



STATE OF NEW YORK
DEPARTMENT OF HEALTH
PO Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: May 11, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000029210



Dear [REDACTED]

On April 30, 2018, you and your mother, [REDACTED] appeared by telephone at a hearing on your appeal of NY State of Health's February 15, 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
PO 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(b).

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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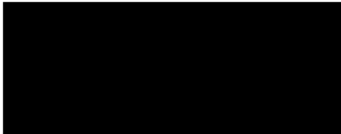


STATE OF NEW YORK
DEPARTMENT OF HEALTH
PO Box 11729
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Decision

Decision Date: May 11, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000029210



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 do not qualify to switch your enrollment in a qualified health plan outside of the open enrollment period?

Procedural History

On February 3, 2018, NYSOH received your initial application for financial assistance with health insurance.

On February 4, 2018, NYSOH issued an eligibility determination notice stating that you were eligible to receive an advance premium tax credit (APTC) of up to \$328.00 per month, effective March 1, 2018.

Also on February 4, 2018, NYSOH issued an enrollment notice confirming your selection of Empire EPO 5500 X for HSA Bronze ST INN Pediatric Dental Dep 25 (Empire) as your qualified health plan (QHP) as of February 3, 2018. The notice further stated that your coverage under Empire as your QHP would begin effective January 1, 2018.

On or about February 7, 2018, you spoke with NYSOH to request to switch your QHP coverage.

On February 15, 2018, issued an eligibility determination notice it further stated that you did not qualify to select a health plan outside of the open enrollment period for 2018.

On February 22, 2018, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you were not eligible to enroll in a health plan outside of the open enrollment period.

On February 23, 2018, NYSOH received an executed Authorized Representative Designation Form confirming that you wanted your mother, [REDACTED] [REDACTED] to act as your Authorized Representative for all matters relating to your account, including the appeal.

On April 30, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and remained open as the Hearing Officer directed you to provide as additional evidence to corroborate your testimony: a letter issued by Empire BlueCross BlueShield, confirming that your coverage under your mother's employer-sponsored coverage would end effective January 1, 2018. The record was to be closed on May 2, 2018, or upon the receipt of the above referenced document, whichever occurred earlier.

That same day, you provided to NYSOH Appeals Unit through facsimile the above referenced document.

Accordingly, the record was closed on April 30, 2018.

Findings of Fact

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

- 1) You testified that you turned [REDACTED] [REDACTED] on [REDACTED] [REDACTED]
- 2) On February 3, 2018 you submitted your initial application for health insurance. This application indicated that you qualified for a special enrollment period based on a loss of your minimum essential coverage on December 6, 2017.
- 3) On February 3, 2018, you were found eligible for an APTC of up to \$328.00, effective March 1, 2018. You enrolled in Empire as your QHP that same day, with such coverage beginning effective January 1, 2018.
- 4) Your mother testified that on or about February 7, 2018, you attempted to switch your enrollment in a QHP because the plan that you had selected did not provide coverage certain medications you require.

- 5) Your mother testified that you contacted NYSOH to request a switch in your plan coverage, and were initially told it would not be a problem; however, you were subsequently told that this request to change your plan came too late, and that you needed to file an appeal to switch your plan at that time.
- 6) On February 15, 2018, NYSOH issued a notice stating that you could not switch QHP outside of the open enrollment period because you did not qualify for a special enrollment period.
- 7) Your mother testified that you inadvertently selected December 6, 2017 as the “Event Date,” when indicating the basis for your requesting a special enrollment period on your initial application.
- 8) Your mother testified, and you provided documentation reflecting, that your loss of minimum essential coverage occurred on January 1, 2018, not December 6, 2018. Your mother further testified that as a result, you should have been permitted to switch your QHP since it was during the 60-day period following the loss of your coverage.
- 9) On April 30, 2018, you provided to NYSOH Appeals Unit a letter issued by Empire BlueCross Blue Shield, dated February 5, 2018, confirming that your coverage ended effective January 1, 2018.
- 10) Your mother testified that you would not be seeking the new plan coverage go into effect as of January 1, 2018, but rather to select a new QHP going forward.

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).

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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;

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(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 do not qualify to switch your enrollment in a QHP outside of the open enrollment period.

NYSOH provided an open enrollment period from November 1, 2017 until January 31, 2018. Your initial application was received by NYSOH on February 3, 2018. You attested in that application that you lost your minimum essential coverage on December 6, 2017. On February 4, 2018, NYSOH issued a notice confirming that you were eligible for a special enrollment period, but needed to select a QHP by February 4, 2018. On February 3, 2018, you selected Empire as your QHP, with such coverage to begin effective March 1, 2018.

On or about February 7, 2018, you requested to switch your QHP due to coverage issues. On February 15, 2018 NYSOH issued a notice stating that you do not qualify to switch your plan enrollment enroll in a QHP outside of the open enrollment period.

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.

Your NYSOH account reflects that your enrollment in your minimum essential coverage was terminated effective December 6, 2017, which would have provided you 60 days, or until February 4, 2018, to select a QHP for coverage during the 2018 plan year.

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

Your mother testified that this “Event Date” selection of December 6, 2017 was made in error, and the termination of your coverage occurred on January 1, 2018. Accordingly, you should have been permitted to switch your QHP enrollment within 60 days from January 1, 2018, or March 2, 2018.

The record reflects that you attempted to switch your plan enrollment on February 7, 2018, but were prevented from doing so.

When a triggering life event occurs, the qualified individual has 60 days from the date of that event to select a QHP.

Since 60 days from January 1, 2018 is March 2, 2018, you would have qualified to select a QHP outside of the open enrollment period until March 2, 2018.

The credible evidence of record indicates that your request to switch your QHP was submitted on February 7, 2018, prior to the expiration of the special enrollment period you should have been granted.

Therefore, NYSOH's February 15, 2018 eligibility determination notice that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into your new plan effective March 1, 2018, which is when your new enrollment would have started had you been allowed to select your new plan on February 7, 2018. In the alternative, you may elect to have your new coverage in effect from this point forward. In any event, you have 60 days from the date of this decision to select your new plan.

Decision

The February 15, 2018 eligibility determination notice that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into your new plan effective March 1, 2018, which is when your new enrollment would have started had you been allowed to select your new plan on February 7, 2018. In the alternative, you may elect to have your new coverage in effect from this point forward. In any event, you have 60 days from the date of this decision to select your new plan.

Effective Date of this Decision: May 11, 2018

How this Decision Affects Your Eligibility

NYSOH improperly denied you an opportunity to switch your QHP during the 60-day period from your loss of coverage on January 1, 2018.

Your case is being sent back to NYSOH to allow you to enroll into coverage to be effective March 1, 2018, if you so choose. In the alternative, you may elect to enroll into coverage from this point forward. You have 60 days from the date of this decision to select a plan.

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 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

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).

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
PO Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The February 15, 2018 eligibility determination notice that you do not qualify to select a health plan outside of the open enrollment period for 2017 is MODIFIED to reflect that you are eligible for a special enrollment period.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into your new plan effective March 1, 2018, which is when your new enrollment would have started had you been allowed to select your new plan on February 7, 2018. In the alternative, you may elect to have your new coverage in effect from this point forward. In any event, you have 60 days from the date of this decision to select your new plan.

NYSOH improperly denied you an opportunity to switch your QHP during the 60-day period from your loss of coverage on January 1, 2018.

Your case is being sent back to NYSOH to allow you to enroll into coverage to be effective March 1, 2018, if you so choose. In the alternative, you may elect to enroll into coverage from this point forward. You have 60 days from the date of this decision to select a plan.

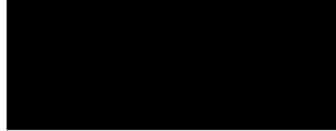
If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY – Spanish: 1-877-662-4886).

You will be responsible for 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。我们可以为您免费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، يرجى الاتصال بالرقم 1-855-355-5777. يمكننا 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 okyerE 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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