



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

## Notice of Decision

Decision Date: July 21, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000006393

[REDACTED]

Dear [REDACTED]

On July 8, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's December 22, 2015 eligibility redetermination and enrollment notices and the April 21, 2016 disenrollment confirmation 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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## Decision

Decision Date: July 21, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000006393

[REDACTED]

## 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 your enrollment in a qualified health plan at full cost was effective January 1, 2016 and advance payments of the premium tax credit were to be applied no earlier than March 1, 2016?

Did NYSOH properly determine that you were disenrolled from your qualified health plan effective May 31, 2016, and not April 30, 2016?

## Procedural History

On October 24, 2015, NY State of Health (NYSOH) issued a notice that it was time to renew your health insurance for the upcoming coverage year. That notice stated that based on information from federal and state sources, NYSOH could not make a decision about whether you would qualify for financial help paying for your health coverage, and that you needed to update your account by December 15, 2015 or you might lose the financial assistance you were currently receiving.

No updates were made to your account by December 15, 2015.

On December 22, 2015, NYSOH issued an eligibility redetermination notice that stated you were newly eligible to purchase a qualified health plan at full cost, effective January 1, 2016, because you had not responded to the renewal notice and updated your NYSOH account on time.

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Also on December 22, 2015, NYSOH issued an enrollment notice confirming that you were enrolled in a Healthfirst Platinum plan at the full cost of \$612.60 monthly, effective January 1, 2016.

On January 15, 2016, NYSOH received your updated application for health insurance.

On January 16, 2016, NYSOH issued an eligibility redetermination notice stating that you were newly eligible to receive up to \$234.00 per month in advance payment of the premium tax credits (APTC) and, if you selected a silver-level qualified health plan, were eligible for cost-sharing reductions. This eligibility was effective February 1, 2016.

Also on January 16, 2016, NYSOH issued a notice confirming your enrollment in a qualified health plan at full cost of \$612.60 monthly, effective January 1, 2016.

On January 20, 2016, NYSOH issued another eligibility redetermination notice stating that you were newly eligible to receive up to \$243.00 per month in APTC and, if you selected a silver-level qualified health plan, were eligible for cost-sharing reductions. This eligibility was effective March 1, 2016.

Also on January 20, 2016, NYSOH issued a notice confirming your enrollment in a qualified health plan with a monthly premium of \$349.00 after your APTC of \$243.00 was applied, effective March 1, 2016.

On January 22, 2016, you spoke to NYSOH's Account Review Unit and appealed the eligibility determination insofar as it began your financial assistance eligibility on March 1, 2016, and not January 1, 2016.

On April 21, 2016, based on your April 20, 2016 request, NYSOH issued a disenrollment notice confirming that your 2016 health coverage in your platinum qualified health plan would end May 31, 2016. You also appealed this coverage end date insofar as you wanted your coverage to end on April 30, 2016.

On July 8, 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, and the record reflects, that you receive all of your notices from NYSOH by electronic mail.

- 2) You testified that you did not receive any electronic alerts regarding any renewal notice in your NYSOH account telling you that you needed to update your application in order to renew your eligibility.
- 3) You testified that you did not know that you needed to update your account until January 15, 2016 after receiving an invoice for the full cost of insurance for January 2016 from your health plan.
- 4) The record reflects that on January 15, 2016, NYSOH received your updated application for health insurance.
- 5) On April 20, 2016, NYSOH received and processed your request to have your qualified health plan coverage cancelled because your health coverage through your employer was to begin April 24, 2016.
- 6) You testified that you did not use your Healthfirst Platinum plan in May 2016, because you had health insurance coverage through your employer by then.
- 7) You testified that you are seeking to have your APTC amount applied to your January 2016 premium and to have your coverage in your platinum qualified health plan cancelled effective April 30, 2016.

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

## **Applicable Law and Regulations**

### Annual Eligibility Redetermination

Generally, NYSOH must conduct annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, such as tax credits and cost-sharing reductions, Medicaid, or Child Health Plus. In such cases, NYSOH is required to request that the qualified individual provide updated income and family size information for use in an eligibility redetermination for the upcoming year (see 45 CFR § 155.335(a) and (b)).

NYSOH must send an annual renewal notice that contains the information by which NYSOH will use to redetermine a qualified individual's projected eligibility for that year (45 CFR § 155.335(c)(3)). If a qualified individual does not respond to the notice after a 30-day period, NYSOH must redetermine that individual's eligibility using the projected eligibility provided in the annual renewal notice (45 CFR § 155.335(g), (h)). NYSOH must ensure this redetermination is effective on

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the first day of the coverage year or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)). The rules specified in 45 CFR § 155.330(f) are not pertinent here.

### Electronic Notices

If the individual elects electronic communications, NYSOH must send an email or other electronic communication alerting the individual that a notice has been posted to his or her account and send a notice by regular mail within three business days if the electronic communication cannot be delivered (45 CFR § 155.230(d); 42 CFR § 435.918(b)(4), (5)).

### 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)).

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).

### Minimum Essential Coverage

Generally, an individual will be treated as eligible for minimum essential coverage if the individual may enroll in an eligible employer-sponsored plan that is affordable and provides minimum value (26 CFR §§ 1.36B-2(c)(3)(v)(A) & (C)). A person who has an employer-sponsored health insurance plan that provides minimum essential coverage is not entitled to APTC (26 CFR § 1.36B-2(c)(1)).

“Minimum essential coverage” is defined in section 5000A(f) of the Internal Revenue Code and the regulations issued under that section. As described in that section, eligible employer-sponsored plans are considered minimum essential coverage (26 CFR § 1.36B-2(c)(1)).

## Termination of coverage

The Marketplace may initiate termination of an enrollee's coverage in a qualified health plan and must permit a qualified health plan issuer to terminate such coverage: (1) When the enrollee is no longer eligible for coverage in a qualified health plan through the Marketplace; or (2) The enrollee's coverage is cancelled due to non-payment of premiums (45 CFR § 155.430(b)(2)(i) and (ii)).

The Marketplace must permit an enrollee to terminate his or her coverage with a qualified health plan, including when an enrollee obtains other minimum essential coverage, with appropriate notice to the Marketplace or the qualified health plan (45 CFR § 155.430(b)(1)).

Reasonable notice is defined as at least fourteen days before the requested effective date of termination (45 CFR § 155.430(d)(1)(i)).

When an enrollee initiates termination of coverage with a qualified health plan, the last date of coverage is ---

- (i) The termination date specified by the enrollee, if the enrollee provides reasonable notice;
- (ii) Fourteen days after the termination is requested by the enrollee, if the enrollee does not provide reasonable notice; or
- (iii) On a date on or after the date on which the termination is requested by the enrollee, subject to the determination of the enrollee's QHP issuer, if the enrollee's QHP issuer agrees to effectuate termination fewer than fourteen days, and the enrollee requests an earlier termination date.

45 CFR § 155.430(d)(2).

## **Legal Analysis**

The first issue under review is whether NYSOH properly determined that your enrollment in a qualified health plan at full cost was effective January 1, 2016.

NYSOH must redetermine a qualified individual's eligibility for health insurance and financial assistance to help pay for that health insurance annually. NYSOH must issue a renewal notice that contains the individual's projected eligibility. If an individual does not respond to this notice, NYSOH must issue an eligibility determination for the upcoming coverage year based on the information contained in the renewal notice.

On October 24, 2015, NYSOH issued an annual renewal notice in your case. That notice stated that based on information from federal and state sources,

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NYSOH could not make a decision about whether or not you qualify for financial help with paying for your health coverage. You were asked to update the information in your account by December 15, 2015 or the financial help you were receiving might end.

Because there was no timely response to this notice, your eligibility for financial assistance and your enrollment in a qualified health plan was redetermined on December 22, 2015. You were found eligible to enroll in a qualified health plan at full cost effective January 1, 2016, and were enrolled in a platinum qualified health plan with a premium of \$612.60 for that month.

However, you testified and the record reflects that you elected to receive alerts regarding notices from NYSOH electronically. You credibly testified that you did not receive an electronic alert regarding the renewal notice, which directed you to update the information in your NYSOH account. There is no evidence in your account documenting that any email alert was sent to you regarding the renewal notice or the need to renew your application.

Therefore, it is concluded that NYSOH did not give you the proper notice that you needed to update your account.

You first renewed your eligibility for financial assistance through NYSOH for 2016 on January 15, 2016 and then again on January 19, 2016. Therefore, we must assume that this is the information that would have been used had you been timely informed of the need to update your account, as stated in the renewal notice. Ordinarily, this would result in the determination at issue being modified and/or NYSOH being directed to recalculate your APTC amount for the remainder of the year. However, since you have enrolled in employer-sponsored insurance as of April 2016, this cannot be done. Therefore, the remedy can only occur when you reconcile the amount of APTC to which you should have been entitled in January 2016 on your 2016 tax return. This may result in a tax refund or reduced tax bill.

The second issue under review is whether your platinum health plan should have been cancelled as of April 30, 2016 and not May 31, 2016.

The Marketplace must permit an enrollee to terminate his or her coverage with a qualified health plan with appropriate notice to the Marketplace. If the enrollee has provided reasonable notice, the last day of coverage through their qualified health plan is the day specified provided the enrollee has given 14 days advance notice. In the alternative, if the QHP issuer agrees to terminate coverage in fewer than 14 days and the enrollee requests an earlier termination date, the last day of coverage is the date requested by the enrollee.

In your case, you became newly eligible for employer-sponsored insurance effective April 24, 2016. The record reflects that you informed NYSOH of your

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request to cancel your platinum qualified health plan on April 20, 2016 for an April 31, 2016 end date such that 14 days' notice was not provided. However, the federal regulation allows for an exception if the qualified health plan issuer, here Healthfirst, agrees to effectuate termination fewer than 14 days and the enrollee has requested an earlier termination date, as in your case. Since you did not use your Healthfirst Platinum plan for yourself during May 2016, it is up to Healthfirst to agree to the earlier termination date of April 30, 2016, as you had requested.

Therefore, the coverage termination date of May 31, 2016 as stated in the April 21, 2016 disenrollment notice is AFFIRMED and you can pursue the earlier cancellation date request with Healthfirst directly.

## **Decision**

The December 22, 2015 notices of eligibility redetermination and enrollment are AFFIRMED.

The April 21, 2016 disenrollment notice is AFFIRMED.

**Effective Date of this Decision:** July 21, 2016

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

Your enrollment in your qualified health plan at full cost for the month of January 2016 remains in effect and your eligibility for APTC began as of February 1, 2016.

Any difference in the amount of APTC that you received versus were entitled to can be reconciled when you file your 2016 federal tax return.

Your enrollment in your Healthfirst Platinum plan ended May 31, 2016. However, you can pursue an earlier cancellation date request with Healthfirst directly.

## **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.

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

### **Summary**

The December 22, 2015 notices of eligibility redetermination and enrollment are **AFFIRMED**.

The April 21, 2016 disenrollment notice is **AFFIRMED**.

Your enrollment in your qualified health plan at full cost for the month of January 2016 remains in effect and your eligibility for APTC began as of February 1, 2016.

Any difference in the amount of APTC that you received versus were entitled to can be reconciled when you file your 2016 federal tax return.

Your enrollment in your Healthfirst Platinum plan ended May 31, 2016. However, you can pursue an earlier cancellation date request with Healthfirst directly.

### **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:**

