



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

Notice of Decision

Decision Date: May 22, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000030235



Dear [REDACTED]

On May 16, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's March 10, 2018 plan disenrollment and March 13, 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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DEPARTMENT OF HEALTH
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Decision

Decision Date: May 22, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000030235



Issues

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

Did NY State of Health properly terminate your and your spouse's qualified health plan for non-payment of premium, effective January 31, 2018?

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

Procedural History

On December 15, 2017, NY State of Health (NYSOH) issued an eligibility determination notice, based on your December 14, 2017 application, stating, in part, that you and your spouse were eligible to purchase in a full-pay qualified health plan (QHP) through NYSOH, effective January 1, 2018.

On December 15, 2017, NYSOH issued a plan enrollment notice confirming, in part, your and your spouse's enrollment in a full-pay QHP at \$1,134.59 per month, effective January 1, 2018.

On March 10, 2018, NYSOH issued a plan disenrollment notice stating that your and your spouse's enrollment in your QHP terminated, effective January 31, 2018, because you did not pay your insurance premium by the insurance payment deadline.

On March 12, 2018, NYSOH received your updated application.

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).

On March 13, 2018, NYSOH issued an eligibility determination notice stating, in part, that you and your spouse were eligible to purchase a full-pay qualified health plan through NYSOH, effective April 1, 2018. It further stated that you and your spouse did not qualify to select a health plan outside of the open enrollment period for 2018.

On March 14, 2018, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you and your spouse were not eligible to enroll in a health plan outside of the open enrollment period.

On May 16, 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) Your NYSOH account indicates that you and your spouse were enrolled in a gold-level QHP in 2017 at full cost of \$1,049.54.
- 2) You and your spouse were enrolled in the same gold-level QHP for the 2018 coverage year with a monthly premium of \$1,134.59 per month, effective January 1, 2018.
- 3) You testified that you paid your premiums to your and your spouse's QHP for January 2018, February 2018 and March 2018.
- 4) Your NYSOH account indicates that you and your spouse were disenrolled from your QHP, effective January 31, 2018, for non-payment of premium.
- 5) You testified that you were unaware of this disenrollment until you were informed by your pharmacy that your insurance coverage was no longer active.
- 6) You testified that you then contacted your and your spouse's QHP and you were informed that you both were disenrolled for non-payment because you were not paying the full monthly premium amount due.
- 7) You testified that you, by mistake, set up your automatic payments for 2018 based on the previous year's premium amount, which was an \$85.05 difference per month (\$1,134.59 - \$1,049.54).

- 8) You testified that you offered to immediately pay your QHP the past due amount after being informed of this, but your and your spouse's QHP told you that you and your spouse had already been disenrolled and there was nothing that they could do.
- 9) You testified that you were informed by your and your spouse's QHP to contact NYSOH to reinstate your coverage.
- 10) Your NYSOH account indicates, and you testified, that an updated application was submitted on March 12, 2018, and you attempted to reenroll yourself and your spouse into coverage.
- 11) You testified that since filing your application on December 14, 2017, there have been no other major changes to your household.
- 12) You testified that you would like to be able to reenroll yourself and your spouse into a QHP for the remainder of the 2018 coverage year.

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 QHP and enrollees may change QHPs (45 CFR § 155.410(a)(1)).

For the benefit year beginning on January 1, 2018, the national annual open enrollment period began on November 1, 2017 and extended through December 15, 2017 (45 CFR § 155.410(e)(3)). NY State extended this enrollment period through January 31, 2018 for applications processed through NYSOH (https://www.health.ny.gov/press/releases/2017/2017-09-07_open_enrollment_dates.htm).

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Special Enrollment Periods

After each open enrollment period ends, NYSOH provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a qualified health plan, and an enrollee may change their enrollment to another plan. This is generally permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent either:
 - (i) Loses minimum essential coverage.
 - (ii) Is enrolled in any non-calendar year group health plan or individual health insurance coverage, even if the qualified individual or his or her dependent has the option to renew such coverage.
 - (iii) Loses pregnancy-related coverage.
 - (iv) Loses medically needy coverage as described under section 1902(a)(10)(C) of the Social Security Act only once per calendar year.
- (2)
 - (i) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care, or through a child support order or other court order.
 - (ii) the enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation as defined by State law in the State in which the divorce or legal separation occurs, or if the enrollee, or his or her dependent, dies.
- (3) The qualified individual, or his or her dependent, becomes newly eligible for enrollment in a qualified health plan because he or she gains citizenship, status as a national, or lawful present or is no longer incarcerated.
- (4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities.

(5) The enrollee or, his or her dependent adequately demonstrates to NYSOH that the qualified health plan in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;

(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

(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 and your spouse's QHP coverage for non-payment of premium, effective January 31, 2018.

