



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

Notice of Decision

Decision Date: July 22, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006937

[REDACTED]

Dear [REDACTED]

On July 12, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's November 9, 2014 renewal 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 NY State of Health 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 22, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006937



Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NY State of Health properly determine that you were eligible to receive up to \$315.86 per month in advance payments of the premium tax credit, effective January 1, 2015?

Procedural History

On October 1, 2014, NYSOH received your application for health insurance. This application listed an expected annual household income of \$27,375.40.

On November 9, 2014, NYSOH issued a renewal notice stating that you were eligible to receive advance payments of the premium tax credit (APTC) of up to \$315.86 per month, and eligible for cost sharing reductions (CSR), effective January 1, 2016. The notice stated that your APTC eligibility was based on information that was available from state and federal data sources which showed that your income was between \$16,105.00 and \$46,680.00. The notice also stated that you were eligible for CSR because state and federal data sources showed that your income was below \$29,175.00. Lastly, the notice stated that you would be re-enrolled in your silver-level qualified health plan (QHP), effective January 1, 2015.

On December 1, 2014, NYSOH issued an eligibility determination notice based on your October 1, 2014 application, which stated that you were eligible to receive up to \$196.00 per month in APTC, as well as for CSR, effective

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November 1, 2014. The notice stated that your eligibility was based on your reported household income of \$27,375.40.

On December 15, 2014, NYSOH issued a notice of enrollment confirmation confirming your enrollment in a silver level QHP with the application of \$196.00 in APTC to your monthly premium. The notice stated that if you paid your first month's premium, your coverage could start as early as January 1, 2015.

On December 29, 2014, NYSOH issued a disenrollment notice stating that your coverage in your QHP was being terminated effective December 31, 2014, but that you would be automatically renewed into the same plan for 2015.

On December 30, 2014, you changed your enrollment.

On December 31, 2014, NYSOH issued a cancellation notice stating that they had received your December 30, 2014 request to cancel your enrollment in the silver level QHP in which you were auto-enrolled.

On December 31, 2014, NYSOH issued an enrollment confirmation for a new silver level QHP, with a monthly premium responsibility of \$78.48 after the application of \$315.86 in APTC. The notice stated that if you paid your first month's premium, your coverage could start as soon as February 1, 2015.

On February 8, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of the amount of APTC you were found eligible for in 2015, insofar as the tax reconciliation of the APTC you received showed that you had received more APTC than you were eligible for.

On July 12, 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 the income you reported to NYSOH for 2015 was too high because it did not include a tuition and fees credit that you were eligible for.
- 2) You testified that you believed you included the tuition and fees deduction when you filed your application in October 2014, but realized later that you must not have.

- 3) You testified that you reported your income as \$27,000.00 when you filed your application in 2014, and changed it to \$30,000.00 in July 2015, but that it should have been about \$24,581.00.
- 4) The record reflects that your October 1, 2014 application listed an expected annual income of \$27,375.40, with no deductions listed.
- 5) Your October 1, 2014 application reflects that you were in a one-person household, with no dependents, and that you expected to file your 2015 taxes as single.
- 6) The record reflects that no updates were made to your NYSOH account between December 30, 2014 and December 7, 2015.
- 7) The record reflects that the amount of APTC you were found eligible for in the November 9, 2014 renewal notice was based on information obtained on November 8, 2014 from state and federal data sources, apparently your tax return for calendar year 2013, and not from the income that you listed in your October 1, 2014 application.
- 8) You testified that you do not recall receiving the November 9, 2014 renewal notice.
- 9) You testified that the IRS has found you to owe approximately \$700.00 in taxes because you received more APTC than you were entitled to. You testified that you are not facing any penalties from the IRS.
- 10) You testified that you filed this appeal because you believe you wouldn't owe money to the IRS if NYSOH recalculates your APTC using your tuition and fees deduction because the calculation would show that you were actually eligible for the amount of APTC you received.

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

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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 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).

The taxpayer's expected contribution amount is the amount that the taxpayer is expected to spend on health insurance premiums. The expected contribution for 2015 is set by federal law at 2.01% to 9.56% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc. 2014-37).

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 2014 FPL, which is \$11,670.00 for a one-person household (79 Federal Register 3593). For 2013, it was \$11,490.00 (78 Federal Register 5182, 5183).

For annual household income in the range of at least 200% but less than 250% of the 2014 FPL, the expected contribution is between 6.34% and 8.10% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

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).

Legal Analysis

The only issue under review is whether NYSOH properly determined you to be eligible for up to \$315.86 per month in APTC.

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The application that was submitted on October 1, 2014 listed an annual household income of \$27,375.40.

You are in a one-person household. You filed your 2015 income taxes as single with no dependents.

You reside in Queens County, where the second lowest cost silver plan available for an individual in 2015 through NYSOH cost \$371.75 per month.

An annual income of \$27,375.40 is 234.58% of the 2014 FPL for a one-person household. At 234.58% of the FPL, the expected contribution to the cost of the health insurance premium is 7.56% of income, or \$172.47 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through NYSOH (in 2015) for an individual in your county (\$371.75 per month) minus your expected contribution (\$172.47 per month), which equals \$199.28 per month. Therefore, rounding to the nearest dollar, you would have been eligible for an APTC of \$199.00 per month, had NYSOH used the income of \$27,375.40 that you listed in your application.

The November 9, 2014 renewal notice indicates that your eligibility for APTC for 2015 was based on information available from state and federal data sources. You testified that you did not receive the notice but, even if you had, you would have had no reason to update your account, as the notice stated that your eligibility for APTC was based on the fact that your income was between \$16,105.00 and \$46,680.00, which in fact was accurate. Additionally the notice stated that your eligibility for CSR was based on the fact that your income was below \$29,175.00. Since you attested to income of \$27,375.40, which is in keeping with the ranges cited in the renewal notice, you would have had no reason to know that your eligibility was not based on the income you had attested to.

However, given that you received \$315.86 per month in APTC in 2015, and not the \$199.00 per month you would have been eligible for based on the income you listed in your October 1, 2014 application, it is clear that NYSOH was relying on a lower income amount in determining your eligibility than that which you listed in your application; it appears to have relied on 2013 federal tax information.

You testified during the hearing that, because of your tuition and fees credit, you believe that you should have attested to an income of approximately \$24,581.00 for 2015. If you had actually attested to that income in your application, then your income would have been 210.63% of the 2014 FPL. At 210.63%, your expected contribution to the cost of your premium would have been 6.71% of income, or \$137.45 per month. If you subtract this from the cost of the second lowest cost

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silver plan available through NYSOH in Queens County (\$371.75), it equals \$234.30. Therefore, rounding to the nearest dollar, you would have been eligible for an APTC of \$234.00 per month, if you had listed your income as \$24,581.00.

Since this amount is still less than what you received in APTC (\$315.86 per month), NYSOH clearly based your eligibility on an income lower than \$24,581.

When you receive APTC, you are actually receiving, in advance, the benefit of a tax deduction you would ordinarily not receive until after the year is over and you file your tax return. The credit is given to you in advance, so that you can afford to get the coverage.

NYSOH tries to estimate, as closely as possible, what your ultimate tax credit will be, so that your receipt of APTC, in advance, will not have an excessive impact on any tax payment or refund you have at the end of the year. Ultimately, however, the IRS determines what your tax credit will be for the completed year.

After you received the APTC as a credit against your health insurance premiums, you then were required to file a federal tax return, in which the total of the monthly APTC you received is reconciled with the tax credit associated with your actual reported annual income for the year. If you received too much APTC in advance, the excess will decrease the amount of your tax return, or increase the payment you owe.

This determination is made by the IRS and is made using the information you reported in your income taxes. Therefore, NYSOH's calculation of your APTC is no longer relevant; the amount of tax credit you were in fact entitled to for the year has since been determined by the IRS.

Even if the prior award of APTC is rescinded, you would still have to pay back the credit you should not have received.

However, it is worth noting that the fact that you state you did not receive the November 9, 2014 renewal notice, coupled with the fact that the notice contained only a range of income that was inclusive of the amount of income you attested to, indicates that there was no fault on your part in accepting the \$315.86 in monthly APTC. Had you received a notice from NYSOH with more specific income information, you might have seen that NYSOH was basing your APTC on an incorrect income amount; without the benefit of such a notice, you had no reasonable way of knowing that a mistake had been made.

Therefore, it is concluded that there was nothing fraudulent and no error or your part in your receipt of the \$315.86 per month in APTC, in the opinion of the NYSOH Appeals Unit.

Since the November 9, 2014 renewal notice was based on information obtained from state and federal data sources, it was correct at the time and is AFFIRMED.

NYSOH has no jurisdiction over the issue of whether the amount of tax credit you are being asked to repay is correct. You must contact the IRS with regard to the issue of the reconciliation of the APTC you received.

Decision

Since the November 9, 2014 renewal notice was based on information obtained from state and federal data sources, it was correct at the time and is AFFIRMED.

The appeal of the November 9, 2014 renewal notice is moot, since any change made to it would have no effect.

Effective Date of this Decision: July 22, 2016

How this Decision Affects Your Eligibility

This decision has no effect on your current eligibility.

NYSOH based its November 9, 2014 eligibility determination on the income it collected from data sources, which may have resulted in your receipt of more APTC than you were entitled to, based on your actual income.

NYSOH finds that you did not knowingly or intentionally receive more APTC than you were entitled to.

NYSOH has no authority to review the IRS determination that you received more APTC than you were entitled to in 2015.

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

Since the November 9, 2014 renewal notice was based on information obtained from state and federal data sources, it was correct at the time and is **AFFIRMED**.

The appeal of the November 9, 2014 renewal notice is moot, since any change made to it would have no effect.

This decision has no effect on your current eligibility.

NYSOH based its November 9, 2014 eligibility determination on the income it collected from data sources, which may have resulted in your receipt of more APTC than you were entitled to, based on your actual income.

NYSOH finds that you did not knowingly or intentionally receive more APTC than you were entitled to.

NYSOH has no authority to review the IRS determination that you received more APTC than you were entitled to in 2015.

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Legal Authority

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A Copy of this Decision Has Been Provided To:

