



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

Notice of Decision

Decision Date: August 17, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006917

[REDACTED]

Dear [REDACTED]

On July 15, 2016 you appeared by telephone at a hearing on your appeal of NY State of Health's December 9, 2015 eligibility determination and January 15, 2016 enrollment notice.

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).

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Issues

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

Did New York State of Health properly determine that your spouse was not eligible for the Essential Plan as of December 9, 2015?

Did New York State of Health properly determine that your spouse was eligible to receive up to \$161.00 monthly of advance premium tax credits as of December 9, 2015?

Did New York State of Health properly determine that your spouse was eligible for the correct level of cost-sharing reductions effective as of December 9, 2015?

Did New York State of Health properly determine that your spouse's plan enrollment start date in the Essential Plan should be February 1, 2016?

Procedural History

On November 14, 2015 New York State of Health (NYSOH) issued an eligibility determination that your spouse was eligible for up to \$212.00 of advance premium tax credits and eligible for cost-sharing reductions, effective as of December 1, 2015.

Also on November 14, 2015, NYSOH issued an enrollment notice confirming that on November 13, 2015, your spouse was enrolled in Fidelis Care Silver ST INN Pediatric Dental Dep25 (Fidelis Care) with a plan enrollment of December 1, 2015.

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On November 17, 2015, 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 your spouse 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.

On December 8, 2015, your NYSOH account was updated.

On December 9, 2015, NYSOH issued an eligibility determination that your spouse was eligible for up to \$161.00 of advance premium tax credits and eligible for cost-sharing reductions, effective as of January 1, 2016.

Also on December 9, 2015, NYSOH issued an enrollment notice confirming that on December 8, 2015, your spouse was enrolled in Fidelis Care Silver ST INN Pediatric Dental Dep25 (Fidelis Care) with a plan enrollment of January 1, 2016.

On January 14, 2016, your NYSOH account was updated.

On January 15, 2016, NYSOH issued an eligibility determination notice that your spouse was eligible to enroll in the Essential Plan, effective as of February 1, 2016.

Also on January 15, 2016, NYSOH issued an enrollment notice confirming that on January 14, 2016, your spouse was enrolled in Essential Plan 1 (Fidelis Care) with a plan enrollment start date of February 1, 2016.

On February 8, 2016, you spoke with NYSOH's Account Review Unit and requested an appeal insofar as your spouse's eligibility for the Essential Plan, effective January 1, 2016.

On July 15, 2016 you had a telephone hearing with a Hearing Officer from the NYSOH's Appeals Unit. The record was developed during the hearing and the record was left open until July 20, 2016, to allow you submit additional documentation to NYSOH Appeals Unit.

On July 18, 2016, you faxed six-pages of documents to NYSOH Appeals Unit. That fax has been marked as "Appellant Exhibit A" and 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. You testified that you had a meeting with [REDACTED] from Fidelis Care, on November 13, 2015, and enrolled your spouse in health plan for December 2015 and January 2016.
2. [REDACTED] is listed as an application counselor on your NYSOH account.
3. According to your NYSOH account, with assistance from [REDACTED] your spouse applied for coverage through NYSOH on November 13, 2015.
4. According to the November 13, 2015, NYSOH application, your spouse's expected 2015 annual household income was \$31,000.00.
5. On July 18, 2016, you submitted a "Marketplace Enrollment Checklist/Receipt" and a summary of benefits from your November 13, 2015 meeting with [REDACTED]. It indicates that your spouse was enrolled in a Fidelis Silver plan with a monthly premium of \$171.59 and a \$250.00 deductible (Appellant Exhibit A pgs. 3, 6).
6. According to your NYSOH account, updates were initiated by [REDACTED] and [REDACTED] on December 8, 2015.
7. According to the December 8, 2015 NYSOH application, your spouse's expected 2016 annual household income was \$35,000.00.
8. According to your December 8, 2015 NYSOH application, your spouse expects to file a 2016 federal income tax return, with tax filing status of married filing jointly, and will not be claiming any dependents on that tax return.
9. On December 9, 2015, NYSOH issued an enrollment notice confirming that on December 8, 2015, your spouse was enrolled in Fidelis Care Silver ST INN Pediatric Dental Dep25 (Fidelis Care) with a plan enrollment of January 1, 2016 ([REDACTED]).
10. According to your NYSOH account, updates were initiated by [REDACTED] on January 14, 2016.
11. According to your January 14, 2016 NYSOH application, your spouse's expected 2016 annual household income was changed to \$31,000.00.
12. On January 15, 2016, NYSOH issued an enrollment notice confirming that on January 14, 2016, your spouse was enrolled in Essential Plan 1 (Fidelis Care) with a plan enrollment start date of February 1, 2016 ([REDACTED]).

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13. You testified that you are seeking to have your spouse's Essential Plan coverage to begin January 1, 2016, not February 1, 2016.

14. You currently reside in Westchester County, NY.

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

Applicable Law and Regulations

Modified Adjusted Gross Income

The NYSOH 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)).

Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

In an analysis of Essential Plan eligibility, the determination is based on the FPL in effect on the first day of the benefit year for which coverage is requested (45 CFR § 155.300(a)). On the date of your application, that was the 2015 FPL, which is \$15,930.00 for a two-person household (80 Fed. Reg. 3236, 3237).

A person who has a household income that is at or below 150% of the FPL has a \$0.00 premium contribution (New York's Basic Health Plan Blueprint, p. 21, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

A person who has a household income greater than 150% of the FPL or below 200% of the FPL has a \$20.00 per month premium contribution (New York's Basic Health Plan Blueprint, as approved January 2016).

Advance Premium Tax Credit:

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 250% but less than 300% of the 2015 FPL, the expected contribution is between 8.18% and 6.41% of the household income (see 26 CFR § 1.36B-3T(g)(1), (IRS Rev. Proc. 2014-62)).

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)).

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 individuals with an annual household income that is at least 100% but less than or equal to 150 % of the 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)).

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. 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.

87% of expenses are covered for a person with an annual household income that is between 150 and 200 percent of the FPL, and 73% of expenses for a person with an annual household income that is between 200 and 250 percent of the FPL (see 45 CFR § 155.305(g)(2); 45 CFR § 156.420(a)).

Essential Plan Effective Date

For individuals seeking enrollment in an Essential Plan, New York State has elected to follow the same rules that NYSOH uses in determining effective dates for individuals seeking enrollment in qualified health plans (NY Social Services Law § 369-gg(4)(c); New York's Basic Health Plan Blueprint, p. 16, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

The effective date of coverage by an Essential Plan is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment, NYSOH must generally ensure that coverage is effective the first day of the following month for selections received by NYSOH from the first to the fifteenth of any month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(i); see also 42 CFR § 600.320). For selections received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(ii)).

Legal Analysis

The first issue is whether NYSOH properly determined that your spouse was not eligible for the Essential Plan as of December 9, 2015?

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$15,930.00 for a two-person household. Since an annual household income of 35,000.00 is 219.71% of the 2015 FPL, NYSOH properly found you to be not eligible for the Essential Plan as of December 9, 2015.

The second issue is whether NYSOH properly determined your spouse eligible for up to \$161.00 monthly of APTC.

According to the record, your spouse has a two-person tax household. Your spouse expects to file a 2016 federal income tax return with the tax status of married filing jointly and will not claim any dependents on that return.

You reside in Westchester County, where the second lowest cost silver plan that is available through NYSOH for an individual costs \$368.26 per month.

The December 9, 2015 eligibility determination was based on an annual household income of \$35,000.00, which was the entered as your spouse's expected 2016 annual household on December 8, 2015.

