



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

## Notice of Decision

Decision Date: May 15, 2018

NY State of Health Account: [REDACTED]  
Appeal Identification Number: AP000000029489



Dear [REDACTED]

On May 2, 2018, you appeared by telephone at a hearing on your appeal requesting a special enrollment period.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:  
NY State of Health Appeals  
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.

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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## Decision

Decision Date: May 15, 2018

NY State of Health Account: [REDACTED]  
Appeal Identification Number: AP000000029489



## Issue

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

Are you eligible to change your enrollment to a different qualified health plan (QHP) outside of the open enrollment period?

## Procedural History

On November 20, 2017, you updated your NYSOH application for financial assistance with health insurance.

On November 21, 2017, NYSOH issued a notice of eligibility determination stating you were eligible to receive up to \$139.00 per month in advance payments of the premium tax credit, effective January 1, 2018.

On December 16, 2017, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in a Healthfirst bronze level QHP, beginning January 1, 2018.

On February 27, 2018, you tried to change your enrollment to a different QHP, but were unable to do so.

That same day, you spoke with NYSOH's Account Review Unit and appealed NYSOH's refusal to allow you to apply for health insurance and NYSOH's failure to allow you to change your insurance coverage.

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On May 2, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, a Spanish language interpreter, ID [REDACTED] provided interpretation services. The record was developed during the hearing and closed at the end of the hearing.

## **Findings of Fact**

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

- 1) You testified that you are requesting a special enrollment period to change your enrollment to another health insurance plan through NYSOH.
- 2) You testified when you renewed your health insurance coverage for 2018, you were informed that the Affinity health plan you were enrolled in during 2017 was not an option available to you for 2018, and that you needed to select a new QHP.
- 3) You testified, and your NYSOH account reflects, you select a Healthfirst QHP on December 15, 2017, with your enrollment in that plan beginning January 1, 2018.
- 4) You testified NYSOH provided you with the names of plans available to you, as well as the costs associated with those plans, and you based your selection on this information.
- 5) You testified you did not speak to NYSOH about whether your doctor was covered by the plan you selected.
- 6) You testified you did not call your doctor before selecting the Healthfirst plan, nor did you speak to Healthfirst to find out whether your doctor participated in their plan.
- 7) You testified you went to have [REDACTED] in January 2018 and were told by the doctor's office that they did not accept your Healthfirst coverage.
- 8) On February 27, 2018, you tried to apply for health insurance, but you were not allowed to submit an application, nor were you allowed change your enrollment to another health insurance plan through NYSOH.
- 9) You testified you are still in a two-person household, and you are still the only one seeking insurance coverage through NYSOH.

- 10) You have not become newly eligible or ineligible for advance payments of the premium tax credit, nor has there been a change in your eligibility for cost-sharing reductions.
- 11) You have not recently moved such that you have access to a new QHP.
- 12) You have not testified to any other circumstance that would qualify you for a special enrollment period.
- 13) You testified you want to change plans because your doctor is not covered by NYSOH.

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

## **Applicable Law and Regulations**

### Open Enrollment Period

NYSOH must provide annual open enrollment periods during which time qualified individuals may enroll in a health plan and enrollees may change health plans (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 QHP, 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.

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(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 QHP because he or she gains citizenship, status as a national, or lawfully present, or is no longer incarcerated.

(4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP 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 QHP 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 a new QHP because 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 QHP 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 QHP; 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 QHP (45 CFR § 155.420(c)(1)).

#### Application Process and Notice of Eligibility Determination

NYSOH must accept an application and make an eligibility determination for an applicant seeking an eligibility determination, at any time during the year (45 CFR § 155.310(c)).

When an individual applies for insurance through NYSOH, NYSOH must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 CFR § 435.1200(b)(3)(iii)).

Any required notice issued by NYSOH must include an explanation of the action referenced in the notice, including the effective date of the action, and the factual and legal basis for such action (45 CFR § 155.230(a)).

#### Appeal of an Eligibility Determination

An applicant has the right to appeal to NYSOH's Appeals Unit any failure by NYSOH to provide timely notice of an eligibility determination (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

### **Legal Analysis**

The issue under review is whether you qualify to change your enrollment to a different QHP outside of the 2018 open enrollment period.

You testified that you are appealing the denial of a special enrollment period to change your enrollment to a different health plan through NYSOH.

You selected a Healthfirst bronze QHP for enrollment on December 15, 2017, and that enrollment went into effect on January 1, 2018.

On February 27, 2018, you requested to change your enrollment to a different health plan.

It appears that NYSOH did not allow you to submit an application when you requested a special enrollment period, and the record does not include any notice of eligibility determination or redetermination denying any request for a special enrollment period.



NYSOH is required to accept applications any time during the year, and it must then promptly issue a notice of eligibility determination that includes the factual and legal basis for any finding.

You attempted to apply for coverage through NYSOH on February 27, 2018; however, NYSOH refused to accept your application as it is required to do. Consequently, it also failed to issue a corresponding notice of eligibility determination regarding your request for a special enrollment period.

Therefore, the Appeals Unit of NYSOH finds that NYSOH improperly refused to accept your application and improperly failed to issue the appropriate notice of eligibility determination, as it is required to do pursuant to regulations.

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

NYSOH provided an open enrollment period from November 1, 2017 through January 31, 2018, and you enrolled into a Healthfirst QHP, with coverage beginning January 1, 2018. You attempted to change your coverage to another health plan on February 27, 2018, which was outside the open enrollment period. Therefore, to enroll in a plan or change your coverage, you would need to be eligible for a special enrollment period.

As noted above, you did not testify to any event that would qualify you for a special enrollment period. Though you testified you did not know your doctor was not covered by Healthfirst, you did not base your plan selection on any information provided by NYSOH, as you testified you did not speak to NYSOH about whether your doctor was part of the plan you chose. Additionally, you testified you chose your QHP without checking with either your doctor, or with Healthfirst, as to whether your doctor would be covered by the new plan.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2018, no triggering events have occurred that would qualify you for a special enrollment period.

Therefore, you are not qualified for a special enrollment period.

## **Decision**

NYSOH's decision to deny you a special enrollment period is **AFFIRMED**.

**Effective Date of this Decision:** May 15, 2018

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

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

## **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  
Attn: Appeals  
465 Industrial Blvd.  
London, KY 40750-0061
- By fax: 1-877-369-0129

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 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**

NYSOH's decision to deny you a special enrollment period is **AFFIRMED**.

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

### **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. 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.

### **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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