On December 13, 2018, you and your spouse were enrolled in a full-pay qualified health plan for the 2018 coverage year with a monthly premium of \$1,134.59, effective January 1, 2018. On March 10, 2018, NYSOH issued a notice stating that you and your spouse were disenrolled from your health plan for non-payment of the premium, effective January 31, 2018.

You testified that you paid your monthly premiums to your gold-level QHP that you and your spouse for the first three months of 2018. However, you later determined that you were not paying the full monthly premium of \$1,134.59, by mistake, because you had set up automatic payments to your QHP for the previous year's monthly premium amount of \$1,049.54, which was \$85.05 less per month. You further testified that you immediately offered to pay your QHP any past due amount, but were informed you that you would have to contact NYSOH in order to reenroll yourself and your spouse into coverage as you and your spouse had already been disenrolled.

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 March 10, 2018 plan disenrollment notice is DISMISSED as a non-appealable issue.

However, given your credible testimony that you were making payments to your QHP for the first three months in 2018 that you and your spouse were enrolled into coverage, the NYSOH's Appeals Unit is referring your case to Plan Management to further investigate and to follow up with your and your spouse's QHP to see if anything can be done to resolve this matter.

In addition, since the issue concerns a health insurer and/or payment, reimbursement, coverage, benefits, rates and/or premiums, you can contact NY Department of Financial Services at their Consumer Hotline at (800) 342-3736 (Monday through Friday, 8:30 AM to 4:30 PM); or locally to (212) 480-6400; or you can file a complaint at <http://www.dfs.ny.gov/consumer/fileacomplaint.htm>.

The second issue under review is whether NYSOH properly determined that you and your spouse did 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. Your NYSOH account indicates that, on December 14, 2017, you and your spouse were enrolled into a full-pay QHP, effective January 1, 2018. However, you and your spouse were subsequently disenrolled for non-payment of premium, effective January 31, 2018. Your NYSOH account indicates, and you testified, that on March 12, 2018 you updated your NYSOH account and requested to be reenrolled into a QHP.

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.

Though you did lose health coverage as a result of the March 10, 2018 plan disenrollment notice, 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 act that caused your and your spouse's QHP coverage to terminate.

You testified that there have been no changes to your household in 2018, and there is no other evidence in the record to establish grounds for a special enrollment period.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2018, you and your spouse did not experience a triggering event that would qualify you for a special enrollment period as of the date of the hearing.

Therefore, the March 13, 2018 eligibility determination notice, to the extent it denied you and your spouse a special enrollment period, was correct and is **AFFIRMED**.

Decision

Your appeal of the March 10, 2018 plan disenrollment notice is **DISMISSED** as a non-appealable issue.

Your case is referred to Plan Management to further investigate and to follow up with your and your spouse's QHP to see if anything can be done to resolve this matter.

The March 13, 2018 eligibility determination notice is **AFFIRMED**.

Effective Date of this Decision: May 22, 2018

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).

How this Decision Affects Your Eligibility

You and your spouse did not qualify for a special enrollment period as of March 13, 2018, nor do either of you at this time.

Your case is referred to Plan Management to further investigate and to follow up with your QHP to see what may be done to resolve the matter in light of your testimony regarding the mistaken amount of premium payments you paid for the first three months in 2018.

In addition, since the issue on appeal concerns a health insurer and/or payment, reimbursement, coverage, benefits, rates and/or premiums, you can contact NY Department of Financial Services at their Consumer Hotline at (800) 342-3736 (Monday through Friday, 8:30 AM to 4:30 PM); or locally to (212) 480-6400; or you can file a complaint at <http://www.dfs.ny.gov/consumer/fileacomplaint.htm>.

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:

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).

- 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

Summary

Your appeal of the March 10, 2018 plan disenrollment notice is **DISMISSED** as a non-appealable issue.

Your case is referred to Plan Management to further investigate and to follow up with your and your spouse's QHP to see what may be done to resolve the matter in light of your testimony regarding the mistaken amount of premium payments you paid for the first three months in 2018.

The March 13, 2018 eligibility determination notice is **AFFIRMED**.

You and your spouse did not qualify for a special enrollment period as of March 13, 2018, nor do either of you at this time.

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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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 मदद चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

Polski (Polish)

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

Twi (Twi)

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye&etumi ama wo obi a okyerE kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم 1-855-355-5777 پر کال کریں۔ ہم آپ کو آپ کی مادری زبان میں ایک مفت مترجم فراہم کر سکتے ہیں۔

Tiếng Việt (Vietnamese)

Đây là tài liệu quan trọng. Nếu quý vị cần trợ giúp để hiểu tài liệu này, vui lòng gọi 1-855-355-5777. Chúng tôi có thể cung cấp thông dịch viên miễn phí nói ngôn ngữ của quý vị.

אידיש (Yiddish)

דאס איז א וויכטיגער דאקומענט. אויב איר דארפט הילף עס צו פארשטיין, ביטע רופט 1-855-355-5777. מיר קענען אייך געבן א דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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).