



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

## Notice of Decision

Decision Date: May 4, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000028975



Dear [REDACTED]

On April 26, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's February 9, 2018 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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: May 4, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000028975



## Issue

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

Did NY State of Health properly determine that you do not qualify to enroll in a qualified health plan outside of the open enrollment period for 2018?

## Procedural History

On December 14, 2017, NYSOH received your application for financial assistance with health insurance.

On December 16, 2017, NYSOH issued an eligibility determination notice stating you were eligible to receive an advance premium tax credit (APTC) of up to \$304.00 per month, effective January 1, 2018.

Also on December 16, 2017, NYSOH issued a plan enrollment notice confirming your enrollment in a qualified health plan with the maximum amount of APTC applied to your monthly premium, effective January 1, 2018.

On January 13, 2018, NYSOH issued an eligibility determination notice, based on your January 12, 2018 updated application, stating you were eligible to receive APTC of up to \$293.00 per month, effective February 1, 2018.

Also on January 13, 2018, NYSOH issued a plan enrollment notice confirming your enrollment in a qualified health plan, effective January 1, 2018, with \$293.00 applied to your monthly premium, effective February 1, 2018.

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On January 26, 2017, NYSOH issued a disenrollment notice stating enrollment in your qualified health plan was terminated, effective January 1, 2018, because you did not pay your insurance bill by the payment deadline.

On February 9, 2018, NYSOH issued an eligibility determination notice, based on your February 8, 2018 updated application, stating you were eligible to receive APTC of up to \$302.00 per month, effective March 1, 2018. The notice also stated that you did not qualify to select a health plan outside of the open enrollment period for 2018.

On February 15, 2018, you spoke to NYSOH's Account Review Unit and appealed your inability to enroll into a qualified health plan outside of the open enrollment period for the remainder of the coverage year.

On April 26, 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) According to your NYSOH account, you were enrolled in a qualified health plan, effective January 1, 2018.
- 2) At the hearing, you acknowledged that you did not make the January 2018 premium payment to the health plan by the payment due date.
- 3) You testified that you contacted the health plan to make the January 2018 premium payment after the due date and you were advised by a plan representative that your coverage had already been terminated for non-payment.
- 4) You further testified the plan representative advised you to contact NYSOH to reapply for coverage, and then you could make a payment and be reinstated for February 2018.
- 5) You testified that you contacted NYSOH and reapplied for insurance, and that you enrolled into a qualified health plan that day.
- 6) Your account confirms that an updated application was submitted on January 12, 2018.
- 7) Your account indicates that you reenrolled into coverage on January 12, 2018. This plan enrollment was effective January 1, 2018, but the

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application of your newly determined APTC amount was effective February 1, 2018.

- 8) You testified that you thought that when you contacted NYSOH on January 12, 2018, that you were reenrolling into coverage and that your coverage would start as of February 1, 2018.
- 9) You testified that you attempted to make a premium payment to your qualified health plan for the month of February 2018, but that they informed you that you were no longer enrolled into coverage.
- 10) You testified that your qualified health plan informed you to contact NYSOH and tell them to send over a new enrollment number so that you could be reenrolled for a February 1, 2018 start date.
- 11) You testified that NYSOH informed you that you had been enrolled as of February 1, 2018, even though this contradicted what you were being told by your qualified health plan.
- 12) Your NYSOH account confirms that, on January 25, 2018, your qualified health plan initiated termination of the January 1, 2018 plan enrollment for non-payment of the January 2018 premium, as noted in the January 26, 2018 plan disenrollment notice issued by NYSOH.
- 13) You testified that you contacted NYSOH on February 8, 2018, to attempt to reenroll into a qualified health plan, but that you were unable to do so.
- 14) You testified the health plan has since reimbursed you for the late premium payment made in January 2018.
- 15) You testified there have been no significant changes in your household since applying for health insurance.
- 16) You testified that you are seeking a special enrollment period so that you can reenroll into coverage for the remainder of the 2018 coverage year.

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 QHP and enrollees may change QHPs (45 CFR § 155.410(a)(1)).

For the benefit year beginning on January 1, 2018, the national annual open enrollment period began on November 1, 2017 and extended through December 15, 2017 (45 CFR § 155.410(e)(3)). NY State extended this enrollment period through January 31, 2018 for applications processed through NYSOH ([https://www.health.ny.gov/press/releases/2017/2017-09-07\\_open\\_enrollment\\_dates.htm](https://www.health.ny.gov/press/releases/2017/2017-09-07_open_enrollment_dates.htm)).

### 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.

(45 CFR § 155.420(d)).

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a qualified health plan (45 CFR § 155.420(c)(1)).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined that you did not qualify to enroll in a qualified health plan outside of the open enrollment period for 2018.

NYSOH provided an open enrollment period from November 1, 2017 until January 31, 2018. The record indicates that, on January 12, 2018, you contacted NYSOH and an updated application for health insurance was submitted. This was within the open enrollment period for 2018.

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You testified that you contacted NYSOH on January 12, 2018, to reapply for health insurance for yourself, because you had been advised by your health plan that your enrollment had already been terminated as of January 1, 2018, due to non-payment of the January 2018 premium. It is reasonable to conclude that ,since you were already enrolled for coverage as of January 1, 2018 as noted in the December 16, 2017 notices, there would be no reason for you to submit an updated application unless you had already been advised by the health plan that your enrollment had already been cancelled and you needed to reapply.

Your account confirms that your health plan did not initiate termination of the January 1, 2018 enrollment until January 26, 2018, which is after the date that you had submitted the new application. Since your enrollment had not been cancelled by the health plan at the time of your January 12, 2018 application, you were not given a new plan enrollment start date; instead, your previous January 1, 2018 plan enrollment was simply confirmed.

Given the totality of the evidence, including your credible testimony, it is concluded that it was an error on the part of the health plan to advise you that your enrollment had been terminated prior to actually initiating termination of your enrollment with NYSOH. Had the health plan properly and timely terminated your coverage in January 2018 for non-payment of premium, you would have had sufficient time to reapply for health coverage and you would have been able to reenroll into a qualified health plan prior to the end of the open enrollment period.

Accordingly, the credible evidence of record establishes that your January 12, 2018 application for health insurance was submitted prior to the expiration of the open enrollment period and, due to error on the part of the health plan in not timely initiating termination of coverage with NYSOH as of January 1, 2018, your application was not properly processed. Pursuant to the regulations, this error on the part of your health plan, constituted a triggering event and qualifies you for a special enrollment period.

Accordingly, the February 9, 2018 eligibility determination, to the extent it stated you were not eligible to enroll in a health plan outside of the open enrollment period, is not correct and is **RESCINDED**.

Your case is **RETURNED** to NYSOH to assist you in enrolling into a new qualified health plan. You may choose to enroll into a new qualified health plan, as early as January 12, 2018, the date your new enrollment should have been processed. In the alternative, you may elect within 60 days from the date of this decision.

## **Decision**

The February 9, 2018 eligibility determination, to the extent it stated you were not eligible to enroll in a health plan outside of the open enrollment period, is **RESCINDED**.

Your case is **RETURNED** to NYSOH to assist you in enrolling into a new qualified health plan. You may choose to enroll into a new qualified health plan, as early as January 12, 2018, the date your new enrollment should have been processed. In the alternative, you may elect within 60 days from the date of this decision.

**Effective Date of this Decision:** May 4, 2018

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

NYSOH improperly denied you a special enrollment period.

Your case is being sent back to NYSOH to allow you to enroll into coverage as of January 12, 2018, which would give you a February 1, 2018 start date, if you so choose. In the alternative, you and your spouse may elect to enroll into coverage within 60 days from the date of this decision.

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

## **If You Disagree with this Decision (Appeal Rights)**

If applicable, if you think a portion of your appeal should not be dismissed, you can ask us to vacate, or cancel, this dismissal. You must ask us in writing within 30 days after the date on this notice, showing good cause as to why the dismissal should be vacated. NYSOH's Appeals Unit will review your request. If your request is approved, another hearing will be scheduled for you. If your request is denied, NYSOH will tell you in writing. If you do not respond to the dismissed portion of your appeal within 30 days, your appeal will remain dismissed, and NYSOH will take no further action on your appeal.

Insofar as your case was decided, the Decision is final unless you submit an appeal request to the Federal Marketplace or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This

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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  
Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The February 9, 2018 eligibility determination, to the extent it stated you were not eligible to enroll in a health plan outside of the open enrollment period, is **RESCINDED**.

Your case is **RETURNED** to NYSOH to assist you in enrolling into a new qualified health plan. You may choose to enroll into a new qualified health plan, as early as January 12, 2018, the date your new enrollment should have been processed. In the alternative, you may elect within 60 days from the date of this decision.

NYSOH improperly denied you a special enrollment period.

Your case is being sent back to NYSOH to allow you to enroll into coverage as of January 12, 2018, which would give you a February 1, 2018 start date, if you so choose. In the alternative, you and your spouse may elect to enroll into coverage within 60 days from the date of this decision.

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

## **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.