



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

Notice of Decision

Decision Date: July 1, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006145

[REDACTED]

Dear [REDACTED],

On May 19, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's January 12, 2016 eligibility determination notices.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of the 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 the NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification Number at the top of this letter.

Legal Authority

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(b).

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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Issues

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

Did NYSOH properly determine that your spouse is not qualified to enroll in health coverage through NYSOH because of their citizenship or immigration status as of January 11, 2016?

Did the NYSOH properly determine that you are eligible to receive up to \$0.00 monthly of advance premium tax credits as of January 11, 2016?

Did the NYSOH properly determine that you are not eligible for cost-sharing reductions as of January 11, 2016?

Procedural History

On January 11, 2016, you updated your NYSOH account. NYSOH rendered a preliminary eligibility determination that you are eligible for up to \$0.00 monthly of advance premium tax credit, and your spouse is not eligible to purchase health coverage through NYSOH.

Also on January 11, 2016, you spoke to the NYSOH Account Review Unit and requested an appeal insofar as: (1) Your spouse being determined not eligible for health insurance through NYSOH; (2) The amount of financial assistance you were determined eligible to receive.

On January 12, 2016, NYSOH issued an eligibility determination notice that you are eligible for up to \$0.00 monthly of advance premium tax credits and not eligible for cost-sharing reductions.

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Also on January 12, 2016, NYSOH issued an eligibility determination notice that your spouse is not qualified to enroll through in coverage through NYSOH because their citizenship or immigration status is unable to be verified.

On May 19, 2016 you had a telephone hearing with a Hearing Officer from the NYSOH's Appeals Unit. The record was developed during the hearing. The hearing record was left open until May 23, 2016 to allow you to submit: (1) your 2015 Form 1040, and (2) documentation indicating your spouse's current immigration status.

On May 19, 2016, you uploaded your 2015 Form 1040 U.S. Individual Income Tax Return and 2015 Form 1040 Schedule C to your NYSOH account (Documents [REDACTED], [REDACTED]).

On May 23, 2016, you uploaded a one-page statement regarding your spouse's immigration documentation (Document [REDACTED]).

These documents have been marked collectively as "Appellant Exhibit A" and "Appellant Exhibit B", and they have been made part of the record. The record is now complete and closed.

Findings of Fact

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

1. According to your January 11, 2016 application and testimony, you are applying for health insurance through NYSOH for yourself, your spouse and two of your children.
2. According to your NYSOH account and testimony, you plan on filing a 2016 federal income tax return with the tax status of married filing jointly, with your spouse, and will be claiming three dependents on that tax return.
3. According to your January 11, 2016 application, your 2016 expected annual household income is \$105,400.01.
4. You testified that your adjusted gross income (2015 FORM 1040 Line 37) from 2015 is a better representation of your 2016 expected household income.
5. According to your 2015 FORM 1040 U.S. Individual Income Tax Return, your household's adjusted gross income in 2015 was \$81,989.00 (Appellant Exhibit A).
6. You currently reside in Suffolk County, NY.

7. According to your January 11, 2016 NYSOH application, your spouse's immigration/citizenship status is "Other."
8. You testified that your spouse entered the United States with student visa, which originally expired in 1999 and was renewed until [REDACTED], 2005.
9. You were unable to locate a copy of your spouse's working visa from 2002 (Appellant Exhibit B).
10. You testified that your spouse does not have immigration documentation that is current.
11. You testified that you have contacted an attorney to assist your spouse in obtaining an immigration status. Currently, you have not started the process to obtain an immigration status for your spouse, and there are no applications that are pending.

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

Applicable Law and Regulations

Citizenship and Immigration Status

To enroll in a qualified health plan through the Marketplace, an applicant must be a citizen or national of the United States, or a non-citizen lawfully present in the United States and reasonably expecting 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)).

The Marketplace must verify or obtain information in order to determine that an applicant is eligible for enrollment in a qualified health plan, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

Modified Adjusted Gross Income

The Marketplace 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)).

Advance Premium Tax Credit:

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The advance premium tax credit is available to a person who is eligible to enroll in a qualified health plan and (1) expects to have a household income between 138% and 400% of the 2015 federal poverty level; (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 qualified health plan; 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 the 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).

For annual household income in the range of at least 300% but less than 400% of the 2015 FPL, the expected contribution is between 9.66% and 9.66% of the household income (see 26 CFR § 1.36B-3T(g)(1), (IRS Rev. Proc. 2014-62)).

In an analysis of APTC eligibility, the determination is based on the FPL "for the benefit year for which coverage is requested. (45 CFR § 155.305(f)(1)(i)). On the date of your application, that was the 2015 FPL, which is \$28,410.00 for a five-person household (80 Fed. Reg. 3236, 3237).