An annual household income of \$35,000.00 equals 219.71% of the 2015 FPL for a two-person household. At 219.71% of the FPL, the expected contribution to the cost of the health insurance premium is 7.11% of income, or \$207.38 per month.

The maximum amount of APTC that can be awarded equals the cost of the second lowest cost silver plan in your county (\$368.26 per month) minus your expected contribution (\$207.38 per month), which equals \$160.88 per month. Therefore, NYSOH correctly computed your APTC to be \$161.00 per month.

The third issue is whether NYSOH properly determined the level of cost-sharing reductions your spouse was eligible for effective January 1, 2016.

On December 8, 2015, NYSOH your spouse was re-enrolled in a Fidelis Care silver plan with an enrollment start date of January 1, 2016

NYSOH directs issuers to offer three variations of silver-level qualified health plans, which provide varying levels of coverage

87% of expenses are covered for a person with an annual household income that is between 150 and 200 percent of the FPL. 73% of expenses are covered for a person with an annual household income that is between 200 and 250% of the FPL.

As discussed above, an annual household income of \$35,000.00 equals 219.71% of the 2015 FPL for a two-person household.

Therefore, the Appeals Unit finds that for 2016 you are eligible for the third-level of CSR, as provided for by 45 CFR § 155.305(g)(2)(iii).

The particulars of the terms of coverage regarding covered medical services, treatment, prescriptions, and the amount of co-pays, deductibles, and out of pockets costs for which you are responsible for are set by the individual plans and, are not reviewable by NYSOH Appeals Unit. In other words, while the Appeals Unit can confirm the level of CSR to which you are entitled, it cannot determine whether your particular plan meets the requirements of that level.

Your case will be returned to NYSOH to confirm that your enrollment for 2016 was in a plan that reflects you are eligible for the third-level of cost-sharing reductions.

The fourth issue is whether NYSOH properly started your spouse's Essential Plan on February 1, 2016.

According to the available record, your spouse was enrolled in an Essential Plan on January 14, 2016.

The date on which an Essential Plan can take effect depends on the day a person selects the plan for enrollment.

A plan that is selected from the first day to and including the fifteenth day of a month will go into effect on the first day of the following month. A plan that is selected on or after the sixteenth day of the month will go into effect on the first day of the second following month.

On January 14, 2016, your spouse was enrolled in Essential Plan (Fidelis Care), so it properly took effect on the first day of the following after January 2016; that is, on February 1, 2016.

Therefore, the January 15, 2016, enrollment confirmation notice stating that your spouse's enrollment in the Essential Plan (Fidelis Care) would be effective February 1, 2016, was correct and must be AFFIRMED.

Decision

The December 9, 2015 eligibility determination is AFFIRMED.

The January 15, 2016, enrollment notice is AFFIRMED.

Your case is RETURNED TO NYSOH to confirm that your spouse's enrollment for January 1, 2016 was in a plan that reflects that your spouse was eligible for cost-sharing reductions with an actuarial value of 73%.

Effective Date of this Decision: August 17, 2016

How this Decision Affects Your Eligibility

Your spouse remains eligible to receive an advance premium tax credit of up to \$161.00 per, effective January 1, 2016.

Your spouse remains eligible for the third-level of cost-sharing reductions, effective January 1, 2016.

Your case has been returned to NYSOH to determine that your spouse received the appropriate level of cost-sharing reductions effective January 1, 2016.

Your spouse remains enrolled in the Essential Plan (Fidelis Care) with a plan enrollment start date of February 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 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):

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Summary

Your spouse remains eligible to receive an advance premium tax credit of up to \$161.00 per, effective January 1, 2016.

Your spouse remains eligible for the third-level of cost-sharing reductions, effective January 1, 2016.

Your case has been returned to NYSOH to determine that your spouse received the appropriate level of cost-sharing reductions effective January 1, 2016.

Your spouse remains enrolled in the Essential Plan (Fidelis Care) with a plan enrollment start date of February 1, 2016.

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:

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