



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

Notice of Decision

Decision Date: May 18, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000029885



Dear [REDACTED]

On May 14, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's January 14, 2018 disenrollment notice and February 3, 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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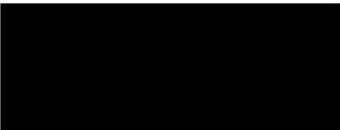


STATE OF NEW YORK
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Decision

Decision Date: May 18, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000029885



Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did NY State of Health (NYSOH) properly terminate your qualified health plan for non-payment of premium effective, January 1, 2018?

Did NYSOH properly determine that you do not qualify to enroll in a qualified health plan outside of the open enrollment period, effective March 1, 2018?

Procedural History

On December 6, 2017, NYSOH received your application for health insurance.

On December 7, 2017, NYSOH issued an eligibility determination notice stating that you were eligible to receive an advance premium tax credit (APTC) of up to \$388.00 per month and cost-sharing reductions if you enrolled in a silver level qualified health plan, both effective January 1, 2018.

Also on December 7, 2017, NYSOH issued an enrollment confirmation notice stating that you were enrolled in a qualified health plan, effective January 1, 2018.

On January 14, 2018, NYSOH issued a disenrollment notice stating that your enrollment in your qualified health plan was terminated, effective January 1, 2018, because a premium payment had not been received by the health plan.

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On January 25, 2018, NYSOH received your updated application for health insurance.

On January 26, 2018, NYSOH issued an eligibility determination notice, based on the January 25, 2018 application, stating that you were eligible to receive up to \$247.00 per month in APTC, effective March 1, 2018.

On February 3, 2018, NYSOH issued an eligibility determination notice stating that you were eligible to receive up to \$247.00 per month in APTC, effective March 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 7, 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 14, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and closed that day.

Findings of Fact

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

- 1) You were enrolled in a qualified health plan for the 2018 coverage year with a monthly premium of \$395.14, effective January 1, 2018.
- 2) You testified that you in mid-December 2017 you issued a check to your qualified health plan for your January 2018 premium and dated the check January 1, 2018.
- 3) You testified that around January 20, 2018, you received a notice advising you that you had been disenrolled from your qualified health plan for non-payment of premium.
- 4) You were disenrolled from your qualified health plan, effective January 1, 2018.
- 5) You testified that after receiving the disenrollment notice, you contacted NYSOH to reenroll in coverage in late January 2018. You further testified that you thought you had reenrolled in coverage and that there was nothing further you needed to do.
- 6) You testified that on or around February 2, 2018, you contacted your qualified health plan to make a premium payment over the phone, and

were advised that your qualified health plan had no record of your reenrollment.

- 7) During the hearing, you gave permission for the Hearing Officer to listen to recordings of phone calls you had with NYSOH.
- 8) On January 25, 2018, you placed a phone call to NYSOH. A review of the recording of that phone call reflects that you were calling to reenroll in coverage as you had received a disenrollment for non-payment notice. During the phone call, you initially indicated that you wanted to enroll in an Empire BlueCross BlueShield silver level qualified health plan, but then, after realizing that your APTC amount had changed, you began discussing other plan options with the NYSOH representative. The NYSOH representative indicated that you would need to contact the qualified health plan to find out specifics about what was covered. The NYSOH representative advised you that you had until February 15, 2018 to select a plan. You confirmed with the NYSOH representative that you had until February 15, 2018 to select a plan, and the NYSOH representative then told you a second time that you had until February 15, 2018 to select a plan. At no time during that call, did the NYSOH representative advise you that you only had until January 31, 2018 to select a qualified health plan for 2018.
- 9) You next contacted NYSOH on February 2, 2018.
- 10) You testified that on March 15, 2018, your qualified health plan cashed your January 2018 premium payment.
- 11) You testified that your qualified health plan has refunded you the January 2018 premium payment.

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

Applicable Law and Regulations

Appealable Issues

An applicant has the right to appeal to NYSOH's Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) a failure by NYSOH to provide timely notice of an eligibility determination 45 CFR § 155.505; and (4) a denial of a request for a

special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

Enrollment in a Qualified Health Plan

NYSOH must provide annual open enrollment periods during which time qualified individuals may enroll in a qualified health plan and enrollees may change qualified health plans (45 CFR § 155.410(a)(1)).

For the benefit year beginning on January 1, 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)).

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

“voluntary termination of coverage or other loss due to—

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

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

(45 CFR § 155.420(e)).

Legal Analysis

The first issue under review is whether NYSOH properly terminated your qualified health plan for non-payment of premium effective, January 1, 2018.

On December 6, 2017, you were enrolled in a qualified health plan for the 2018 coverage year with a monthly premium of \$395.14, effective January 1, 2018.

You testified that you paid your premiums to your qualified health plan for January 2018. However, your qualified health plan did not cash your premium payment check until March 15, 2018.

On January 14, 2018, NYSOH issued a notice stating that you were disenrolled from your health plan for non-payment of the premium, effective January 1, 2018.

NYSOH Appeals Unit only has the authority to review issues related to the following: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, (3) a failure to provide timely notice of an eligibility determination, and (4) a denial of a special enrollment period.

Since the Appeals Unit is not given the authority to review termination of enrollment due to non-payment of premiums, we cannot reach the merits as to whether you were properly terminated from your health plan for non-payment of premiums. Therefore, your appeal of the January 14, 2018 disenrollment notice is **DISMISSED** as a non-appealable issue.

The second 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 March 1, 2018.

NYSOH provided an open enrollment period from November 1, 2017 until January 31, 2018.

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

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health plan offered in NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

Although you did lose health coverage as a result of the January 14, 2018 disenrollment, the loss of health insurance coverage in this case cannot be considered a triggering event for a special enrollment period, because it was a result of non-payment of your premiums which NYSOH considers a voluntary action causing the termination of your coverage.

However, 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.

The record reflects that on January 25, 2018 you spoke to a representative from NYSOH in order to reenroll in a qualified health plan. This was during the open enrollment period, and had you selected a qualified health plan for reenrollment that day, you would have been permitted to do so. However, a review of the telephone conversation placed that day indicates that the NYSOH representative informed you that you had until February 15, 2018 to select a qualified health plan for enrollment. Had you been properly advised regarding the end of the open enrollment period for 2018, you could have selected a plan for enrollment by January 31, 2018.

The record reflects that you next contacted NYSOH on February 2, 2018.

Since the record indicates that your non-enrollment into a qualified health plan was the direct result of statements made to you by a representative of NYSOH, you should have been granted a special enrollment period as of your February 2, 2018 application.

Therefore, NYSOH's February 3, 2018 eligibility determination 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 February 2, 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 February 2, 2018 because NYSOH gave you incorrect information. In the alternative, you may elect to enroll into coverage within 60 days from the date of this decision.

Decision

The February 3, 2018 eligibility determination 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 February 2, 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 February 2, 2018, 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 premium payments for any months you are enrolled into coverage.

Effective Date of this Decision: May 18, 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 February 2, 2018, 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 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

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Summary

The February 3, 2018 eligibility determination 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 February 2, 2018 application.

NYSOH improperly denied you 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 a qualified health plan as of February 2, 2018, 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 premium payments for any months you are enrolled into coverage.

Your case is being sent back to NYSOH to allow you to enroll into coverage as of February 2, 2018, 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 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 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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