



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

Notice of Decision

Decision Date: June 16, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000005079

[REDACTED]

Dear [REDACTED],

On January 25, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's October 23, 2013 preliminary eligibility determination and December 16, 2013 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.

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NY State of Health Account ID: [REDACTED]
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Issues

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

Is your appeal of the last preliminary determination prepared on October 23, 2013 by New York State of Health (NYSOH) timely?

If your appeal can be addressed, did NYSOH properly allow you to receive advance payments of the premium tax credit (APTC) and cost-sharing reductions (CSR), based upon your final October 23, 2013 application, effective January 1, 2014?

Does NYSOH's Appeals Unit have authority to direct NYSOH to reimburse you for any penalties assessed against you by the IRS or Medicare?

Procedural History

On October 23, 2013, NYSOH received three applications for financial assistance, filed on your behalf.

Twice on October, 23, 2013, NYSOH issued preliminary eligibility determinations stating you were not eligible to purchase health coverage under Medicaid or Child Health Plus, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance. They also stated that you were not eligible to enroll in a qualified health plan at full cost through NYSOH. This was because, based on the information from federal and state data sources, you were already enrolled in or eligible for a public insurance program such as Medicare.

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After your third application was filed on October 23, 2013, NYSOH made a third preliminary eligibility determination stating that you were eligible to enroll in a qualified health plan with APTC and CSR, effective January 1, 2014.

On November 6, 2013, NYSOH sent you a notice, based upon your first two October 23, 2013 applications, stating that you were not eligible for Medicaid, not eligible to receive APTC or CSR, and not eligible to enroll in a qualified health plan at full cost. This was because you were already “Receiving (*sic*) Public MEC.”

On December 16, 2013, a notice was issued by NYSOH stating that you had previously been found eligible to enroll in a qualified health plan and to receive APTC, and that you had chosen a health plan. The notice did not include any explanation of your right to appeal, nor did it include an effective date.

On November 6, 2014, NYSOH issued a renewal notice, stating that a decision could not be made on your eligibility to renew your coverage, and directing you to update your account by December 15, 2014, or the financial assistance you were receiving might end.

You updated your address in your online account on December 16, 2014, and your eligibility was redetermined.

On December 17, 2014, December 22, 2014, and January 3, 2015, NYSOH issued notices of eligibility determination stating that you were conditionally eligible to purchase a qualified health plan at full cost effective January 1, 2015. The determinations indicated that you needed to confirm your termination of Medicare under Part A or Part B before February 1, 2015.

On January 27, 2015, NYSOH issued a notice of eligibility determination stating that you were eligible to purchase a qualified health plan only at full cost, because NYSOH had determined that you were already enrolled in or eligible for a public insurance program such as Medicare.

On November 3, 2015, you contacted NYSOH’s Account Review Unit to appeal the fact that you were permitted to enroll in a qualified health plan and receive APTC and CSR for 2014.

On January 25, 2016, 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 support the following findings of fact:

- 1) You testified that you were found eligible for Medicare Part A in February of 2009 as the result of an accident.
- 2) Your testimony supports and your account reflects that on October 23, 2013, you applied three times over a span of less than two hours to enroll in a health plan and to receive financial assistance through NYSOH.
- 3) In response to your first two applications on October 23, 2013, your account indicates that when the system made attempts to verify your coverage status, NYSOH's public minimum essential coverage service returned a response that it found you "Receiving (*sic*) Public MEC." The applications indicate that both were submitted by "██████" You were therefore found ineligible to enroll in coverage through NYSOH.
- 4) You were asked by both these applications if you were enrolled in public coverage, and you responded, "No" in both applications; however, your online account indicates that you were enrolled in Medicare effective February 1, 2012.
- 5) Two preliminary determinations were made in response to these first two applications, both of which stated you were not eligible to purchase health coverage through NYSOH.
- 6) On November 6, 2013, an eligibility redetermination notice was issued based upon your first two October 23, 2013 applications. It stated that you were not eligible for Medicaid, not eligible to receive tax credits or cost sharing reductions, and not eligible to enroll in a qualified health plan at full cost. This was because you were already receiving public "MEC."
- 7) However, on the third application submitted on October 23, 2013, also submitted by "██████," NYSOH's public minimum essential coverage service did not return a response that you were receiving public minimum essential coverage through Medicare. Because the service did not respond that you were already enrolled in Medicare, you were not asked again if you were in fact enrolled in public coverage.
- 8) There is no explanation in your account as to why, after twice correctly denying you any financial assistance through NYSOH based on your enrollment in Medicare, the system failed to check with the public minimum essential coverage service for enrollment in public coverage. The system then allowed you to receive advance payments of a premium tax credit.

- 9) The Appeals Unit requested an explanation from NYSOH's Division of Eligibility and Marketplace Integration regarding the failure of the public minimum essential coverage service to report your enrollment in Medicare, and this failure could not be explained.
- 10) Because the system did not receive contradictory information from NYSOH's public minimum essential coverage service in response to the third October 23, 2013 application, you were allowed to enroll in a qualified health plan with maximum advance payments of the premium tax credit of \$259.00 per month.
- 11) The third application you submitted on October 23, 2013 did not ask you if you were already enrolled in Medicare or any other publicly subsidized health care; instead, the application only asked if you had access to or enrollment in other coverage excluding public programs like Medicare, Medicaid, CHP, etc. As confirmed by NYSOH's Division of Eligibility and Marketplace Integration, the existence of coverage under Medicare is verified through outside governmental data sources, so it is considered necessary for the application only to ask applicants about other, private coverage. You were not asked to confirm that you did not have public coverage because the system failed to indicate that you did.
- 12) You testified that you are currently being penalized by the Internal Revenue Service and Medicare for what they see as a violation of their own regulations regarding having coverage under Medicare while at the same time collecting tax credits for a qualified health plan through NYSOH for all of 2014.
- 13) You are seeking a refund of premium payments made for your enrollment in a qualified health plan for all of 2014, or, in the alternative, that NYSOH notify the Internal Revenue Service of the enrollment information leading to your current fines.
- 14) You testified that you had been told by a NYSOH representative in November that you would have to make your appeal request to the Department of Financial Services. You were then told by that agency that you needed to appeal through the Department of Health.

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

Applicable Law and Regulations

Valid Appeal Requests

An applicant has the right to appeal to the Appeals Unit of NYSOH: (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) an eligibility determination for an exemption; (4) a failure by the Exchange to provide timely notice of an eligibility determination; and (5) the denial of a request for a special enrollment period (45 CFR § 155.505, 45 CFR § 155.420(d)).

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by the Marketplace (45 CFR § 155.520(b)(2); 18 NYCRR § 358-3.5(b)(1)).

Advance Payment of the Premium Tax Credit

Advance payments of the premium tax credit (APTC) are available to a person who is eligible to enroll in a qualified health plan (QHP) and (1) expects to have a household income between 138% and 400% of the applicable poverty level (FPL) (2) expects to file a tax return and claim a personal exemption deduction for a person who meets the eligibility requirements to enroll in a QHP, and (3) is not otherwise eligible for minimum essential coverage except through the individual market (see 45 CFR § 155.305(f), 42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

Cost-Sharing Reductions

Cost-sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a QHP through NYSOH, (2) meets the requirements to receive APTC, (3) is expected to have an annual household income that does not exceed 250% of the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested, and (4) is enrolled in a silver-level QHP (45 CFR § 155.300(a), 45 CFR § 155.305(g)(1)).

Minimum Essential Coverage

Minimum essential coverage includes most government-sponsored insurance plans such as Medicaid, Medicare, CHIP, Tricare, Veterans' Health Coverage, and eligible employer-sponsored insurance (26 USC §§ 36B(c)(2)(B) and 5000A(f)).

According to 26 USC § 5000A, which is part of the Internal Revenue Code, various government-sponsored plans provide minimum essential coverage,

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including the Medicare program under part A of title XVIII of the Social Security Act (26 USC § 5000A(f)(1)(A)(i), 42 USCS §§ 1395c et seq.).

End of Tax Year Reconciliation

At the end of a tax year, a person who elects to take APTC to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of advance tax credit received and the amount to which he or she is entitled. If a tax credit less than the actual entitlement is received, that individual may receive an income tax refund, or owe less in taxes. A person who received more tax credit than his maximum entitlement may owe the excess as an additional income tax liability (26 CFR § 1.36B-4(a)).

Legal Analysis

The first issue under review is whether your appeal of the last preliminary determination prepared on October 23, 2013 by New York State of Health (NYSOH) was timely.

The decision which found you eligible to receive advance payments of the premium tax credit (APTC) and cost-sharing reductions (CSR) for 2014 were made in December 2013, or earlier. Therefore, your appeal of any determination made with regard to 2014 would generally be considered untimely.

However, the period in which to file an appeal begins only after a written eligibility determination is issued. Because there is no documentation in your account that any such written determination was issued with regard to the final October 23, 2013 application, and because the December 16, 2013 notice does not comply with the requirements for a notice of eligibility determination, that period never began. Therefore, your appeal must be considered timely filed and will be addressed.

The second issue under review is whether NYSOH properly allowed you to enroll in a qualified health plan and receive APTC and CSR, based upon your final October 23, 2013 application, effective January 1, 2014.

On October 23, 2013, you personally completed and submitted three online applications for financial assistance through NYSOH. In your three applications, which were all submitted within a two hour period, you made various inconsistent statements. Statements that changed between the applications included statements about your marital status and your income. In each application, you denied receiving Social Security retirement or disability benefits.

On your first two applications on October 23, 2013, NYSOH's public minimum essential coverage service correctly returned a response that you were showing

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active coverage through Medicare with a start date of February 1, 2012. You were asked during each application process to confirm that you were enrolled in public coverage, and you twice denied that you were.

On your third application attempt on October 23, 2013, NYSOH's public minimum essential coverage data service did not return a response that you were already receiving public minimum essential coverage through Medicare; you were therefore not asked to confirm that you were enrolled in public coverage.

