



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

Notice of Decision

Decision Date: October 6, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006872

[REDACTED]

Dear [REDACTED],

On June 22, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 1, 2016 eligibility determination 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]
Appeal Identification Number: AP000000006872



Issues

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

Did NY State of Health (NYSOH) properly reenroll you and your spouse in your qualified health plan, at full cost, effective January 1, 2016?

Did NYSOH properly determine that the application of advance payments of the premium tax credit to your qualified health plan monthly premium was effective no earlier than March 1, 2016?

Did NYSOH properly calculate your eligibility for advance payments of the premium tax credit?

Did NYSOH properly determine that your daughter's eligibility for and enrollment in her Child Health Plus coverage was effective March 1, 2016?

Procedural History

In a notice of eligibility determination issued on December 16, 2014, you and your spouse were found conditionally eligible to receive advance payments of the premium tax credit (APTC) and cost-sharing reductions (CSR), effective January 1, 2015, and your daughter was found conditionally eligible to enroll in Child Health Plus (CHP), also effective January 1, 2015. Your family was subsequently enrolled in coverage.

On October 24, 2015, NYSOH issued a notice that it was time to renew your health insurance for the upcoming coverage year. That notice stated that, based

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on information from federal and state sources, NYSOH could not make a decision about whether your household would qualify for financial help paying for health coverage, and that you needed to update your account by December 15, 2015, or your household might lose the financial assistance you were currently receiving.

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

On December 21, 2015, NYSOH issued an eligibility determination notice stating that you and your spouse were newly eligible to purchase a qualified health plan (QHP) at full cost, effective January 1, 2016.

Also on December 21, 2015, NYSOH issued an eligibility determination stating that your daughter was not eligible to enroll in coverage through NYSOH because you had not responded to the renewal notice and had not completed your renewal within the required timeframe. The notice further stated that your daughter's eligibility for coverage would end December 31, 2015.

On December 22, 2015, NYSOH issued a disenrollment notice, informing you that your and your spouse's enrollment in your QHPs and your daughter's enrollment in her CHP plan were ending on December 31, 2015.

Also on December 22, 2015, NYSOH issued an enrollment notice, confirming your reenrollment and your spouse's reenrollment in a QHP, with a monthly premium of \$1,106.80, effective January 1, 2016.

On January 21, 2016, your NYSOH account was updated.

On January 22, 23, 25, and 29, 2016, you updated your NYSOH account multiple times.

On January 24, 26, and 30, 2016, NYSOH issued eligibility determination notices stating that you and your spouse were conditionally eligible to receive up to \$518.00 per month in APTC, and conditionally eligible to receive CSR, effective March 1, 2016. This same notice also stated that your daughter was conditionally eligible for CHP with a \$9.00 monthly premium, effective March 1, 2016. You were directed to provide documentation regarding your income by March 29, 2016 and April 28, 2016, or your eligibility to enroll in insurance or to receive financial assistance might end.

Also on January 24, 26, and 30, 2016, NYSOH issued enrollment confirmation notices confirming your daughter's enrollment in a CHP plan with a \$9.00 monthly premium, effective March 1, 2016, and notifying you that you needed to pick a plan in order for your coverage and your spouse's coverage to begin.

On January 31, 2016, you again updated your NYSOH account.

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On February 1, 2016, NYSOH issued an eligibility determination notice again stating that you and your spouse were conditionally eligible to receive up to \$518.00 per month in APTC and conditionally eligible to receive CSR, effective March 1, 2016. The notice also stated that your daughter was conditionally eligible to enroll in CHP coverage with a \$9.00 monthly premium, effective March 1, 2016. You were again directed to submit income documentation.

Also on February 1, 2016, NYSOH issued an enrollment confirmation notice confirming your and your spouse's enrollment in the same couple's silver-level QHP that you were enrolled in during January and February 2016, with a plan start date of March 1, 2016. The notice also stated that your APTC would be applied to your monthly premium as of March 1, 2016. Lastly, the notice confirmed your daughter's enrollment in a CHP plan with a \$9.00 monthly premium, with a plan start date of March 1, 2016.

On February 5, 2016, you spoke to NYSOH's Account Review Unit and appealed the February 1, 2016 eligibility determination, insofar as it began your and your spouse's eligibility for APTC, and your daughter's eligibility for CHP, on March 1, 2016 and not January 1, 2016.

On June 22, 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 received the October 24, 2015 renewal notice informing you that you needed to update your application by December 15, 2015; however, you did not actually review it until early January 2016.
- 3) You testified that you called NYSOH on January 6, 2016 because you realized that you had missed the renewal deadline and wanted to know what you had to do to re-enroll.
- 4) You testified that the NYSOH representative you spoke with on January 6, 2016 told you that you had until January 31, 2016 to submit your information, and if you submitted the information by that deadline, you would be fine. You testified that you were not exactly sure what that

- meant, but thought it to mean that you had until the end of January 2016 to update your application and pick a plan.
- 5) You testified that you are self-employed, so you needed to get your income information together, and you also needed to review the available QHPs. You thought you had until January 31, 2016 to do all of this, based on what you were told in the January 6, 2016 phone call with NYSOH.
 - 6) You testified and the record reflects that you completed your application and selected a plan on January 31, 2016.
 - 7) You testified that you paid the full price premiums for your QHP for the months of January 2016 and February 2016.
 - 8) You testified that you used your insurance coverage in January and February 2016 and had out of pocket expenses for those months.
 - 9) You testified that your daughter did not have coverage for the months of January and February 2016, and the record confirms this.
 - 10) You testified that it was not until you filed your appeal that you learned that if you had completed your application by January 15, 2016, you could have had coverage for February 1, 2016.
 - 11) You testified that you filed this appeal because you are seeking for your APTC to be applied to your QHP premiums as of January 1, 2016, and for your daughter's CHP coverage to begin as of January 1, 2016.
 - 12) After the hearing, the Hearing Officer listened to the recordings of the phone calls you made to NYSOH on January 6, 22, 23, 25, 29, and February 5, 2016 in their entirety.
 - 13) The recording of your January 6, 2016 phone call with NYSOH contains no mention by the NYSOH representative that you needed to update your account and pick a plan by January 15, 2016 in order to have your eligibility and enrollment begin as of February 1, 2016.
 - 14) During the January 6, 2016 phone call between you and the NYSOH representative, the representative answered your question about what would happen now that you'd missed the December 15, 2015 deadline by stating that it should not be much of an issue because it was still open enrollment. The representative went on to say that you could apply through January 31, 2016, and even if you got your information in after that, it "shouldn't be a big deal."

15) The NYSOH representative offered to update your application for you on January 6, 2016 before your phone call ended, however you declined to do so at the time because you stated that you needed to get your income information together and would call back.

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 information provided in the annual renewal notice (45 CFR § 155.335(g), (h)). NYSOH must ensure this redetermination is effective on 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.

Redetermination During a Benefit Year

When an eligibility redetermination results in a change in the amount of APTC for a part of the benefit year, NYSOH must recalculate the amount of APTC in such a manner as to account for any advance payments already made (or not made) on behalf of the tax filer, such that the recalculated advance payment amount is projected to result in total advance payments for the benefit year that correspond to the tax filer's total projected premium tax credit for the overall benefit year (45 CFR § 155.330(g)).

Any change resulting from redeterminations during a benefit year should be made effective the first day of the month following the date of the notice of redetermination, except that redeterminations resulting from changes made after

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a date specified by the state, which can be no earlier than the 15th of the month, may not be made effective until the first day of the month after the month following the date of the notice of redetermination (45 CFR § 155.330(f)(1) and (2)). New York has specified that changes made after the 15th of a given month will take effect the month after the following month.

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)).

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 income the person reported to NYSOH and their actual gross income for that year. A person who received less tax credit than her 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, based on gross income, will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

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)).

Child Health Plus

The "period of eligibility" for Child Health Plus is "that period commencing on the first day of the month during which a child is an eligible child and enrolled or recertified for enrollment on an annual basis based on all required information and documentation and ending on the last day of the twelfth month following such date," unless the CHP premiums are not timely paid, or the child no longer resides in New York State, gains access to or obtains other health insurance coverage, or becomes eligible for Medicaid (NY Public Health Law § 2510(6)).

"A State must specify a method for determining the effective date of eligibility for [Child Health Plus], which can be determined based on the date of application or through any other reasonable method that ensures coordinated transition of

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children between [Child Health Plus] and other insurance affordability programs as family circumstances change and avoids gaps or overlaps in coverage” (42 CFR § 457.340(f)).

NYSOH is required to provide proper written notice to an applicant of any decision effecting an enrollee’s Child Health Plus eligibility (42 CFR § 457.340(e)). When Child Health Plus coverage is denied, suspended or terminated NYSOH must provide sufficient notice to enable the child's parent or caretaker relative to take appropriate actions in order to allow Child Health Plus coverage to continue without interruption (42 CFR § 457.340(e)(2); 42 CFR § 457.1130(a)(3)).

The State of New York has provided that a child’s period of eligibility for Child Health Plus begins on the first day of the month during which a child is eligible. A child will become eligible on the first day of the next month, if the application is received by the 15th of the month; applications received after the 15th day of the month will be processed for the first day of the second following month (see State Plan Amendment (SPA) NY-14-0005, approved February 3, 2015 and effective January 1, 2014).

Misinformation

An appellant having relied, to his detriment, on erroneous information received from a NYSOH representative in a phone call, is not a basis for NYSOH to provide rights that the appellant would otherwise not have had (see, e.g., *Smith v New York State & Local Retirement Sys.*, 199 AD2d 763 (1993); *Matter of Grella v Hevesi*, 38 AD3d 113, 117-118 (2007)).

Legal Analysis

The first issue under review is whether NYSOH properly reenrolled you and your spouse in your qualified health plan, at full cost, 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 and projected eligibility 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, NYSOH could not make a decision about whether or not your household would 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 your household was receiving might end.

Because there was no timely response to this notice, your household's eligibility for financial assistance and your enrollment in your QHP was terminated effective December 31, 2015. You and your spouse were then re-enrolled into the same QHP at full cost, effective January 1, 2016.

You testified that you did receive the October 24, 2015 renewal notice, but that you did not actually review it until after the December 15, 2015 deadline for renewal.

Therefore, the record reflects that NYSOH properly notified you of your annual renewal and that information in your NYSOH account needed to be updated in order to ensure your enrollment in your health plan and eligibility for financial assistance would continue. Once you were properly notified of the need to renew and failed to timely do so, NYSOH properly found that you were no longer eligible for financial assistance as of January 1, 2016.

The second issue under review is whether NYSOH properly determined that the application of APTC to your qualified health plan monthly premium was effective no earlier than March 1, 2016.

When an individual changes information in their application after the 15th of any month, NYSOH will ordinarily make the redetermination that results from the change effective the first day of the second following month. Additionally, the date on which a qualified health plan can take effect depends on the day a person selects the plan for enrollment. A plan that is selected after the fifteenth day of a month ordinarily goes into effect on the first day of the second following month.

By your own admission, you missed the December 15, 2015 deadline for a January 1, 2016 start date, and so you remain ineligible for financial assistance for the month of January 2016.

You testified, and the record reflects, that you then contacted NYSOH on January 6, 2016 to determine what your options were for re-enrolling in coverage.

You did contact NYSOH on January 6, 2016 to find out how missing the December 15, 2015 deadline would affect you. The NYSOH representative you spoke with that day did offer to update your account information, which you declined to do because you were still gathering income information. However, the NYSOH representative also told you that you could enroll any time up until January 31, 2016, and that it should not be much of an issue that you missed the December 15, 2015 deadline for renewal. The representative failed to tell you

that if you updated your application and picked a plan by January 15, 2016, you would be eligible for enrollment and any applicable financial assistance on February 1, 2016.

You renewed your eligibility for financial assistance through NYSOH for 2016 on January 31, 2016; because you updated after the 15th of the month, the changes went into effect the first day of the second following month, or March 1, 2016.

Although you testified that you relied on the statements made to you by the NYSOH representative when you called on January 6, 2016, any such misrepresentations cannot serve to create rights which would not otherwise exist. Therefore, the Appeals Unit is constrained to find that the updates you made to your account on January 31, 2016 properly went into effect on March 1, 2016.

The third issue under review is whether NYSOH properly calculated the amount of monthly APTC to which you were entitled as of March 1, 2016.

When APTC is recalculated mid-year, the Marketplace is required to consider the amounts of APTC previously received (or not received) and the newly estimated overall annual tax credit, and prorate upcoming monthly amounts to ensure that the APTC you receive during the year is as close as possible to the overall tax credit you will be entitled to when you file your taxes for the 2016 tax year.

It appears that NYSOH did not do this. Instead, it simply found you eligible for the monthly amount to which you would have been entitled had you received APTC for the entire 12 months of the year based on your income.

Because you testified at the hearing that you paid your full premium payment for your and your spouse's QHP for the months of January and February 2016, your annual tax credit should have been divided over the remaining ten months of the year.

Therefore, your case must be RETURNED to NYSOH to recalculate the amount of APTC you should have received for the remainder of the year, based on your having paid the full cost for coverage for January and February, and the failure of NYSOH to recalculate your APTC amount for a partial year.

NYSOH is also directed to reach out to your QHP to ensure that any cost-sharing you have already paid in January and February (such as payments toward your deductible or countable out-of-pocket expenses) has been taken into consideration in determining your cost-sharing for the remainder of the year.

The fourth issue under review is whether NYSOH properly determined that your daughter's eligibility for and enrollment in her CHP plan coverage began as of March 1, 2016.

Your daughter was found eligible for CHP effective January 1, 2015.

Generally, NYSOH must redetermine a qualified child's eligibility for CHP once every 12 months without requiring information from the individual, if it is able to do so based on reliable information contained in the individual's account or other more current information available to the agency. NYSOH's October 24, 2015 renewal notice stated that there was not enough information to determine whether your child was eligible to continue to receive financial assistance for health insurance, and that you needed to supply additional information by December 15, 2015, or any such financial assistance might end.

Because there was no timely response to this notice, your child's enrollment in her CHP plan was terminated, effective December 31, 2015.

As stated above, you acknowledged that you received the October 24, 2015 renewal notice and missed the December 15, 2015 deadline. Therefore, NYSOH found that your daughter's eligibility for CHP ended as of December 31, 2015.

However, when NYSOH denies, terminates, or suspends a child's CHP coverage, it is required to provide sufficient notice so that a child's parent is able to take action to prevent a gap in coverage for the child. Notice is considered received five days after the date on the notice.

In this case, the notice formally disenrolling your child from her CHP plan was dated December 22, 2015, and indicated that coverage would end December 31, 2015. This was after the 15th day of the month, and left you with less than ten days to resolve the issue and re-enroll your child in coverage so as to avoid a gap in coverage for the beginning of 2016, which is an insufficient amount of time when the health insurance coverage of a child is at issue.

Since you did not receive proper and timely notice that your child's coverage was terminated and you were given insufficient time to correct the problem without a gap of coverage, the December 31, 2015 disenrollment date must be rescinded.

Your case is RETURNED to NYSOH to reinstate your child's coverage in her CHP plan for January and February 2016, without interruption. You will be responsible for any unpaid premiums.

Decision

The February 1, 2016 eligibility determination and enrollment confirmation notices are AFFIRMED.

Your case is RETURNED to NYSOH to facilitate your daughter's enrollment in her CHP plan effective January 1, 2016. You are responsible for additional premium payments.

Your case is RETURNED to NYSOH to recalculate your monthly APTC amounts for the remainder of the year such that the amount you've received by the end of the year is as close as possible to the overall tax credit you will be eligible for when you file your 2016 federal taxes, based on an expected annual income of \$40,500.00.

Additionally, if a household's eligibility for cost-sharing reductions changes during a benefit year and that household remains in the same QHP, the health plan must ensure that any cost-sharing already paid by the individual is taken into account when determining the future level of cost-sharing for the year.

Your case is RETURNED to NYSOH to reach out to your QHP and ensure that any cost-sharing you've already paid is taken into account when determining your cost-sharing obligations for the remainder of the year.

Effective Date of this Decision: October 6, 2016

How this Decision Affects Your Eligibility

Your APTC subsidy was properly applied to your monthly QHP premium beginning March 1, 2016. However, NYSOH should have recalculated your monthly eligibility based on the partial year you would receive the payments. Therefore your case is returned to NYSOH to recalculate your APTC for the partial year you will receive it.

Your daughter's enrollment in CHP is effective January 1, 2016.

Your case is being returned to NYSOH to facilitate your daughter's enrollment into her CHP plan beginning January 1, 2016. You will be responsible for any additional premium payments.

Your case is being returned to NYSOH to redetermine the amount of APTC you should receive for the remainder of the year so that, by the end of the year, you will have received the full amount you and your spouse were entitled to for the year, based on your expected annual income of \$40,500.00.

Your case is being returned to NYSOH to reach out to your QHP to ensure that any deductible and other countable out-of-pocket payments you've made are taken into consideration when determining your cost-sharing obligations for the remainder of the year.

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

Summary

The February 1, 2016 eligibility determination and enrollment confirmation notices are **AFFIRMED**.

Your case is **RETURNED** to NYSOH to facilitate your daughter's enrollment in her CHP plan effective January 1, 2016. You are responsible for additional premium payments.

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).

Your case is RETURNED to NYSOH to recalculate your monthly APTC amounts for the remainder of the year such that the amount you've received by the end of the year is as close as possible to the overall tax credit you will be eligible for when you file your 2016 federal taxes, based on an expected annual income of \$40,500.00.

Additionally, if a household's eligibility for cost-sharing reductions changes during a benefit year and that household remains in the same QHP, the health plan must ensure that any cost-sharing already paid by the individual is taken into account when determining the future level of cost-sharing for the year.

Your case is RETURNED to NYSOH to reach out to your QHP and ensure that any cost-sharing you've already paid is taken into account when determining your cost-sharing obligations for the remainder of the year.

Your APTC subsidy was properly applied to your monthly QHP premium beginning March 1, 2016. However, NYSOH should have recalculated your monthly eligibility based on the partial year you would receive the payments. Therefore your case is returned to NYSOH to recalculate your APTC for the partial year you will receive it.

Your daughter's enrollment in CHP is effective January 1, 2016.

Your case is being returned to NYSOH to facilitate your daughter's enrollment into her CHP plan beginning January 1, 2016. You will be responsible for any additional premium payments.

Your case is being returned to NYSOH to redetermine the amount of APTC you should receive for the remainder of the year so that, by the end of the year, you will have received the full amount you and your spouse were entitled to for the year, based on your expected annual income of \$40,500.00.

Your case is being returned to NYSOH to reach out to your QHP to ensure that any deductible and other countable out-of-pocket payments you've made are taken into consideration when determining your cost-sharing obligations for the remainder of the year.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:

