



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

Notice of Decision

Decision Date: March 20, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: APM29246768

[REDACTED]

Dear [REDACTED]

On March 9, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's failure to issue a timely notice of an eligibility determination.

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

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

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:
NY State of Health Appeals
PO Box 11729
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the NY State of Health 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
DEPARTMENT OF HEALTH
PO Box 11729
Albany, NY 12211

Decision

Decision Date: March 20, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: APM29246768

[REDACTED]

Issue

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

Did NY State of Health (NYSOH) fail to issue you a timely notice of eligibility determination?

Procedural History

On November 30, 2016, you contacted NYSOH to apply for health insurance coverage. A defect existed on your account, and you were unable to complete an application through NYSOH. A complaint was filed ([REDACTED]) to resolve the defect.

On November 24, 2017, NYSOH closed out the complaint; however, the defect still existed on your NYSOH account.

On January 9, 2018, you spoke with NYSOH's Account Review Unit and requested an appeal insofar as NYSOH failed to issue a timely notice of eligibility determination.

On February 1, 2018, you contacted NYSOH to apply for health insurance coverage. The defect still existed on your account. Another complaint was filed ([REDACTED]) to resolve the defect.

On February 21, 2018, an evidence packet from NYSOH was uploaded to your NYSOH account. The packet contained an “Appeal Summary” of your case (see Document [REDACTED]).

On March 9, 2018, you had a telephone hearing with a Hearing Officer from NYSOH’s Appeals Unit. Testimony was taken during the hearing and the record was left open until March 12, 2018, to allow you to submit proof of your income and immigration status.

On March 12, 2018, you faxed eleven-pages of documentation to NYSOH’s Appeals Unit. That documentation was made part of the record collectively as “Appellant Exhibit A.” The record is now complete and closed.

Findings of Fact

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

- 1) You testified that you are applying for health insurance for yourself.
- 2) The “Appeal Summary” in NYSOH’s evidence packet states, in relevant part, that:

On 11/30/2016, the appellant contacted the Marketplace to update the application and a [r]esequenced defect arose on the account [REDACTED] was filed in an attempt to correct the error. At this time, there has been no resolution and defect is still present on account. Therefore, no eligibility determination has been made and enrollment is not possible. [The appellant] is disputing the inability to enroll in coverage due to defect still existing on account; requesting ability to enroll in coverage

(see Document [REDACTED]).

- 3) You testified that you contacted NYSOH monthly to find out if the defect on your account had been resolved; however, you were consistently notified by NYSOH representatives that the issue had not been resolved.
- 4) You testified that you want to be granted an exemption from being assessed a tax penalty on your 2017 federal income tax return because you were not enrolled in health insurance for the entire year.
- 5) You testified that you are not seeking retroactive health insurance coverage for 2017; however, you want to be enrolled prospectively.

- 6) You testified that you expect to file a 2018 federal income tax return with the tax status of single and do not expect to claim any dependents on that return.
- 7) You testified that you are employed at [REDACTED] and your earnings are your only source of income.
- 8) On March 12, 2018, you submitted your last four paystubs to NYSOH's Appeals Unit. The paystubs reflect that you were issued gross income of:
 - (a) \$799.55 on February 16, 2018;
 - (b) \$815.15 on February 23, 2018;
 - (c) \$1,149.11 on March 2, 2018; and
 - (d) \$2,368.31 on March 9, 2018

(Appellant Exhibit A, pp. 3-10).
- 9) According to your NYSOH account, you reside in Queens County, New York.
- 10) You testified that you are an immigrant non-citizen and have a valid employment authorization card (EAC).
- 11) On March 12, 2018, you submitted your EAC to NYSOH's Appeals Unit. That card states that your category code is "[REDACTED]" with an expiration date of June 24, 2018 (Appellant Exhibit A, p. 11).

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

Applicable Law and Regulations

Timely Eligibility Determination

NYSOH must accept applications from individuals seeking health insurance coverage, and at the option of the applicant, an application for financial assistance (45 CFR § 155.310(a), (b)).

When an individual applies for insurance through NYSOH, NYSOH must determine that person's eligibility promptly and without undue delay. NYSOH must provide timely written notice to an applicant of any eligibility determination resulting from their application (45 CFR §§ 155.310(e)(1); 155.310(g)).

Exemptions

A shared responsibility payment may be imposed with respect to a non-exempt individual who does not maintain minimum essential coverage. However, an exemption may relieve an individual from the shared responsibility payment (45 CFR §155.600(a)).

An exemption may be granted to an applicant for at least before, a month or months during which, and the month after, if it is determined the individual(s) experienced circumstances that prevented them from obtaining coverage under a qualified health plan (45 CFR §155.605(g)(1)(iii)).

Modified Adjusted Gross Income

NYSOH bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). The term “modified adjusted gross income” means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3) Social Security benefits that were excluded from gross income under 26 USC § 86 (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

“Adjusted gross income” means, in the case of an individual taxpayer, gross federal taxable income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from time savings accounts, deductions attributable to royalties, and certain retirement savings (26 USC § 62(a)).

Household Composition

For APTC and CSR, the household size equals the number of individuals for whom the taxpayers are allowed a deduction under 26 USC § 151 for the taxable year, which typically includes: (1) the taxpayer, (2) his or her spouse, and (3) any claimed dependents (26 USC § 36B(d)(1)).

Qualified Health Plan – Citizenship and Immigration Status

To enroll in a qualified health plan (QHP) through the Marketplace, an applicant must be a citizen or national of the United States or a non-citizen who is lawfully present in the United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1); 45 CFR § 155.20; 42 CFR §600.305; 42 CFR § 600.5).

The federal regulations state that the following non-citizens are lawfully present:

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- (1) A qualified alien as defined in section 431 of the Personal Responsibility and Work Opportunity Act (PRWORA) (8 U.S.C. 1641);
- (2) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;
- (3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings;
- (4) An alien who belongs to one of the following classes:
 - (i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. 1160 or 1255a, respectively);
 - (ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. 1254a), and pending applicants for TPS who have been granted employment authorization;
 - (iii) Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
 - (iv) Family Unity beneficiaries pursuant to section 301 of Public Law 101-649 as amended;
 - (v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
 - (vi) Aliens currently in deferred action status;
 - (vii) Aliens whose visa petitions have been approved and who have a pending application for adjustment of status;
- (5) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. 1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;
- (6) An alien who has been granted withholding of removal under the Convention Against Torture; or

(7) A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. 1101(a)(27)(J));

(8) *Exception.* An individual with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012, memorandum, shall not be considered to be lawfully present with respect to any of the above categories in paragraphs (1) through (7) of this definition

(45 CFR § 152.2).

Legal Analysis

The issue under review is whether NYSOH failed to allow you to apply for health insurance and issue you a timely notice eligibility determination.

NYSOH must accept applications from individuals seeking financial assistance and health insurance coverage. When an individual applies for insurance through NYSOH, NYSOH must determine that person's eligibility promptly and without undue delay. Further, NYSOH must provide timely written notice to an applicant of any eligibility determination resulting from their application.

The record reflects that on November 30, 2016, you contacted NYSOH to apply for health insurance coverage. A defect existed on your account, and you were unable to complete an application through NYSOH. A complaint was filed ([REDACTED]) to resolve the defect.

You testified that you contacted NYSOH monthly to find out if the defect on your account had been resolved and were consistently notified by NYSOH representatives that the issue had not been resolved. The record reflects that, as of the date of your hearing, the defect has not been resolved and was still present on your NYSOH account. Therefore, you were prevented from applying for and enrolling in health insurance coverage, through no fault of your own.

Based on the available record, NYSOH failed to correct the defect on your account so as allow you to apply for health insurance and, as a result, failed to issue you a timely notice of eligibility determination.

NYSOH's failure to resolve the technical defect on your account resulted in you not being enrolled in health insurance coverage for the entire 2017 coverage year. You testified that you want to be granted an exemption from being assessed a tax penalty on your 2017 federal income tax return because you were not enrolled in health insurance for the entire year.

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Sometimes after an appeal decision, an appellant can claim an exemption from the requirement to have health insurance. Waiting for a successful appeal is considered a “hardship” that kept you from getting coverage.

You must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, NYSOH does not accept hardship exemption applications.

You will find the information you need to claim the exemption due to an appeal decision at <https://www.healthcare.gov/exemptions-tool/#/results/2017/details/eligible-based-on-appeal>. You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word “pending” in column “c” and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

You testified that you are not seeking retroactive health insurance coverage through NYSOH; however, you want to be enrolled in health insurance prospectively. As stated above, NYSOH has not resolved the technical defect on your account to allow them to collect the necessary non-financial and financial information to determine your eligibility for financial assistance.