In the absence of the response from data sources showing your active coverage in Medicare, the system prepared a preliminary eligibility determination stating that you were eligible to enroll in a qualified health plan and to receive APTC and CSR, effective January 1, 2014. You were allowed to enroll in a plan.

There is no explanation why, when the response from data sources failed, you were allowed to enroll in any plan at all.

On December 16, 2013, a notice was issued by NYSOH reiterating that you had previously been found eligible to enroll in a qualified health plan, to receive a maximum of \$259.00 per month in APTC, and to receive CSR if you chose a silver level qualified health plan. This notice confirmed your enrollment in such a plan and provided details regarding your financial contributions, but failed to provide appeal rights or an effective date.

To be eligible for APTC, a person must not be eligible for minimum essential coverage outside of NYSOH. Minimum essential coverage includes most government-sponsored insurance plans, including Medicare Part A. You testified that you were enrolled in Medicare Part A prior to applying for coverage through NYSOH. To be eligible for CSR, you would have to be eligible for APTC.

You were not asked in the third October 23, 2013 application whether you were eligible for or enrolled in public coverage. However, it is noted that you denied in the prior two applications that you were. There is no explanation as to why the system failed to note the enrollment in Medicare in your third application of October 23, 2013.

You were advised in the November 6, 2013 notice that you would not be eligible for any financial subsidies through NYSOH if you were "Receiving Public MEC"; however, the term "MEC" was not explained.

Although it is clear now that you should not have been found eligible for either APTC or CSR through NYSOH in 2014 because of your enrollment in Medicare, the Appeals Unit has no way to verify that any error or misstatement on your part contributed to your incorrectly having been found eligible for APTC and CSR throughout 2014, or that you were aware that you were enrolled in Medicare for 2014. You were never asked about Medicare during the third application.

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Therefore, the Appeals Unit finds that although the inconsistencies in the three applications you submitted on October 23, 2013 would tend to show that your applications were not reliable, there is no explanation as to why NYSOH failed, in response to this application, to find you ineligible to enroll in coverage because of your prior enrollment in Medicare.

Ordinarily, an eligibility determination notice that was incorrect would be rescinded or modified by the Appeals Unit. However, in this case, you were covered by a private insurance company for all of 2014, and the premiums were subsidized by APTC. If the coverage were to retroactively cancelled, you would still be liable for any claims that have already been paid by your private carrier, Empire Blue Cross Blue Shield.

Your case will be returned to NYSOH to facilitate any possible remedies to this problem.

The third issue under review is whether NYSOH's Appeals Unit has any authority to direct NYSOH or any other entity to reimburse you for any penalties assessed against you by the IRS or Medicare.

You testified that you are currently being penalized by the Internal Revenue Service and Medicare for what they see as a violation of their own regulations regarding having coverage under Medicare while at the same time collecting APTC for a health plan through NYSOH for all of 2014.

As noted above, the Appeals Unit of NYSOH has only limited authority, and addressing penalties assessed against you by the IRS or Medicare is outside the authority that has been granted to the Appeals Unit. Therefore, the Appeals Unit cannot direct any entity to reimburse you for penalties or premiums related to your receipt of Medicare.

It is within the authority of the IRS and the Medicare system to determine whether you did or did not have personal knowledge of your own eligibility for and enrollment in Medicare at the time you submitted the three applications for coverage on October 23, 2013, and if penalties are appropriate.

Decision

The third preliminary determination made on October 23, 2013 was incorrect.

To the extent that it can be considered an eligibility determination, the December 16, 2013 notice reiterating that you had previously been found eligible to enroll in a qualified health plan and to receive APTC is incorrect.

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You did not qualify for advance premium tax credits and cost-sharing reductions through NYSOH in 2014.

Your case is RETURNED to NYSOH to assist you in deciding on any possible remedy to your incorrect enrollment in a plan through NYSOH and the receipt of APTC and CSR.

Effective Date of this Decision: June 16, 2016

How this Decision Affects Your Eligibility

You did not qualify for advance premium tax credits and cost-sharing reductions through NYSOH in 2014.

Your case is returned to NYSOH to assist you in deciding on any possible remedy to your incorrect enrollment in a plan through NYSOH and the receipt of APTC and CSR.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to U.S. Department of Health and Human Services 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 U.S. Department of Health and Human Services. 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 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:
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- By fax: 1-855-900-5557

Summary

The third preliminary determination made on October 23, 2013 was incorrect.

To the extent that it can be considered an eligibility determination, the December 16, 2013 notice reiterating that you had previously been found eligible to enroll in a qualified health plan and to receive APTC is incorrect.

You did not qualify for advance premium tax credits and cost-sharing reductions through NYSOH in 2014.

Your case is RETURNED to NYSOH to assist you in deciding on any possible remedy to your incorrect enrollment in a plan through NYSOH and the receipt of APTC and CSR.

Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545(a).

A Copy of this Decision Has Been Provided To:

