



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

## Notice of Decision

Decision Date: August 12, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007072

[REDACTED]

Dear [REDACTED],

On August 5, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 9, 2016 eligibility determination notice, February 9, 2016 notice of enrollment and June 16, 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.

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).

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## Decision

Decision Date: August 12, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007072

[REDACTED]

## Issue

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

Did NY State of Health (NYSOH) properly determine that the application of advance premium tax credits was effective March 1, 2016?

Did NYSOH properly determine that you did not qualify for a special enrollment period to enroll in a plan outside of open enrollment period as of June 16, 2016?

## Procedural History

On February 21, 2015, NYOSH issued an eligibility determination notice stating that you were eligible to receive up to \$288.00 per month in advance payments of the premium tax credit (APTC), and, if you selected a silver-level plan, cost-sharing reductions (CSR), effective April 1, 2015. You then enrolled in health plan.

On October 23, 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 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.

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On December 21, 2015, NYSOH issued an eligibility determination notice stating that you were newly eligible to purchase a qualified health plan (QHP) at full cost because you were found ineligible for Medicaid, Child Health Plus, APTC, and CSR to help pay for the cost of insurance. This was because you had not responded to the renewal notice and had not completed your renewal within the required time frame. Your eligibility financial assistance would end as of December 31, 2015.

On December 24, 2015, NYSOH issued a notice of enrollment confirming that you had been reenrolled in Healthfirst Silver Leaf Premier as of December 22, 2015 at premium rate of \$440.05 per month, effective January 1, 2016.

On February 8, 2016, NYSOH received an updated application for health insurance.

On February 9, 2016, NYSOH issued an eligibility redetermination notice stating that you were newly eligible to receive up to \$161.00 per month in APTC. This eligibility determination was effective March 1, 2016.

Also on February 9, 2016, NYSOH issued a notice of enrollment confirming your enrollment in Healthfirst Silver Leaf Premier, as your QHP, with a monthly premium responsibility of \$279.05, after your APTC of \$161.00 was applied, effective March 1, 2016. Your original enrollment date of January 1, 2016 remained in place.

On February 12, 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 March 21, 2016, NYSOH received an updated application for health insurance.

On March 22, 2016, NYSOH issued an eligibility redetermination notice stating that you were eligible to receive up to \$161.00 per month in APTC. This eligibility determination was effective May 1, 2016. It also stated that you had qualified to select a plan outside of the open enrollment period, and that you had until April 29, 2016 to select your plan. You were enrolled in a plan effective March 1, 2016, with APTC to start at the same time.

On April 7, 2016, NYSOH issued a disenrollment notice stating that your coverage under Healthfirst Silver Leaf Non-Premium had been terminated effective March 1, 2016 because a premium payment had not been received.

On April 16, 2016 and May 12, 2016, NYSOH issued eligibility redetermination notices stating that you were eligible to receive up to \$161.00 per month in

APTC. Each eligibility determination stated that you qualified to select a health plan outside of the open enrollment period for 2016, until May 31, 2016.

On June 16, 2016, NYSOH issued an additional eligibility redetermination notice stating that you were eligible to receive up to \$161.00 per month in APTC. The notice also stated that you did not qualify to select a health plan outside of the open enrollment period for 2016. This eligibility determination was effective July 1, 2016.

On August 5, 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) Your NYSOH account indicates that you receive notices from NYSOH by regular mail.
- 2) You testified that you did not receive any notices from NYSOH telling you that you needed to update the information in your NYSOH account to ensure that your coverage would not be interrupted and that your financial assistance would continue.
- 3) No notices sent to you at the address listed on your NYSOH account have been returned as undeliverable.
- 4) You testified that you did not know you needed to renew your application until you noticed that the total premium amount billed for January 2016 and February 2016 coverage was far greater than what you typically were billed for during the 2015 plan year.
- 5) You testified, and the record reflects, that you updated the information in your NYSOH account on February 8, 2016.
- 6) You testified that when your account was updated for coverage beginning March 1, 2016, a NYSOH representative inadvertently selected a QHP for you that was not the QHP plan you were enrolled in during the 2015 plan year; that is, Healthfirst Silver Leaf Premier. You further testified that you were enrolled in Healthfirst Silver Leaf Non-Premium, which lacked the vision and dental coverage you were seeking. You realized this was the wrong plan when your premium billed to you was slightly less than what you had been expecting.

- 7) The record reflects that your coverage under Healthfirst Silver Leaf Non-Premium was terminated effective March 1, 2016 for non-payment of premium amounts.
- 8) You testified that you were seeking a special enrollment period to reenroll in Healthfirst Silver Leaf Premier for the remainder of the 2016 plan year. You did not want to be backdated under this plan to March 1, 2016, since you had incurred to vision or dental related expenses during that time.