Cost-Sharing Reductions:

Cost-sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a QHP through the Marketplace, (2) meets the requirements to receive advanced premium tax credits, (3) is expected to have an annual household income that does not exceed 250 percent of the FPL for the plan year coverage is requested and (4) is enrolled in a silver-level QHP (45 CFR § 155.305(g)(1)).

End of Tax Year Reconciliation

At the end of a tax year, a person who elects to take the advance premium tax credit to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to the NYSOH and their actual income for that year. A person who received less tax

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credit than their maximum entitlement, based on gross income, may receive an income tax refund, or owe less in taxes. A person who received more tax credit than his maximum entitlement will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

Legal Analysis

The first issue under review is whether NYSOH properly determined that your spouse is not qualified to enroll in health coverage through NYSOH because of their citizenship or immigration status as of January [REDACTED], 2016.

An individual seeking coverage through NYSOH must have, and be able to demonstrate, satisfactory citizenship or immigration status. In the application that you submitted to NYSOH on January [REDACTED], 2016, your citizenship/immigration status was entered as "Other."

You credibility testified that your spouse entered the United States on a student visa that expired on [REDACTED] 2005. Furthermore, the record shows that you do not have any other current documentation to show your spouse's immigration status.

Since NYSOH did not have any further information on your immigration status, your spouse was properly found not eligible to enroll in health coverage through NYSOH. Therefore, the January 12, 2016, eligibility determination notice stating that your spouse is not qualified to enroll through in coverage through NYSOH because their citizenship or immigration status is unable to be verified is **AFFIRMED**.

The second issue is whether the Marketplace properly determined you eligible for up to \$0.00 monthly of APTC.

According to the record, you have a five-person tax household. You expect to file your 2016 federal income tax return with the tax status of married filing jointly, with your spouse, and expect to claim three dependents on that return.

You reside in Suffolk County, where the second lowest cost silver plan that is available through NYSOH for an individual costs \$385.25 per month.

The January 12, 2016 eligibility determination was based on an annual household income of \$105,400.01, which was the amount attested to as your total household's expected annual income for 2016.

An annual household income of \$105,400.01 equals 371.0% of the 2015 FPL for a five-person household. At 371.0% of the FPL, the expected contribution to the cost of the health insurance premium is 9.66% of income, or \$848.47 per month.

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The maximum amount of APTC that can be awarded equals the cost of the second lowest cost silver plan in your county (\$385.25 per month) minus your expected contribution (\$848.47 per month), which equals \$0.00 per month. Therefore, the Marketplace correctly computed your APTC to be \$0.00 per month.

The second issue is whether the Marketplace properly determined you eligible for cost-sharing reductions.

Cost-sharing reductions are available to a person who has an annual household income no greater than 250% of the FPL. Since your annual household income is 371.0% of the FPL for purposes for APTC and cost-sharing reductions, you were correctly found not eligible for cost-sharing reductions.

Since the January 12, 2016 eligibility determination properly stated that you are eligible for APTC of up to \$0.00 per month and not eligible for cost-sharing reductions, it is correct and is AFFIRMED.

You testified that your adjusted gross income from 2015 is a better representation of your 2016 expected household income. The record indicates that your adjusted gross income in 2015 was \$81,989.00. The record contains sufficient testimony and documentation to return your case to NYSOH to recalculate your financial assistance. Your case is RETURNED to NYSOH to recalculate your eligibility for financial assistance based on five-person household, living in Suffolk County with an expected 2016 household income of \$81,989.00.

Decision

The January 12, 2016 eligibility determination notices are AFFIRMED.

Your case is RETURNED to NYSOH to recalculate your eligibility for financial assistance based on five-person household, living in Suffolk County with an expected 2016 household income of \$81,989.00.

Effective Date of this Decision: July 1, 2016

How this Decision Affects Your Eligibility

Your spouse remains not eligible to purchase health coverage through NYSOH.

You remain eligible to receive an advance premium tax credit of up to \$0.00 per month and not eligible for cost-sharing reductions.

Any difference between the advance premium tax credit (based on your expected 2016 income) and the premium tax credit you can claim on your 2016 federal tax return (based on your actual 2016 income) should be reconciled on your 2016 federal tax return.

Your case is RETURNED to NYSOH to recalculate your eligibility for financial assistance based on five-person household, living in Suffolk County with an expected 2016 household income of \$81,989.00.

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 after the date 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 date 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:
NY State of Health Appeals
P.O. Box 11729
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- By fax: 1-855-900-5557

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Summary

Your spouse remains not eligible to purchase health coverage through NYSOH.

You remain eligible to receive an advance premium tax credit of up to \$0.00 per month and not eligible for cost-sharing reductions.

Any difference between the advance premium tax credit (based on your expected 2016 income) and the premium tax credit you can claim on your 2016 federal tax return (based on your actual 2016 income) should be reconciled on your 2016 federal tax return.

Your case is RETURNED to NYSOH to recalculate your eligibility for financial assistance based on five-person household, living in Suffolk County with an expected 2016 household income of \$81,989.00.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

