



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

## Notice of Decision

Decision Date: May 31, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000006391

[REDACTED]

Dear [REDACTED],

On May 23, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health's January 13, 2016 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  
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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## Decision

Decision Date: May 31, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000006391

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## Issues

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

Did NY State of Health (NYSOH) properly determine that you and your spouse were newly conditionally eligible to receive up to \$623.00 per month in advance payments of the premium tax credit, effective February 1, 2016?

Did NYSOH determine that you and your spouse were newly conditionally eligible for the correct level of cost-sharing reductions, effective February 1, 2016?

## Procedural History

On January 12, 2016, you updated your NYSOH account and your income information several times.

On January 13, 2016, NYSOH issued an eligibility determination notice based on the information contained in the last January 12, 2016 application, stating that you and your spouse were newly conditionally eligible to receive up to \$623.00 per month in advance payments of the premium tax credit (APTC), effective February 1, 2016. The notice also stated that you and your spouse were newly conditionally eligible to receive cost-sharing reductions (CSR), if you enrolled in a silver level qualified health plan (QHP), effective February 1, 2016.

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Also on January 13, 2016, NYSOH also issued a notice confirming your enrollment and your spouse's enrollment in a couple's silver-level QHP, with a \$491.26 monthly premium, with an enrollment start date of February 1, 2016.

On January 22, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of the January 13, 2016 eligibility determination as it related to your eligibility and your spouse's eligibility.

On May 23, 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 supports the following findings of fact:

- 1) You testified that you expect to file your 2016 taxes with a tax filing status of married filing jointly. You will claim two dependents on that tax return.
- 2) The application that was submitted on January 12, 2016 listed annual household income of \$48,525.00, consisting of \$20,025.00 you earn from your employment and \$28,500.00 your spouse earns from employment. You testified that this amount was correct.
- 3) Your application states that you will not be taking any deductions on your 2016 tax return, and you testified that this is correct.
- 4) You testified that you filed this appeal because you want more financial assistance with your premium payment and would like to have a lower deductible.
- 5) You testified that you only paid "fifty-something" in monthly premiums last year, and now you are paying "five hundred something" this year.
- 6) The record reflects that you were enrolled in a QHP, along with your spouse, your two daughters, and your youngest son, at a monthly premium of \$52.53, after the application of a \$1434.89 monthly tax credit, effective January 1, 2015.
- 7) The record reflects that your daughters are no longer included in your household, and your testimony confirmed this.
- 8) The record also reflects that your youngest son is now enrolled in Medicaid.

- 9) The record reflects that NYSOH issued a notice on May 3, 2016 which stated that your spouse was no longer eligible to enroll in coverage through NYSOH because of a purported failure to provide documentation of his citizenship status to NYSOH.
- 10) The record reflects that, also on May 3, 2016, NYSOH issued an eligibility determination stating in pertinent part that you were eligible to purchase a full-cost QHP, and not eligible for a tax credit or cost-sharing reductions, because of a purported failure to provide citizenship documentation to NYSOH. This notice had an effective date of June 1, 2016.
- 11) The record reflects that your plan changed to an individual silver-level QHP, with a monthly premium of \$557.13, and a \$2,250.00 deductible, as of June 1, 2016.
- 12) Your application states that you live in Dutchess County.

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

## **Applicable Law and Regulations**

### 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 federal 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 NYSOH in the county where the taxpayer resides

*minus*

- 2) the taxpayer's expected contribution amount

(see 26 USC § 36B, 26 CFR § 1.36B-3).

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The taxpayer's expected contribution amount is the amount that the taxpayer is expected to spend on health insurance premiums. The expected contribution for 2016 is set by federal law at 2.03% to 9.66% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc. 2014-37, IRS Rev. Proc. 2014-62).

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 2015 FPL, which is 24,250.00 for a four-person household (80 Federal Register 3236, 3237).

For annual household income in the range of at least 200% but less than 250% of the 2015 FPL, the expected contribution is between 6.41% and 8.18% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37, IRS Rev. Proc. 2014-62).

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on NYSOH application) with their actual income (stated on their federal income tax return). Those who take less tax credit in advance than they claim on the tax return may get the rest of it as an income tax refund or have their tax bill reduced. Those who take more tax credit in advance than they can claim on their tax return will owe the difference as additional income taxes (26 CFR § 1.36B-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)).

### 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" (CSR), using the following categories:

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

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

(3) Those 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), 45 CFR § 155.305(g)(3)).

Each category listed above gives a different level of CSR, so that you would receive different amounts of financial assistance based on the level of your income (see 45 CFR § 156.420). These subsidies reduce the deductibles, copayments, coinsurance, and other out-of-pocket expenses that people eligible for CSR 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)).

#### De Novo Review

NYSOH Appeals Unit must review each appeal de novo and "consider all relevant facts and evidence adduced during the appeals process" (45 CFR § 155.535(f)). "*De novo review* means a review of an appeal without deference to prior decisions in the case" (45 CFR § 155.500).

#### NYSOH Eligibility Determinations

When an individual applies for insurance through NYSOH, NYSOH must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 CFR § 435.1200(b)(3)(iii)).

NYSOH is required to provide "timely written notice to an applicant of any eligibility determination" made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual NYSOH (45 CFR § 155.310(g)).

An applicant or enrollee has the right to appeal an eligibility determination or redetermination or a failure by NYSOH to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

## Legal Analysis

The first issue under review is whether NYSOH properly determined that you and your spouse were eligible for an APTC of up to \$623.00 per month, effective February 1, 2016.

The application that was submitted on January 12, 2016 listed an annual household income of \$48,525.00, and the eligibility determination relied upon that information.

You are in a four-person household. You expect to file your 2016 income taxes as married filing jointly and will claim two dependents on that tax return.

You reside in Dutchess County, where the second lowest cost silver plan available for a couple through NYSOH costs \$882.58 per month.

An annual income of \$48,525.00 is 200.10% of the 2015 FPL for a four-person household. At 200.10% of the FPL, the expected contribution to the cost of the health insurance premium is 6.41% of income, or \$259.20 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through NYSOH for couple in your county (\$882.58 per month) minus your expected contribution (\$259.20 per month), which equals \$623.38 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined you and your spouse to be eligible for up to \$623.00 per month in APTC.

You testified that you do not understand why you now have a premium of over five hundred dollars, when you used to have a premium of fifty dollars for the same plan.

According to the record, beginning January 1, 2015, your monthly premium for your family's silver-level QHP was only \$52.53. However, you had six people in your household at the time, and five people enrolled in your QHP, with a combined tax credit of \$1,434.89. When you updated your application on January 12, 2016, your household size had decreased from six to four, and your income had increased. As a result of these changes, the amount of tax credit you were eligible for decreased, and you were left with a premium responsibility of \$491.26.

Moreover, as of June 1, 2016, your premium is now \$557.13 per month because, according to the record, you are now enrolled in an individual silver-level QHP at full cost, with no tax credit being applied. According to the notices contained in the record, this is because your spouse allegedly did not submit documentation of his citizenship status, so he is no longer eligible for coverage through NYSOH as of June 1, 2016. Therefore, no premium will be spent through the Marketplace for

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his coverage, your overall premium responsibility goes down, and you are no longer eligible for a tax credit as of June 1, 2016.

The second issue under review is whether NYSOH properly determined that your family was eligible for the appropriate level of CSR, with maximum out of pocket costs of \$8,000.00 per year, effective February 1, 2016.

CSR are available to a household with income no greater than 250% of the FPL. After you updated your NYSOH application on January 12, 2016, NYSOH issued a corresponding notice of eligibility redetermination, including a determination that you and your spouse were eligible for CSR. However, this notice did not provide any determination with respect to the specific level of CSR for which you were eligible.

Although NYSOH did not issue a timely notice of eligibility determination with respect to the level of your eligibility for cost-sharing reduction (CSR), this does not prevent the Appeals Unit from reaching the merits of your case on your appeal request. Under 45 CFR § 155.505(b), you are as entitled to appeal a NYSOH failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Also, since the Appeals Unit reviews of NYSOH determinations on a de novo basis, no deference would have been granted to that written determination had it been issued before you filed your appeal.

In the application that was submitted on January 12, 2016 you attested to an expected yearly income of \$48,525.00. The eligibility determination relied upon that information.

An annual income of \$48,525.00 is 200.10% of the 2015 federal poverty level (FPL) for a four-person household. Since your household met the non-financial requirements and had a household modified adjusted gross income (MAGI) that was at or below 250% of the FPL for the applicable family size, you were correctly found eligible for CSR effective February 1, 2016. At that percentage of FPL, you were eligible for the third level of CSR described in federal regulations.

You testified that one of the reasons you appealed the January 13, 2016 eligibility determination is that you feel the deductible is now too high, compared to what you were paying last year.

The record reflects that you were enrolled in a silver-level QHP with your spouse and three of your children, effective January 1, 2015. Your family was also found eligible for CSR as of January 1, 2015; however, the record reflects that your household income at that time was at 156.25% of the FPL. Therefore, your family was eligible for the second level of CSR, which provides more assistance with out-of-pocket costs than the third level, for which you and your spouse became eligible effective February 1, 2016. According to the record, your maximum out-of-pocket expense beginning January 1, 2015 was \$4,000.00 for your family, versus the \$8,000.00 maximum that went into effect as of February 1, 2016.

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Therefore, your maximum out-of-pocket expenses, including copays and deductibles, appropriately increased as of the January 13, 2016 eligibility determination notice.

However, as of June 1, 2016, when you lost your eligibility for APTC and CSR, your health insurance plan was required to take into account any out-of-pocket expenses you had already paid for that year.

Therefore, your case is RETURNED to NYSOH to determine whether your plan complied with the requirements of the CSR level for which your household was found eligible effective February 1, 2016, and to assist you in confirming that your health insurance plan properly took into consideration your prior expenses when your level of CSR was redetermined effective June 1, 2016.

The January 13, 2016 eligibility determination notice stating that, based on the information you provided, you and your spouse were eligible for up to \$623.00 per month in APTC, and eligible for CSR, is correct and is AFFIRMED.

Whether the change in your eligibility that resulted in your tax credit ending as of June 1, 2016 was correct has not been appealed and is therefore not addressed in this decision.

## **Decision**

The January 13, 2016 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to determine whether the plan you and your spouse were enrolled in as of February 1, 2016 complied with the requirements of the CSR level for which your household was eligible, and to assist you in confirming that your health insurance plan properly took into effect the out-of-pocket expenses you had already incurred when your level of CSR was redetermined effective June 1, 2016.

**Effective Date of this Decision:** May 31, 2016

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

You and your spouse were eligible for up to \$623.00 in APTC as of your January 12, 2016 application.

You and your spouse were eligible for the third level of cost-sharing reductions as of your January 12, 2016 application.

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Your case is being sent back to NYSOH to determine whether the plan you and your spouse were enrolled in effective February 1, 2016 complied with the requirements of the CSR level for which your household was eligible so that you received the appropriate level of assistance with your deductible and out-of-pocket expenses.

NYSOH will assist you in confirming that your health insurance plan properly took into effect the out-of-pocket expenses you had already incurred when your level of CSR was redetermined effective June 1, 2016.

This decision does not address or change your current eligibility, or your spouse's currently eligibility, for financial assistance through NYSOH.

### **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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Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The January 13, 2016 eligibility determination notice is **AFFIRMED**.

Your case is **RETURNED** to NYSOH to determine whether the plan you and your spouse were enrolled in as of February 1, 2016 complied with the requirements of the CSR level for which your household was eligible, and to assist you in confirming that your health insurance plan properly took into effect the out-of-pocket expenses you had already incurred when your level of CSR was redetermined effective June 1, 2016.

You and your spouse were eligible for up to \$623.00 in APTC as of your January 12, 2016 application.

You and your spouse were eligible for the third level of cost-sharing reductions as of your January 12, 2016 application.

Your case is being sent back to NYSOH to determine whether the plan you and your spouse were enrolled in effective February 1, 2016 complied with the requirements of the CSR level for which your household was eligible so that you received the appropriate level of assistance with your deductible and out-of-pocket expenses.

NYSOH will assist you in confirming that your health insurance plan properly took into effect the out-of-pocket expenses you had already incurred when your level of CSR was redetermined effective June 1, 2016.

This decision does not address or change your current eligibility, or your spouse's currently eligibility, for financial assistance through NYSOH.

## **Legal Authority**

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**A Copy of this Decision Has Been Provided To:**

