



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

## Notice of Decision

Decision Date: April 15, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000005168

[REDACTED]

Dear [REDACTED],

On February 1, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health's October 2, 2015 and October 28, 2015 eligibility determination notices.

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: April 15, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000005168



## Issues

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

Did NYSOH properly determine that you were eligible to enroll in a qualified health plan at full cost, effective November 1, 2015?

Did NYSOH properly determine that you were eligible to receive up to \$251.00 per month in advance payments of the premium tax credit, effective December 1, 2015?

Did NYSOH properly determine that you were eligible for the appropriate level of cost-sharing reductions as of December 1, 2015?

## Procedural History

On April 30, 2015 a NYSOH representative submitted an application seeking financial assistance on your behalf.

On May 1, 2015 NYSOH issued an eligibility determination notice, based on your April 30, 2015 application, stating that you were eligible to receive up to \$272.00 per month in advance payments of the premium tax credit (APTC), as well as cost-sharing reductions, effective June 1, 2015.

On May 12, 2015 NYSOH issued an enrollment confirmation notice stating that you were enrolled in Empire Blue Cross Blue Shield Silver with a premium responsibility of \$199.19 per month. Your coverage in this plan could begin as early as June 1, 2015 if you paid the first month's premium.

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On September 30, 2015 and October 1, 2015 a NYSOH representative changed your account to state that you were not seeking financial assistance, to add your children, and to submit an application on your and your children's behalf.

On October 2, 2015 NYSOH issued an eligibility determination notice, based on the October 1, 2015 application, stating that you and your children were eligible to purchase a qualified health plan at full cost, effective November 1, 2015.

Also on October 2, 2015 NYSOH issued an enrollment confirmation notice stating that you were enrolled in Empire Blue Cross Blue Shield Silver with a premium responsibility of \$471.19 per month. Your coverage in this plan could begin as early as June 1, 2015 if you paid the first month's premium. The notice further stated that your children needed to pick a health plan.

On October 27, 2015, after submitting three additional non-financial applications, a NYSOH representative changed your account to state that you and your children were seeking financial assistance and submitted two applications on your and your children's behalf.

On October 28, 2015 NYSOH issued an eligibility determination notice, based on your last October 27, 2015 application, stating that you were eligible to receive an APTC of up to \$251.00 per month and cost-sharing reductions, effective December 1, 2015. Your children were newly eligible to enroll in Child Health Plus, effective December 1, 2015.

Also on October 28, 2015 NYSOH issued an enrollment confirmation notice stating that you were enrolled in Empire Blue Cross Blue Shield Silver with a premium responsibility of \$220.19 per month and that your APTC would be applied to your premium effective November 1, 2015. The notice further stated that your children were enrolled in an Empire Blue Cross Blue Shield Child Health Plus plan effective December 1, 2015.

On November 12, 2015, you spoke with NYSOH's Account Review Unit and appealed the October 2, 2015 eligibility determination insofar as you were no longer eligible for APTC, and the October 28, 2015 eligibility determination insofar as it found you eligible for only \$251.00 in APTC and an increased deductible.

On January 26, 2016, a Hearing Officer from NYSOH's Appeals Unit called you to conduct your scheduled telephone hearing. You requested the hearing be adjourned to a different day.

On February 1, 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.

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## Findings of Fact

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

- 1) You testified that you are only appealing your coverage and eligibility.
- 2) The record reflects that NYSOH backdated your children's coverage in their Child Health Plus plan to November 1, 2015.
- 3) You testified that you plan on filing your 2015 taxes with a tax filing status of Head of Household and claim your two children as dependents on that tax return.
- 4) The record reflects that in the application that was submitted on April 30, 2015 you attested to an annual household income of \$29,740.00. You testified that this is the amount of income you received in 2015.
- 5) The record reflects that on May 11, 2015 you were enrolled into an Empire Blue Cross Blue Shield Silver plan with a plan code of [REDACTED], based on this you had had a \$0.00 deductible and \$1000 out-of-pocket maximum (tracking number [REDACTED]).
- 6) You testified that in the beginning of October 2015 you contacted Empire Blue Cross Blue Shield to inquire about adding your children to your health insurance plan. You further testified that you were then placed into a conference call between yourself, your health plan, and NYSOH.
- 7) The record reflects that in the application that was submitted on October 1, 2015 you were not seeking financial assistance through NYSOH but you and your children were seeking insurance coverage.
- 8) You testified that you did not give the NYSOH representative permission to change your application from financial assistance to non-financial.
- 9) You testified that after your NYSOH account was updated, you received a bill from Empire Blue Cross Blue Shield for over \$2,000.00.
- 10) You testified that you contacted NYSOH after receiving the bill to try and understand what happened. You were told that as a result of your application being marked as non-financial, Empire Blue Cross Blue Shield had retroactively cancelled the APTC you had been eligible for from June-October 2015.
- 11) The record reflects that in the application that was submitted on October 27, 2015 you again were seeking financial assistance through NYSOH and you attested to an annual household income of \$32,000.00.

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- 12) You testified that you were told by a NYSOH representative that you had to increase your income to \$32,000.00 or else your children would not be insured through NYSOH.
- 13) The record reflects that when your account was update on October 27, 2015 the plan code of your Empire Blue Cross Blue Shield Silver plan was updated to [REDACTED] with a \$250.00 deductible and \$2000.00 out-of-pocket maximum.
- 14) You testified that Empire Blue Cross Blue Shield is not covering medical bills that you incurred in November and December 2015.
- 15) You testified that there is confusion between yourself and Empire Blue Cross Blue Shield as to the amount of outstanding premiums you may owe them from June 1, 2015 through December 31, 2015.

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

## **Applicable Law and Regulations**

### Redetermination During a Benefit Year

When a redetermination is issued as a result of a change in an applicant's information, NYSOH must generally make that redetermination effective on the first day of the month following the date NYSOH is notified of the change (45 CFR § 155.330 (f)(1)(ii)). However, NYSOH may determine that its policy will be that any change made after the 15<sup>th</sup> of any month will not be effective until the first of the next following month (45 CFR § 155.330 (f)(2)), and it has elected to do so (13 OHIP/ADM-03).

### Advance Payments of Premium Tax Credit

Advance payments of the premium tax credit (APTC) are generally 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)).

The maximum amount of APTC that can be authorized equals:

- 1) the cost of the health insurance premium for the taxpayer's coverage family in the second lowest cost silver plan offered through NY State of Health in the county where the taxpayer resides

*minus*

- 2) the taxpayer's expected contribution amount

(see 26 USC § 36B, 26 CFR § 1.36B-3).

The taxpayer's expected contribution amount is the amount that the taxpayer is expected to spend on health insurance premiums. The expected contribution for 2015 is set by federal law at 2.01% to 9.56% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc. 2014-37).

In an analysis of APTC eligibility, the determination is based on the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested (45 CFR §§ 155.300(a), 155.305(f)(1)(i)). On the date of your application, that was the 2014 FPL, which is \$19,790.00 for a three-person household (79 Fed. Reg. 3593, 3593).

For annual household income in the range of at least 150% but less than 200% of the 2014 FPL, the expected contribution is between 4.02% and 6.34% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

### 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 federal poverty level (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)).

The FPL "for the benefit year for which coverage is requested" (45 CFR § 155.305(g)(1)(i)(C)) on the date of your applications was the 2014 FPL, which was \$19,790.00 for a three-person household (79 Fed. Reg. 3593).

### Levels of Cost-Sharing Reductions

NYSOH directs insurers to offer three variations of silver-level qualified health plans, in addition to a full-cost plan, which provide varying levels of financial assistance, called "cost-sharing reductions," using the following categories:

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(1) Those individuals with an annual household income that is at least 100% but less than or equal to 150 % of the federal poverty level (FPL),

(2) Those individuals with an annual household income that is greater than 150% but less than or equal to 200% of the FPL, and

(3) Those individuals with an annual household income that is greater than 200 but less than or equal to 250% of the FPL (see 45 CFR § 155.305(g)(2)).

(The categories for policies that cover more than one person are slightly different (45 CFR § 155.305(g)(3)), but those differences are not relevant in the current case).

Each category listed above gives a different level of cost-sharing reductions, so that you will receive financial assistance based on the level of your income (see 45 CFR § 155/420).

These subsidies reduce the deductibles, copayments, coinsurance, and other out-of-pocket charges that people eligible for cost-sharing reductions pay when they use benefits covered by their health plan.

#### Mid-benefit Year Change in Level of Cost-Sharing Reductions

If an individual's eligibility for cost-sharing reductions changes in the middle of a benefit year and that individual stays in the same qualified health plan (QHP), the health plan must ensure that any cost sharing already paid by the individual that year is taken into account when the level of future cost sharing that year is calculated (45 CFR § 156.425(b)).

## **Legal Analysis**

The first issue under review is whether NYSOH properly determined that you were eligible to enroll in a qualified health plan at full cost, effective November 1, 2015.

The record reflects that on April 30, 2015 you submitted an application to NYSOH seeking financial assistance. On May 1, 2015 NYSOH issued an eligibility determination notice, stating that you were eligible to receive APTC of up to \$272.00 per month and cost-sharing reductions, effective June 1, 2015.

The record reflects that on May 11, 2015 you were enrolled into Empire Blue Cross Blue Shield Silver with a plan code of [REDACTED], with a \$0.00 deductible and a \$1000 out-of-pocket maximum. This coverage was effective as of June 1, 2015.

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You testified that in the beginning of October 2015 you contacted Empire Blue Cross Blue Shield to inquire about adding your children to your health insurance plan. On October 1, 2015, a NYSOH representative changed your account to not seeking financial assistance, added your children, and submitted an application on your and your children's behalf. On October 2, 2015 NYSOH issued an eligibility determination notice stating that you were now eligible for a qualified health plan at full cost, effective November 1, 2015.

You testified that after your NYSOH account was updated, you received a bill from Empire Blue Cross Blue Shield for over \$2,000.00 because Empire Blue Cross Blue Shield had retroactively cancelled the APTC you had been eligible for from June-October 2015.

When an individual changes information in their application before the 15th of any month, NYSOH must make the redetermination that results from the change effective the first day of the next following month.

Since your application was updated on October 1, 2015 any changes to your account should not have had any effect on your eligibility or enrollment prior to November 1, 2015. Furthermore, you testified that you did not give the NYSOH representative permission to change your application from one seeking financial assistance to non-financial. You were not even aware that this change had taken place or that it would have an effect on what premiums Empire Blue Cross Blue Shield had previously billed you.

The October 2, 2015 eligibility determination was improper because it resulted in your eligibility for APTC being changed retroactively by your health plan and because you credibly testified that you did not authorize NYSOH to submit a non-financial application. It is therefore RESCINDED.

The final issues under review are whether NYSOH properly determined that you were eligible to receive an advance premium tax credit of up to \$251.00 per month and whether you were eligible for the appropriate level of cost-sharing reductions as of December 1, 2015.

On October 27, 2015, your account was updated again by a NYSOH representative to state that you were seeking financial assistance through NYSOH and that you had an annual household income of \$32,000.00.

In reliance on the information entered into your NYSOH account on October 27, 2015, NYSOH issued an eligibility determination notice stating that you were eligible to receive an APTC of up to \$251.00 per month and cost-sharing reductions. The record reflects that the plan code of your Empire Blue Cross Blue Shield Silver plan was also updated to [REDACTED] with a \$250.00 deductible and \$2000.00 out-of-pocket maximum.

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In order to determine an individual's eligibility for financial assistance through NYSOH, an individual must attest to what their annual expected household income will be for the tax year in which they are seeking enrollment.

You testified that you were told by a NYSOH representative that you had to increase your income to \$32,000.00 or else your kids would not be insured through NYSOH. You further testified that the income that was listed on your April 30, 2015 application of \$29,740.00 was an accurate representation of what your annual household income for 2015 is.

Since NYSOH increased your income to an amount that was not accurate, the October 28, 2015 eligibility determination is RESCINDED.

NYSOH improperly submitted applications on your behalf with inaccurate information without your authority. The pertinent findings that resulted from those applications have now been rescinded. The eligibility determination notice that was issued on May 1, 2015, finding you eligible to receive APTC of up to \$272.00 per month and cost-sharing reductions, effective June 1, 2015 and the enrollment confirmation notice issued on May 11, 2015 stating that you were enrolled into Empire Blue Cross Blue Shield Silver (plan code [REDACTED]) are reinstated.

Therefore, your case is RETURNED to (1) restore your enrollment in Empire Blue Cross Blue Shield Silver plan with a plan code of [REDACTED] from June 1, 2015 through December 31, 2015, (2) restore your eligibility for \$272.00 per month in APTC from June 1, 2015 through December 31, 2015, (3) ensure that the amount you paid towards your plan deductible and maximum out of pocket costs from June 1, 2015 through December 31, 2015 is honored, and (4) work with your plan to ensure a proper accounting of any premium amounts that you may still owe after the above corrections are made.

Please note, that you testified that you are only appealing your coverage and eligibility. This decision will have no effect on your children's eligibility for or enrollment in Child Health Plus as of November 1, 2015.

## **Decision**

The October 2, 2015 and the October 28, 2015 eligibility determination notices are RESCINDED, as they relate to your eligibility only.

Your case is RETURNED to (1) restore your enrollment in Empire Blue Cross Blue Shield Silver plan with a plan code of [REDACTED] from June 1, 2015 through December 31, 2015, (2) restore your eligibility for \$272.00 per month in APTC from June 1, 2015 through December 31, 2015, (3) ensure that the amount you paid towards your plan deductible and maximum out of pocket

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costs from June 1, 2015 through December 31, 2015 is honored, and (4) work with your plan to ensure a proper accounting of any premium amounts that you may still owe after the above corrections are made.

**Effective Date of this Decision:** April 15, 2016

## **How this Decision Affects Your Eligibility**

NYSOH improperly submitted applications with inaccurate information without your authority. Both of the eligibility determinations that resulted from those applications have now been rescinded. The eligibility determination notice that was issued on May 1, 2015, finding you eligible to receive APTC of up to \$272.00 per month and cost-sharing reductions, effective June 1, 2015 and the enrollment confirmation notice issued on May 11, 2015 stating that you were enrolled into Empire Blue Cross Blue Shield Silver (plan code [REDACTED]) are reinstated.

This decision has no effect on your children's eligibility for or enrollment in Child Health Plus as of November 1, 2015.

This decision has no effect on your eligibility for or enrollment in coverage beginning January 1, 2016.

## **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

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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  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

The October 2, 2015 and the October 28, 2015 eligibility determination notices are RESCINDED, as they relate to your eligibility only.

Your case is RETURNED to (1) restore your enrollment in Empire Blue Cross Blue Shield Silver plan with a plan code of [REDACTED] from June 1, 2015 through December 31, 2015, (2) restore your eligibility for \$272.00 per month in APTC from June 1, 2015 through December 31, 2015, (3) ensure that the amount you paid towards your plan deductible and maximum out of pocket costs from June 1, 2015 through December 31, 2015 is honored, and (4) work with your plan to ensure a proper accounting of any premium amounts that you may still owe after the above corrections are made.

This decision has no effect on your children's eligibility for or enrollment in Child Health Plus as of November 1, 2015.

This decision has no effect on your eligibility for or enrollment in coverage beginning January 1, 2016.

### **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:**

