



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

Notice of Decision

Decision Date: August 2, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000006980



Dear [REDACTED],

On June 28, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health’s January 30, 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 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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Issues

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

Did NY State of Health properly determine that you were eligible to receive up to \$115.00 per month in advance payments of the premium tax credit, effective March 1, 2016?

Did NY State of Health properly determine that you were not eligible for cost-sharing reductions?

Procedural History

On January 29, 2016, NY State of Health (NYSOH) received your application for health insurance.

On January 30, 2016, NYSOH issued an eligibility determination notice based on the information contained in the January 29, 2016 application, you were eligible to receive up to \$115.00 per month in advance payments of the premium tax credit (APTC) and not eligible for cost-sharing reductions, effective March 1, 2016.

On February 10, 2016, you spoke with NYSOH's Account Review Unit and requested an appeal insofar as the amount of financial assistance you were determined eligible to receive.

On June 28, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Your testimony was taken during the hearing, and you were directed to submit: (1) a separation letter from your former employer; (2)

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your last two earnings statements from your former employer; and (3) an accounting of your income as an independent contractor for May and June 2016. The record was left open until July 12, 2016 to allow you to submit the additional evidence.

On July 6, 2016, you faxed three-pages of documents to NYSOH Appeals Unit. The fax contained: (1) cover sheet; (2) statement of your last day of employment; (3) your last earnings statement from your former employer. 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) According to your NYSOH account and testimony, you are only applying for health insurance through NYSOH for yourself.
- 2) According to your NYSOH and testimony, you expect to file your 2016 federal income tax return with a tax filing status of single and will claim no dependents on that tax return.
- 3) According to your NYSOH account, the application that was submitted on January 29, 2016, you attested to an annual household income of \$33,280.00.
- 4) According to your NYSOH account, you reside in Kings County, NY.
- 5) You testified that based on your living expenses, you are unable to afford health insurance premiums through NYSOH.
- 6) Your last day of employment at [REDACTED] was on May 22, 2016 (Appellant Exhibit A p. 2).
- 7) You testified that you received between \$1,400.00 and \$2,000.00 as an independent contractor in May and June 2016 and expected to earn more income in subsequent months.
- 8) No additional documentation was received regarding your income as an independent contractor.

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

Applicable Law and Regulations

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Modified Adjusted Gross Income

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)).

“Adjusted gross income” means, in the case of an individual taxpayer, gross income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from time savings accounts, and deductions attributable to royalties (26 USC § 62(a)). Living expenses, such as rent and utilities are not an allowable deduction in computing adjusted gross income.

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 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 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 \$11,770.00 for a one-person household (80 Fed. Reg. 3236, 3237).

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 9.66% 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)).

Hardship Exemption

Under some circumstances, a person may receive an exemption from paying a penalty for not purchasing a qualified health plan QHP. Such an exemption may be granted if that person can show that she experienced a financial hardship or has domestic circumstances that (1) caused an unexpected increase in essential expenses that prevented that person from obtaining health coverage under a QHP; (2) would have caused the person to experience serious deprivation of food, shelter, clothing or other necessities, as a result of the expense of purchasing health coverage under a QHP; or (3) prevented that person from obtaining coverage under a qualified health plan (45 CFR § 155.605 (a), (g)).

NY State of Health has deferred to the U.S. Department of Health and Human Services (HHS) on the matter of hardship exemptions (see 45 CFR § 155.505(c)).

Legal Analysis

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The first issue is whether NYSOH properly determined that you were eligible for APTC of up to \$115.00 per month.

The application that was submitted on January 29, 2016 listed an annual household income of \$33,280.00, and the eligibility determination relied upon that information.

You are in a one-person household. You expect to file your 2016 federal income tax return with the tax status of single and expect to claim no dependents on that tax return.

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

An annual income of \$33,280.00 is 282.75% of the 2015 FPL for a one-person household. At 282.75% of the FPL, the expected contribution to the cost of the health insurance premium is 9.15% of income, or \$253.76 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 an individual in your county (\$368.26 per month) minus your expected contribution (\$253.76 per month), which equals \$114.50 month. Therefore, rounding to the nearest dollar, NYSOH correctly determined you to be eligible for up to \$115.00 per month in APTC.

You testified at the hearing that you have living expenses that make it difficult to afford the health insurance premiums. However, an individual's eligibility for financial assistance through NYSOH is based on their modified adjusted gross income, as defined by federal tax code. The determination of an individual's adjusted gross income is based on gross income minus certain specific deductions. Since the Internal Revenue Service rules do not allow living expenses such as rent, utilities, cable and phone to be deducted from the calculation of your adjusted gross income, they cannot be deducted when NYSOH computes your modified adjusted gross income for APTC purposes.

The second issue is whether you were properly found not eligible for cost-sharing reductions.

Cost-sharing reductions are available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$33,280.00 is 282.75% of the applicable FPL, NYSOH correctly found you to be not eligible for cost sharing reductions, based on the information contained in your January 29, 2016 application.

Since the January 30, 2016 eligibility determination properly stated that, based on the information you provided, you were eligible for up to \$115.00 per month in APTC and not eligible for cost-sharing reductions it is correct and is AFFIRMED.

You testified and provided sufficient evidence that you were no longer employed at [REDACTED] as of May 2016. You further testified that you began to work as an independent contractor and received approximately \$1,400.00 to \$2,000.00 in May and June 2016. You were directed by NYSOH's Appeals Unit to provide an accounting of your income as an independent contractor for May and June 2016. However, no documentation regarding your income as an independent contractor was received.

At this time you do not provide sufficient testimony or documents to return your case to NYSOH to recalculate your benefits on a yearly or monthly basis. However, please contact NYSOH when you have sufficient documentation of your change in income.

Decision

The January 30, 2016 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: August 2, 2016

How this Decision Affects Your Eligibility

You remain eligible for up to \$115.00 in advance premium tax credit.

You remain not eligible for cost-sharing reductions.

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance, consult the Federal Marketplace website (www.healthcare.gov) for additional information and an application.

Please contact NYSOH when you have sufficient documentation of your change in income.

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

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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 January 30, 2016 eligibility determination notice is AFFIRMED.

You remain eligible for up to \$115.00 in advance premium tax credit.

You remain not eligible for cost-sharing reductions.

If you wish to be considered for a hardship exemption, which would exempt you from paying a penalty for not having health insurance, consult the Federal Marketplace website (www.healthcare.gov) for additional information and an application.

Please contact NYSOH when you have sufficient documentation of your change in income.

Legal Authority

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A Copy of this Decision Has Been Provided To:

