

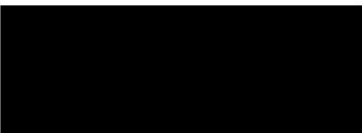


STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: May 17, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000030223



Dear [REDACTED]

On May 11, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's January 26, 2018 enrollment 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 17, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000030223



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 your enrollment in your Essential Plan coverage was effective January 1, 2018?

Procedural History

On November 17, 2017, you updated your application for financial assistance with health insurance through NYSOH four times.

On November 18, 2017, NYSOH issued a notice of eligibility determination, based on your last application of November 17, 2017, stating you were eligible to enroll in the Essential Plan with a \$20.00 monthly premium, beginning January 1, 2018.

Also on November 18, 2017, NYSOH issued a disenrollment notice, stating your enrollment in your Essential Plan was ending, effective December 31, 2017, because you were no longer eligible to enroll in that plan.

On November 27, 2017, NYSOH's system redetermined your eligibility.

On November 28, 2017, NYSOH issued a notice of eligibility determination stating you were eligible to enroll in the Essential Plan with a \$20.00 monthly premium, effective January 1, 2018.

On January 4, 2018, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in an Essential Plan with a \$47.70 monthly premium, beginning February 1, 2018.

On January 26, 2018, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in an Essential Plan, beginning January 1, 2018.

On March 15, 2018, you spoke to NYSOH's Account Review Unit and appealed, insofar as your request to cancel the backdating of your coverage to January 1, 2018 was denied by NYSOH.

On May 11, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

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

- 1) On November 17, 2017, you updated your application for financial assistance with health insurance.
- 2) You testified, and your NYSOH account confirms, you updated your application online.
- 3) You testified you were unable to complete and "check out" your application on that day because NYSOH was having computer issues.
- 4) You testified you spoke to NYSOH several times in November and December 2017, and were assured that, when the glitch was fixed, your coverage would begin on January 1, 2018.
- 5) You testified sometime around December 1, 2017, you were notified the glitch was resolved, but when you called NYSOH to enroll in coverage, you were still unable to complete your enrollment.
- 6) NYSOH's system contains notes entered on November 17, 2017 in Incident # [REDACTED] stating, "Consumer called to pick a plan for 2018 on 11/17/2017. Consumer account has a error message something went wrong. If the issue isn't corrected within 24 hours a defect need to be filed. Consumer picked her plan in time for her to be enrolled in her 2018 starting 1/1/2018."
- 7) On December 1, 2017, notes were entered by a NYSOH representative in that same incident stating, "Consumer called back stating that someone called her to inform her that the defect on the acct has been resolved."

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).

Consumer stated that [REDACTED] in the other dept attempted to confirm and check out, but still showing ERROR Message. Reviewed Incident [REDACTED] and its showing that its been closed as of 12/01/2017. ARU agent attempted to pick plan, and confirm and check out but it looks like BCBS has been picked already for consumer and [REDACTED] starting 01/01/2018. But the message "We Are Sorry is still popping up on the next page. Informed consumer that we will resend request."

- 8) Your NYSOH account reflects a plan was selected on your behalf on January 3, 2018, and a notice was issued on January 4, 2018 confirming your enrollment in an Essential Plan, beginning February 1, 2018.
- 9) You testified, when you were able to pick your plan and were told it would not start until February 1, 2018, you told the NYSOH representative you spoke with that you felt your coverage should begin January 1, 2018, as you had been trying to enroll in a plan since November 17, and as you had been repeatedly told your coverage would begin on January 1, 2018.
- 10) On January 3, 2018, a note was entered by a NYSOH representative in Incident [REDACTED] stating, "Consumer is EP eligible. Since November she has been attempting to choose a health plan for 1/1/18 enrollment. A defect on account prevented application completion. Now that the issue has been resolved; consumer is requesting a new enrollment start date of 1/1/18."
- 11) Also on January 3, 2018, notes in Incident [REDACTED] reflect that a request for a new enrollment start date of January 1, 2018 was submitted on your behalf.
- 12) You testified, after that point, you called NYSOH again on January "twenty-something," to follow up on your backdate request. You testified the person you spoke with that day informed you the request had not been granted yet, and that it was unlikely it would be at that point.
- 13) You testified the NYSOH representative you spoke with that day pointed out your coverage was beginning in approximately a week anyway, so you were resigned at that point to having your coverage begin on February 1, 2018.
- 14) Incident [REDACTED] contains a note entered by a NYSOH representative on January 22, 2018 stating, "Consumer called to check the status of the request." The same incident reflects you also previously called on January 11, 2018 to check on the status of your backdate request.
- 15) You testified, after your call of January 22, 2018, you did not hear anything from NYSOH and assumed you did not have coverage.

- 16) Notes in Incident [REDACTED], entered on January 25, 2018, read, "Backdate EP start date to 1/1/18 for [REDACTED]"
- 17) Your NYSOH account reflects a notice was issued on January 26, 2018 stating your enrollment in your Essential Plan coverage began on January 1, 2018. You testified you never received this notice.
- 18) Your NYSOH account reflects you are enrolled to receive email alerts regarding notices issued in your NYSOH account.
- 19) NYSOH uploaded an evidence packet to your NYSOH account. Contained within that evidence packet under the heading of "electronic notice requirement" is a three-page memorandum dated August 21, 2017. The memorandum sets forth the federal requirements regarding use of electronic communications and asserts that NYSOH complies with federal regulation and guidance on the use of electronic notices. The memorandum asserts that "the electronic notification rules do not require that exchanges track and monitor consumers actual receipt of electronic notices."
- 20) You testified you received your insurance card toward the end of January 2018, and it reflected a February 1, 2018 start date, so you assumed your coverage started on that day.
- 21) You testified you receive a call from your insurance plan in March 2018 informing you that you had a past due amount, and informing you this was because your coverage started on January 1, 2018.
- 22) You testified you called NYSOH and informed them that you no longer wanted your coverage backdated, as you were unaware the backdate request had been granted, and you were unable to use the coverage at all in the month of January 2018.
- 23) You testified you paid your January 2018 premium because you were afraid of losing your coverage, but you would like that premium payment to be credited to a future month's premium, and to be disenrolled from coverage for the month of January 2018.

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

Applicable Law and Regulations

Essential Plan Effective Date

For individuals seeking enrollment in an Essential Plan, New York State has elected to follow the same rules that NYSOH uses in determining effective dates for individuals seeking enrollment in qualified health plans (NY Social Services Law § 369-gg(4)(c); New York's Basic Health Plan Blueprint, p. 16, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/downloads/ny-blueprint.pdf>).

The effective date of coverage by an Essential Plan is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment, NYSOH must generally ensure that coverage is effective the first day of the following month for selections received by NYSOH from the first to the fifteenth of any month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(i); *see also* 42 CFR § 600.320). For selections received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(ii)).

Electronic Notices

Applicants may choose to receive notices and information from NYSOH either by electronic alerts or by regular mail. If the applicant elects to receive electronic notices, NYSOH must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant's account (42 CFR § 600.330(e); 42 CFR § 435.918(b)(4)).

Additionally, if an electronic alert regarding a notice in an individual's NYSOH account fails, NYSOH must send out the notice by regular mail within three days of the failed alert (42 CFR § 435.918(b)(5)).

Legal Analysis

The issue under review is whether NYSOH properly determined your enrollment in your Essential Plan coverage was effective January 1, 2018.

The record shows that on January 3, 2018, you submitted a request to enroll in an Essential Plan. On January 4, 2018, NYSOH issued a notice of enrollment confirmation stating that your enrollment in your Essential Plan was effective February 1, 2018.

The date on which enrollment in an Essential Plan can take effect depends on the day a person selects the plan for enrollment. A plan that is selected between

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).

the first and fifteenth day of a month goes into effect on the first day of the following month.

Therefore, NYSOH's January 4, 2018 enrollment confirmation notice is **AFFIRMED** because it properly began your enrollment in your Essential Plan on February 1, 2018.

However, the record reflects you first tried to enroll in an Essential Plan on November 17, 2017, but a defect on your account prevented you from completing your enrollment. You testified, and notes in NYSOH's system confirm, you kept trying to enroll in coverage, but were unable to select an Essential Plan for enrollment until January 3, 2018. You testified you were told all along your coverage would begin on January 1, 2018, once the defect on your account was fixed, and so you told NYSOH on January 3, 2018 that you wanted your coverage backdated to January 1, 2018.

NYSOH's system reflects you called to check on this request on January 11, 2018 and January 22, 2018. You testified that, during the phone call you had on January 22, 2018, you were told by the NYSOH representative with whom you spoke that the backdate request had not been approved, and was not likely to be approved by that point. You testified the NYSOH representative pointed out your coverage would begin in a little over a week, and so you resigned yourself to the fact that you would not have coverage in January 2018. You testified you received your insurance card, which reflects a February 1, 2018 start date for your plan enrollment, and you did not hear anything else from NYSOH after your January 22, 2018 phone call.

On January 25, 2018, NYSOH backdated your enrollment in your Essential Plan to January 1, 2018, and on January 26, 2018, NYSOH issued a new enrollment confirmation notice, stating your enrollment in your Essential Plan coverage was backdated to January 1, 2018. You testified you were unaware of the backdating of your coverage until March 2018, when your health plan informed you that you had an outstanding balance, and that this was because your coverage began on January 1, 2018. You testified you paid that balance, but would like it applied to a future premium payment, and to be disenrolled from your January 2018 coverage, as you were unable to use it.

The record reflects that you elected to receive alerts regarding notices from NYSOH electronically. Although NYSOH contends that it complied with federal mandates regarding electronic notices, there is no evidence in the file that NYSOH sent you any electronic alert notifying you of a newly available notice in your account on January 26, 2018. You credibly testified that you did not receive any notice from NYSOH regarding the backdating of your Essential Plan coverage. There is also no evidence in your account documenting that any email alert was sent to you regarding the notice, that any such electronic alert failed, or that the notice was later sent to you by regular mail.

NYSOH is required to send applicants proper notice in order for applicants to take appropriate action. Since there is no evidence that NYSOH sent you an email alert, and you testified that you did not receive any notice from NYSOH, there is insufficient evidence in the record that NYSOH provided you with proper notice that your coverage had been backdated.

As such, NYSOH did not provide you with proper notice of this change in the effective date of enrollment, which prevented you from being able to use your coverage in January 2018. Moreover, even if you had received the January 26, 2018 enrollment notice, you would have been left with only five days to use your coverage; therefore, the timing of the notice deprived you of meaningful access to that coverage. It is also noted that you had abandoned the idea of having your coverage backdated when, on January 22, 2018, you were told by a NYSOH representative it was unlikely the request for a backdate would be granted at that point.

There is no indication in the record that NYSOH attempted to confirm with you, on or after January 22, 2018, that you still wanted the coverage backdated.

Therefore, the January 26, 2018 enrollment confirmation notice is **RESCINDED**, and the matter is **RETURNED** to NYSOH to disenroll you from your Essential Plan for January 2018, and for your coverage to become effective February 1, 2018.

Your case is also **RETURNED** to NYSOH's Plan Management to ensure that any premium payment you made to your Essential Plan for the month of January 2018 is credited toward a future month's premium.

Decision

The January 4, 2018 enrollment notice is **AFFIRMED**.

The January 26, 2018 enrollment notice is **RESCINDED**.

Your case is **RETURNED** to NYSOH to disenroll you from your Essential Plan for the month of January 2018, and for your coverage to become effective February 1, 2018.

Your case is **RETURNED** to NYSOH's Plan Management to ensure that any premium payment you made to your Essential Plan for the month of January 2018 is credited toward a future month's premium.

Effective Date of this Decision: May 17, 2018

How this Decision Affects Your Eligibility

Your case is being sent back to NYSOH to disenroll you from your Essential Plan for the month of January 2018; your coverage effective date is February 1, 2018.

NYSOH will assist you in securing credit for a future month's premium payment for any premium payment you made for the month of January 2018.

If You Disagree with this Decision (Appeal Rights)

This 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 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 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 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 January 4, 2018 enrollment notice is **AFFIRMED**.

The January 26, 2018 enrollment notice is **RESCINDED**.

Your case is **RETURNED** to NYSOH to disenroll you from your Essential Plan for the month of January 2018, and for your coverage to become effective February 1, 2018.

Your case is **RETURNED** to NYSOH's Plan Management to ensure that any premium payment you made to your Essential Plan for the month of January 2018 is credited toward a future month's premium.

Your case is being sent back to NYSOH to disenroll you from your Essential Plan for the month of January 2018; your coverage effective date is February 1, 2018.

NYSOH will assist you in securing credit for a future month's premium payment for any premium payment you made for the month of January 2018.

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 مجانًا.

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. ye&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).