During the hearing, you testified that you were applying for health insurance for yourself. Further, you expect to file your 2018 federal income tax return with the tax status of single and do not expect to claim any dependents on that tax return.

For an individual who expects to file a federal income tax return, the household equals the taxpayers and the number of individuals for whom the taxpayer is claiming as a dependent. Therefore, you are in a one-person household.

You testified that you are employed at [REDACTED], and your earnings are your only source of income. You submitted your last four paystubs reflecting that you were issued gross income of: \$799.55 on February 16, 2018; \$815.15 on February 23, 2018; \$1,149.11 on March 2, 2018; and \$2,368.31 on March 9, 2018 (Appellant A pgs. 3-10). Therefore, your expected 2018 annual income is $(\$799.55 + \$815.15 + \$1,149.11 + \$2,368.31) \times 13$ periods) \$66,717.56.

Federal regulations require that a person seeking enrollment in health insurance coverage must be a citizen of the United States or have a satisfactory immigration status. Non-citizens, who are lawfully present, are eligible to enroll in health insurance coverage through NYSOH. A non-citizen who has a current nonimmigrant status and has not violated the terms of the status under which they were admitted, are considered lawfully present.

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On March 12, 2018, you submitted your EAC to NYSOH's Appeals Unit stating that your category code is "A12" with an expiration date of June 24, 2018 (Appellant Exhibit A pg. 11).

The record reflects that you have a valid nonimmigrant status and have provided sufficient evidence to determine that you are lawfully present in the United States.

Based on the foregoing findings, your case is RETURNED to NYSOH to calculate your eligibility for financial assistance based on a one-person household, for a lawfully present individual living in Queens County, New York, with an expected 2018 household income of \$66,717.56.

Decision

NYSOH failed to resolve a known defect on your account so as to allow you to apply for health insurance and, as a result, failed to issue you a timely notice of eligibility determination.

Your case is RETURNED to NYSOH to calculate your eligibility for financial assistance based on a one-person household, for a lawfully present individual living in Queens County, New York, with an expected 2018 household income of \$66,717.56.

Effective Date of this Decision: March 20, 2018

How this Decision Affects Your Eligibility

Your case has been returned to NYSOH to calculate your eligibility for financial assistance based on the parameters stated above.

To apply for an exemption, you must file an application through the United States Department of Health and Human Services (HHS). Currently, NYSOH does not accept hardship exemption applications.

You will find the information you need to claim the exemption due to an appeal decision at <https://www.healthcare.gov/exemptions-tool/#/results/2017/details/eligible-based-on-appeal>. You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word "pending" in column "c" and file your

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return. If HHS does not approve your exemption, you will need to file an amended return later.

If You Disagree with this Decision (Appeal Rights)

If applicable, if you think a portion of your appeal should not be dismissed, you can ask us to vacate, or cancel, this dismissal. You must ask us in writing within 30 days after the date on this notice, showing good cause as to why the dismissal should be vacated. NYSOH's Appeals Unit will review your request. If your request is approved, another hearing will be scheduled for you. If your request is denied, NYSOH will tell you in writing. If you do not respond to the dismissed portion of your appeal within 30 days, your appeal will remain dismissed, and NYSOH will take no further action on your appeal.

Insofar as your case was decided, the Decision is final unless you submit an appeal request to the Federal Marketplace or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the Federal Marketplace. This must be done within 30 days of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:
Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd.
London, KY 40750-0061
- By fax: 1-877-369-0129

If you 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

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to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
NY State of Health Appeals
PO Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

NYSOH failed to resolve a known defect on your account so as to allow you to apply for health insurance and, as a result, failed to issue you a timely notice of eligibility determination.

Your case is RETURNED to NYSOH to calculate your eligibility for financial assistance based on a one-person household, for a lawfully present individual living in Queens County, New York, with an expected 2018 household income of \$66,717.56.

To apply for an exemption, you must file an application through the United States Department of Health and Human Services (HHS). Currently, NYSOH does not accept hardship exemption applications.

You will find the information you need to claim the exemption due to an appeal decision at <https://www.healthcare.gov/exemptions-tool/#/results/2017/details/eligible-based-on-appeal>. You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word “pending” in column “c” and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

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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&etumi ama wo obi a okyer& kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

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

Tiếng Việt (Vietnamese)

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

אידיש (Yiddish)

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

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