Under oath, you waived your right to formal notice of the hearing. 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 had previously elected to receive all of your notices from NYSOH by electronic mail, however, you have since updated this preference to receive your notices from NYSOH by regular mail.
- 2) You testified that you could not recall when you changed the preference for how you receive notices. You explained that you changed the preference from e-mail alerts to regular mail notices because you were having an issue where you were not getting e-mail alerts for all the new notices that had been uploaded to your NYSOH account.
- 3) You testified that you did not receive any electronic alerts regarding any renewal notice in your NYSOH account telling you that you needed to update your application in order to renew your eligibility. You further testified that you did not receive this notice by regular mail.
- 4) You testified that you were not sure if your child needed to recertify for the 2018 coverage year and that you received conflicting information from his qualified health plan regarding whether his coverage would continue for 2018. You explained that you had contacted his plan in response to seeing general notices from the plan, which you had received in the regular mail, regarding the open enrollment period for 2018.
- 5) During the hearing, you gave permission for the Hearing Officer from NYSOH to listen to phone calls you had with NYSOH.

- 6) On December 7, 2017, you were connected to NYSOH by a representative of your child's qualified health plan. A review of the recording of that phone call reflects that you completed your child's application for 2018 coverage and were informed that he was again eligible to enroll in a full cost qualified health plan. You informed the NYSOH representative repeatedly that you wanted your child to be enrolled in an Emblem Health platinum level qualified health plan. The NYSOH representative informed you that this plan was not available to your child, and the only Emblem Health plans available were at the bronze, silver, and gold levels. You repeatedly requested to speak to a supervisor. In response, the NYSOH representative advised you that you should go online to review available plans and speak with your child's medical providers to see which plans they accept. You then became irate, and the NYSOH representative disconnected the call.
- 7) You testified that you did not receive the December 8, 2017 eligibility determination notice stating that you needed to select a plan for your child for enrollment via regular mail. You also testified that you did not receive an e-mail alert from NYSOH regarding this notice.
- 8) You testified that you did not realize that your child had been disenrolled from his qualified health plan until January 2018. You explained that you received information from one of your child's medical providers that your child's coverage had lapsed.
- 9) Your NYSOH account reflects that on January 4, 2018, you contacted NYSOH and enrolled your child into an Emblem Health platinum level qualified health plan.
- 10) On January 4, 2018, you spoke to NYSOH's Account Review Unit. In response, incident [REDACTED] was created. A note within that incident reflects that as of that time, your account was set for e-mail alerts.
- 11) NYSOH uploaded an evidence packet to your NYSOH account. 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) NYSOH has submitted no evidence that an electronic alert was sent to you regarding the October 17, 2017 renewal notice of the December 8, 2017 eligibility determination notice.

13) You testified that you want your child's enrollment in his Emblem Health platinum level qualified health plan to begin on January 1, 2018.

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

## **Applicable Law and Regulations**

### Annual Eligibility Redetermination

Generally, NYSOH must conduct annual eligibility redeterminations for qualified individuals (see 45 CFR § 155.335(a) and (b)).

NYSOH must send an annual renewal notice that contains the information by which NYSOH will use to redetermine a qualified individual's projected eligibility for that year (45 CFR § 155.335(c)(3)). If a qualified individual does not respond to the notice after a 30-day period, NYSOH must redetermine that individual's eligibility using the information and projected eligibility provided in the annual renewal notice (45 CFR § 155.335(g), (h)). NYSOH must ensure this redetermination is effective on the first day of the coverage year or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)). The rules specified in 45 CFR § 155.330(f) are not pertinent here.

### Enrollment in a Qualified Health Plan

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)).

### Electronic Notices

If the individual elects 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

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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 child's enrollment in his qualified health plan, was effective February 1, 2018.

NYSOH must redetermine a qualified individual's eligibility for health insurance and financial assistance to help pay for that health insurance annually. NYSOH must issue a renewal notice that contains the individual's projected eligibility. If an individual does not respond to this notice, NYSOH must issue an eligibility determination for the upcoming coverage year based on the information contained in the renewal notice.

On October 17, 2017, NYSOH issued an annual renewal notice in your case. That notice stated that based on information from federal and state sources, NYSOH could not make a decision about whether or not your child would qualify for health insurance coverage. You were asked to update the information in your account by December 15, 2017 or your child might lose his health insurance coverage.

On November 22, 2017, NYSOH issued a disenrollment notice stating that your child's coverage with his qualified health plan would end on December 31, 2017.

You credibly testified that you received general mailings from your child's qualified health plan regarding the 2018 open enrollment period, and that these mailings prompted you to contact the plan.

On December 7, 2017, you were transferred to NYSOH by a representative of your child's qualified health plan. That day, you updated the information in your NYSOH account and requested to enroll your child into an Emblem Health platinum level qualified health plan. However, you were prevented from doing so by the NYSOH representative who advised you that only Emblem Health bronze, silver, and gold level plans were available for your child.

You testified that you had previously elected to receive alerts regarding notices from NYSOH electronically. You testified that at some point in time, you change this preference to receive notices from NYSOH via regular mail because you were not receiving e-mail alerts regarding all of the new notices in your NYSOH account. A note within incident [REDACTED] indicates that as of January 4, 2017, your account was set to electronic alerts. Therefore, the totality of the evidence in the record reflects, that at the time the October 17, 2017 renewal notice and November 22, 2017 disenrollment notice were issued, your account was set to the electronic alert preference.

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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 October 17, 2017 as well as a disenrollment notice on November 22, 2017, and December 8, 2017 eligibility determination notice. You credibly testified that you did not receive an electronic alert regarding the renewal notice, which directed you to update your account because there was not enough information to renew your child's coverage for the upcoming year, nor did you receive an electronic alert regarding the December 8, 2017 eligibility determination notice which directed you to select a plan for your child. There is also no evidence in your account documenting that any email alert was sent to you regarding these notices, that any such electronic alert failed, or that the notice was later sent to you by regular mail.

You credibly testified you were unaware that your child's qualified health plan had ended until you took your child to a doctor's appointment in January 2018, when the doctor's office advised you that there had been a lapse in your child's coverage.

Your NYSOH account reflects that you contacted NYSOH on January 4, 2018 and enrolled your child into a qualified health plan. When you contacted NYSOH on January 4, 2018, you were able to enroll your child in an Emblem Health platinum level qualified health plan.

When an individual changes information in their application on or before the 15th of any month, NYSOH must make the redetermination that results from the change effective the first day of the following month. Additionally, 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 the fifteenth day of a month goes into effect on the first day of the following month.

Therefore, the credible evidence in the record reflects that you requested to enroll your child into an Emblem Health platinum level qualified health plan on December 7, 2017, however, you were prevented from enrolling your child into an Emblem Health platinum level qualified health plan that day by either system error or agent error on the part of NYSOH.

Had you been permitted to enroll your child in an Emblem Health platinum level qualified health plan on December 7, 2017, consistent with your request, your child's enrollment would have started on the first day of the first month following after December 7, 2017; that is, on January 1, 2018.

The January 5, 2018 enrollment confirmation notice is MODIFIED to state that your child's enrollment in his qualified health plan was effective January 1, 2018.

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Your case is RETURNED to NYSOH to begin your child's enrollment in his qualified health plan as of January 1, 2018.

## **Decision**

The January 5, 2018 enrollment confirmation notice is MODIFIED to state that your child's enrollment in his qualified health plan was effective January 1, 2018.

Your case is RETURNED to NYSOH to begin your child's enrollment in his qualified health plan as of January 1, 2018.

**Effective Date of this Decision:** March 23, 2018

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

Your child's enrollment in his qualified health plan should have begun as of January 1, 2018.

Your case is being sent back to NYSOH to begin your child's enrollment in his qualified health plan as of January 1, 2018.

## **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:

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**

The January 5, 2018 enrollment confirmation notice is MODIFIED to state that your child's enrollment in his qualified health plan was effective January 1, 2018.

Your case is RETURNED to NYSOH to begin your child's enrollment in his qualified health plan as of January 1, 2018.

Your child's enrollment in his qualified health plan should have begun as of January 1, 2018.

Your case is being sent back to NYSOH to begin your child's enrollment in his qualified health plan as of January 1, 2018.

## **Legal Authority**

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

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**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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