



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

Notice of Decision

Decision Date: May 24, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000029768

[REDACTED]

[REDACTED]

Dear [REDACTED]

On May 18, 2018, your authorized representative appeared by telephone at a hearing on your appeal of NY State of Health's March 4, 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).

This page intentionally left blank.



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

Decision

Decision Date: May 24, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000029768



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, effective April 1, 2018?

Procedural History

On October 28, 2017, NY State of Health (NYSOH) issued a renewal notice, based on state and federal data sources, stating that it was time for you to renew your health insurance through NYSOH. This notice stated that you qualified to enroll in the Essential Plan with a \$0.00 monthly premium, effective January 1, 2018. This notice further stated that, to make changes to your NYSOH account, you needed to make these changes between November 16, 2017 and December 15, 2017, to see what you qualified for on January 1, 2018.

On March 3, 2018, NYSOH received your updated application for financial assistance with health insurance.

On March 4, 2018, NYSOH issued an eligibility determination notice stating that you were newly eligible to purchase a qualified health plan at full cost through NYSOH, effective April 1, 2018. It further stated that you do not qualify to select a health plan outside of the open enrollment period for 2018.

On March 5, 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 May 18, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, [REDACTED] acted as your authorized representative and provided testimony on your behalf. The record was developed during the hearing and held open to allow for the Hearing Officer to listen to the telephone record from the NYSOH's Call Center from January 8, 2018.

The Hearing Officer reviewed the available telephone recording from January 8, 2018, after which the record was closed.

Findings of Fact

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

- 1) Your NYSOH account indicates that, based on state and federal data sources, NYSOH determined that you were eligible to enroll in the Essential Plan with a \$0.00 monthly premium, effective January 1, 2018.
- 2) Your NYSOH account indicates that you never selected an Essential Plan for your enrollment.
- 3) Your NYSOH account indicates that, on March 3, 2018, you submitted an updated application for financial assistance with health insurance through NYSOH and you were found eligible to purchase a qualified health plan at full cost through NYSOH, effective April 1, 2018.
- 4) Your NYSOH account indicates that, on March 3, 2018, you attempted to enroll into a full pay qualified health plan but were unable.
- 5) Your authorized representative testified that you travel and are out of the country often.
- 6) Your authorized representative testified that you were out of the country from [REDACTED] through [REDACTED]
- 7) Your authorized representative testified that you attempted to apply numerous times on the website, while you were abroad, but you were unable to because you could not access NYSOH's website while you were outside of the country.

- 8) Your authorized representative testified that you contacted NYSOH during the open enrollment period about the issue you were having with the website, but that you did not submit an application over the phone.
- 9) The Hearing Officer reviewed the telephone record from January 8, 2018, which recording indicated the following:
 - a. You told the NYSOH representative the reason you were calling was because your qualified health plan coverage had ended;
 - b. You were informed by the NYSOH representative that you were eligible for free health insurance coverage through the Essential Plan;
 - c. You told the NYSOH representative that your eligibility for free health insurance was incorrect because you made too much money;
 - d. The NYSOH representative informed you that you would have to update your NYSOH account by going online and including your current income;
 - e. You informed the NYSOH representative multiple times during the telephone call that the NYSOH website was not working because it was not loading for you and you kept receiving an “access denied” error;
 - f. You informed the NYSOH representative multiple times during the phone call that you were out of the country; and
 - g. At no point in the telephone conversation did the NYSOH representative offer to complete an updated application with your correct income over the phone. Rather, before disconnecting the call, the NYSOH representative informed you that you would need to gain access to the NYSOH website in order to update your NYSOH account and see what coverage you may qualify for.
- 10) Your authorized representative testified that you accessed your NYSOH account immediately after returning to New York, [REDACTED], and completed an application for financial assistance with health insurance.
- 11) Your authorized representative testified that you attempted to enroll into a qualified health plan, but you were unable to do so because you were not given a special enrollment period.
- 12) Your authorized representative testified that since filing your application on March 3, 2018, there have been no other major changes to your household.
- 13) Your authorized representative testified that you filed an appeal because you would like to be able to enroll into health insurance coverage.

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).

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)).

Legal Analysis

The issue under review is whether NYSOH properly determined that you do not qualify to enroll in a qualified health plan outside of the open enrollment period, effective April 1, 2018.

NYSOH provided an open enrollment period from November 1, 2017 until January 31, 2018. On March 3, 2018, you submitted an updated application for health insurance and requested to enroll in a qualified health plan. On March 4, 2018, NYSOH issued a notice stating that you do not qualify to enroll in a qualified health plan outside of the open enrollment period.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order 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.

A special enrollment period can be granted if a qualified individual'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

Your authorized representative testified that you were out of the country from [REDACTED] through [REDACTED]. Your authorized representative further testified that you attempted to access the NYSOH website multiple times to update your account while you were out of the country, but you were unable to gain access. Your authorized representative also testified that you attempted to contact NYSOH over the telephone during the open enrollment period, but that you did not submit an application during that phone call.

A Hearing Officer from the NYSOH's Appeals Unit reviewed the only telephone conversation you placed to NYSOH during the 2018 open enrollment period, on January 8, 2018. During this telephone conversation, you indicated to the NYSOH representative multiple times that you were out of the country and that you were having difficulties gaining access to your NYSOH account in order to update your account and reenroll into coverage for the 2018 health insurance year. However, at no time during the telephone conversation did the NYSOH representative offer or inform you that you could submit an application with your updated information over the phone. Rather, the NYSOH representative informed you that you would have to gain access to your online NYSOH account in order to make these updates, even after you reiterated the fact that you were unsuccessful in gaining access to the NYSOH's website.

Therefore, since there is no evidence in the record to the contrary, it is concluded that, had you been given the opportunity to submit an updated application over the phone on January 8, 2018, you would have and would also have been able to select a qualified health plan for your enrollment that day.

Since the record indicates that you contacted NYSOH on January 8, 2018, which was during the open enrollment period, and requested assistance in reenrolling into coverage, the NYSOH's Appeals Unit finds that your non-enrollment into a qualified health plan was unintentional, inadvertent, or erroneous and the direct result of statements made to you by a representative of NYSOH. Therefore, you should have been granted a special enrollment period as of your January 8, 2018 application.

Therefore, NYSOH's March 4, 2018 eligibility determination notice stating that you do not qualify to select a health plan outside of the open enrollment period for 2018 is MODIFIED to reflect that you are eligible for a special enrollment period as of January 8, 2018.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan as of January 8, 2018 because had you been given the opportunity by the NYSOH representative, you would have submitted an application over the telephone that day. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

Decision

The March 4, 2018 eligibility determination notice stating that you do not qualify to select a health plan outside of the open enrollment period for 2018 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your January 8, 2018 application.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan as of January 8, 2018 because had you been given the opportunity by the NYSOH representative, you would have submitted an application over the telephone that day. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

Effective Date of this Decision: May 24, 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 8, 2018, which would give you a February 1, 2018 start date, if you so choose. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

You will be responsible for all 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
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The March 4, 2018 eligibility determination notice stating that you do not qualify to select a health plan outside of the open enrollment period for 2018 is MODIFIED to reflect that you are eligible for a special enrollment period as of the date of your January 8, 2018 application.

Your case is RETURNED to NYSOH to assist you in enrolling into a qualified health plan. You may choose to enroll into a qualified health plan as of January 8, 2018 because had you been given the opportunity by the NYSOH representative, you would have submitted an application over the telephone that day. In the alternative, you may elect to enroll into coverage 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 8, 2018, which would give you a February 1, 2018 start date, if you so

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).

choose. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

You will be responsible for all 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।

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).

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.

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).