

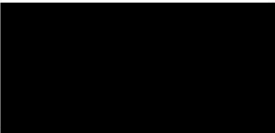


STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: May 8, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000027486



Dear [REDACTED]

On April 16, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's October 31, 2017 eligibility determination 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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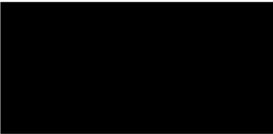


STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Decision

Decision Date: May 8, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AC000000027486



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 you did not qualify for a special enrollment period to enroll in a qualified health plan (QHP) outside the open enrollment period as of December 1, 2017?

Procedural History

On July 10, 2017, you submitted an application for financial assistance.

On July 11, 2017, NYSOH issued an eligibility determination notice, stating that you were eligible for a full cost QHP and that your spouse was conditionally eligible for a full cost QHP, effective August 1, 2018. Your spouse was directed to provide proof of income and citizenship status by October 8, 2017. The notice stated that the eligibility determination was based on your household income of \$108,472.00.

On July 17, 2017, NYSOH issued an enrollment confirmation notice stating that you and your spouse were enrolled in a Gold level QHP with a monthly premium of \$1,113.41, effective August 1, 2017.

NYSOH records reflect that you and your spouse's Gold level QHP coverage ended effective August 31, 2017 because you asked NYSOH to end your coverage.

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).

On October 11, 2017, you updated your NYSOH application indicating that you and your spouse needed health insurance through NYSOH. Your application reflects that you lost coverage through your employer on September 30, 2017.

Also on October 11, 2017, you attempted to reenroll into a QHP but were unable to.

On October 12, 2017, NYSOH issued an eligibility determination notice stating that you and your spouse did not qualify to select a health plan outside of the open enrollment period. It further stated that if you did qualify, that you would have been eligible for a full cost QHP, effective November 1, 2017.

NYSOH records reflect that you were granted a special enrollment period on October 17, 2017.

On October 18, 2017, NYSOH issued an eligibility determination notice, stating that you and your spouse were eligible to purchase a full cost QHP, effective December 1, 2017.

On October 18, 2017, NYSOH issued an enrollment confirmation notice stating that you and your spouse should select a health plan and that your QHP would not begin until you picked a plan.

On October 26, 2017, NYSOH redetermined your eligibility.

On October 27, 2017, NYSOH issued an eligibility determination notice, stating that you and your spouse might be eligible to enroll in coverage if you qualify for a special enrollment period. It further stated that if you did qualify, that you would have been eligible for a full cost QHP, effective December 1, 2017.

On October 28, 2017, NYSOH issued an eligibility determination notice, stating that you and your spouse did not qualify to select a health plan outside of the open enrollment period. It further stated that if you did qualify, that you would have been eligible for a full cost QHP, effective December 1, 2017.

On October 30, 2017, you updated your application for financial assistance. That day, you attempted to reenroll into a QHP but were unable to.

On October 31, 2017, NYSOH issued an eligibility determination notice, stating that you and your spouse do not qualify to select a health plan outside of the open enrollment period. It further stated that if you did qualify, that you and your spouse would have been eligible for a full cost QHP, effective December 1, 2017.

On November 7, 2018, you updated your application with NYSOH. The application states under the Special Enrollment Period Tab that not enrolled member became eligible for QHP on November 7, 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).

On November 8, 2017, NYSOH issued an eligibility determination notice, stating that you and your spouse were eligible for a full cost QHP, effective December 1, 2017.

Also on November 8, 2017, NYSOH issued an enrollment confirmation notice stating that you and your spouse should select a health plan and that your QHP would not begin until you picked a plan.

On January 19, 2018, you spoke with NYSOH's Account Review and requested a special enrollment period to enroll in coverage for October 2017 and December 2017.

On April 16, 2018, you had a telephone hearing with a Hearing Officer from the NYSOH's Appeals Unit. During the hearing [REDACTED] acted as your Authorized representative and assisted you with your testimony. 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 and your spouse were enrolled in a Gold level QHP with a monthly premium of \$1,113.41, effective August 1, 2017.
- 2) NYSOH records reflect that based on your request, you and your spouse's Gold level QHP coverage ended effective August 31, 2017.
- 3) On October 11, 2017, you submitted an application for financial assistance indicating that you lost your employer sponsored health coverage effective September 30, 2017.
- 4) You testified that you lost your employer sponsored health insurance effective September 30, 2017.
- 5) NYSOH records reflect that you were granted a special enrollment period due to the loss of your employer sponsored coverage from September 30, 2017 through November 30, 2017.
- 6) Incident [REDACTED] includes a notation from a NYSOH representative on October 17, 2018 stating "Granting SEP due to loss of MEC 09/30/2017, Returning for outbound call to the consumer to assist with plan selection."
- 7) Incident [REDACTED] includes a notation from a NYSOH representative on October 18, 2018 stating "I spoke with consumer and he stated he will call back please advise granted SEP due to loss of MEC."

- 8) You testified that you were not advised by NYSOH that you were granted a special enrollment period.
- 9) Incident [REDACTED] includes a notation from a NYSOH representative on December 26, 2017 stating "Upon further review of account due to the application being rerun on 10/26/2017 it over rode the SEP that was granted on 10/17/2017 and consumer never chose the plan."
- 10) You testified, and your NYSOH account reflects, that on October 11, 2017 and October 30, 2017, that you contacted NYSOH to reenroll into a QHP, but were prevented from doing so.
- 11) You testified that since filing your application on July 12, 2017, there have been no other major changes to your household.
- 12) You testified that you are seeking to enroll into coverage for October 2017 due to medical bills you incurred that month.

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

Applicable Law and Regulations

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:
 - (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)).

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

(1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or

(2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128” such as failure to comply with other requirements (45 CFR § 147.128(b))

(45 CFR § 155.420(e)).

Legal Analysis

The issue on review is whether NYSOH properly determined that you do not qualify to enroll in a QHP outside of open enrollment, effective December 1, 2017.

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 to enroll in, or change to another health plan offered in NYSOH. To qualify for a special enrollment period, a person must experience a triggering event.

On October 11, 2017, you submitted an application for financial assistance indicating that you lost your employer sponsored health coverage effective September 30, 2017.

NYSOH records reflect that you were granted a special enrollment period due to the loss of your employer sponsored coverage from September 30, 2017 through November 30, 2017. You testified that you were not advised by NYSOH that you were granted a special enrollment period. This is supported by NYSOH records which indicated that you were to be advised that a special enrollment period had been granted to you until November 30, 2017. There is no evidence in the record reflecting that you were informed of the special enrollment period.

NYSOH records reflect that on October 26, 2017, NYSOH redetermined your eligibility. NYSOH records also reflect that due to your eligibility being

redetermined on October 26, 2017, the special enrollment period that was granted by NYSOH was overridden by the system.

You attempted to reenroll on October 30, 2017 but were denied.

A special enrollment period can be granted to an enrollee if a qualified individual's enrollment or non-enrollment into a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of NYSOH or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities.

Pursuant to NYSOH records, you had until November 30, 2017 to select and confirm a QHP, NYSOH had to honor this granting of a special enrollment period until November 30, 2017.

Therefore, NYSOH's October 31, 2017 eligibility determination that you and your spouse do not qualify to select a health plan outside of the open enrollment period is MODIFIED to reflect that you and your spouse are eligible for a special enrollment period as of the date of your October 11, 2017 application.

Your case is RETURNED to NYSOH to assist you and your spouse in enrolling into a QHP. You may choose to enroll into a QHP to be effective as early as November 1, 2017, the date your coverage could have begun had NYSOH allowed you to select a plan on October 11, 2017, because NYSOH failed to honor the special enrollment period it had granted you. In the alternative, you may elect to enroll into coverage going forward. You have sixty days from the date of this decision to select a plan for enrollment.

Decision

NYSOH improperly denied you a special enrollment period.

The October 31, 2017 eligibility determination that you and your spouse do not qualify to select a health plan outside of the open enrollment period is MODIFIED to reflect that you and your spouse are eligible for a special enrollment period as of the date of your October 11, 2017 application.

You may choose to enroll into a QHP to be effective as early as November 1, 2017, the date your coverage could have begun had NYSOH allowed you to select a plan on October 11, 2017, because NYSOH failed to honor the special enrollment period it had granted you. In the alternative, you may elect to enroll into coverage going forward. You have sixty days from the date of this decision to select a plan for enrollment.

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

Effective Date of this Decision: May 8, 2018

How this Decision Affects Your Eligibility

The October 31, 2017 eligibility determination that you and your spouse do not qualify to select a health plan outside of the open enrollment period is **MODIFIED** to reflect that you and your spouse are eligible for a special enrollment period as of the date of your October 11, 2017 application.

You may choose to enroll into a QHP to be effective as early as November 1, 2017, the date your coverage could have begun had NYSOH allowed you to select a plan on October 11, 2017, because NYSOH failed to honor the special enrollment period it had granted you. In the alternative, you may elect to enroll into coverage going forward. You have sixty days from the date of this decision to select a plan for enrollment.

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

This decision does not affect your eligibility to enroll during open enrollment for a plan for the benefit year beginning on January 1, 2018, which open enrollment period began on November 1, 2017, and will extend through January 31, 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 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 have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:
Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd.
London, KY 40750-0061
- By fax: 1-877-369-0129

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The October 31, 2017 eligibility determination that you and your spouse do not qualify to select a health plan outside of the open enrollment period is MODIFIED to reflect that you and your spouse are eligible for a special enrollment period as of the date of your October 11, 2017 application.

You may choose to enroll into a QHP to be effective as early as November 1, 2017, the date your coverage could have begun had NYSOH allowed you to select a plan on October 11, 2017, because NYSOH failed to honor the special enrollment period it had granted you. In the alternative, you may elect to enroll into coverage going forward. You have sixty days from the date of this decision to select a plan for enrollment.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY – Spanish: 1-877-662-4886).

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

NYSOH improperly denied you a special enrollment period.

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 1-855-355-5777번으로 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 مجانًا.

বাংলা (Bengali)

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).

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।

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.

Twí (Twi)

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. y&b&tumi ama wo obi a okyer& 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.

אַײַדיש (Yiddish)

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).

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.