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 a date specified by the state, which can be no earlier than the 15<sup>th</sup> 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 15<sup>th</sup> of a given month will take effect the month after the following month.

### Appealable Issues

An applicant has the right to appeal to the Appeals Unit of NYSOH: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) an eligibility determination for an exemption; (4) a failure by the Exchange to provide timely notice of an eligibility determination; and (5) the denial of a request for a special enrollment period (45 CFR § 155.505, 45 CFR § 155.420(d)).

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by the Marketplace (45 CFR § 155.520(b)(2); 18 NYCRR § 358-3.5(b)(1)).

### Enrollment in a Qualified Health Plan

NY State of Health (NYSOH) must provide annual open enrollment periods during which time qualified individuals may enroll in a qualified health plan (QHP) and enrollees may change QHPs (45 CFR §155.410(a)(1)).

For the benefit year beginning on January 1, 2016, the annual open enrollment period began on November 1, 2015, and extended through January 31, 2016 (45 CFR §155.410(e)(2)).

### Special Enrollment Periods

After each open enrollment period ends, the Marketplace provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a QHP, and an enrollee may change their enrollment to another plan. This is permitted when one of the following triggering events occur:

(1) The qualified individual or his or her dependent loses certain health insurance coverage:

(a) Health insurance considered to be minimum essential coverage;

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- (b) Enrolled in any non-calendar year health insurance policy that will expire in 2014, even if they have the option to renew the expiring non-calendar year individual health insurance policy; or
  - (c) Pregnancy-related coverage; or
  - (d) Medically needy coverage.
- (2) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care; or
  - (3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status; or
  - (4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange; or
  - (5) The enrollee or dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee; or
  - (6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions; or
  - (7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move; or
  - (8) The qualified individual who is an Indian may enroll in a QHP or change from one QHP to another one time per month; or
  - (9) The qualified individual or enrollee, or their dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide; or
  - (10) A qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a



result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities

(45 CFR § 155.420(d)).

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

(1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or

(2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128”

(45 CFR § 155.420(e)).

## **Legal Analysis**

The first issue under review is whether NYSOH properly determined that your eligibility for APTC was effective March 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 23, 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 you 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 you were receiving might end.

Because there was no timely response to this notice, NYSOH properly determined that your eligibility for financial assistance would end December 31, 2015, consistently with the information contained in the renewal notice.

You testified that you did not receive any notice from NYSOH telling you that you needed to update the information in your NYSOH account. You testified, and your NYSOH account confirms, that you elected to receive notifications by regular mail. However, there is no evidence in the record that any of the notices that were sent to your mailing address were returned as undeliverable.

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Therefore, the record reflects that NYSOH properly notified you of your annual renewal and the need to update the information in your NYSOH account in order to ensure your enrollment in your health plan and eligibility for financial assistance would continue, and properly ended your eligibility for continuing financial assistance.

The record shows that on February 8, 2016 you updated the information in your NYSOH account.

When an individual changes information in their application on or before the 15th of any month, NYSOH must make the redetermination that results from the change effective the first day of the following month.

Therefore, NYSOH's February 9, 2016 eligibility determination notice and enrollment confirmation notices are AFFIRMED because they properly began your eligibility for APTC on March 1, 2016.

The second issue under review is whether you were properly denied a special enrollment period as of June 16, 2016.

The Marketplace provided an open enrollment from November 1, 2015 until January 31, 2016. Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered in the Marketplace.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered in NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

Generally, the loss of health insurance coverage is considered a triggering event. Here, the record reflects that your enrollment was terminated effective March 1, 2016 because you did not pay your premiums to your health plan on time. The Marketplace considers the failure to pay premiums a voluntary action causing the termination of your coverage; therefore, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis. The Appeals Unit does not have the authority to decide whether or not your premiums were in fact made on time.

A special enrollment period can be granted if a qualified individual's enrollment or non-enrollment into a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of NYSOH or its instrumentalities as evaluated and determined by the NYSOH.

The credible evidence of record indicates that on or about March 21, 2016, you were inadvertently enrolled in Healthfirst Silver Leaf Non-Premium by a NYSOH representative. You credibly testified that at that time you had sought to be enrolled in Healthfirst Silver Leaf Premier effective March 1, 2016 since inclusive in such coverage was both dental and vision, and that you had not sought to disenroll from such coverage as is reflected in the March 22, 2015 disenrollment notice. Contemporaneous with your disenrollment from Healthfirst Silver Leaf Premier was your enrollment in Healthfirst Silver Leaf Non-Premium, which you had not requested. Such an inadvertent enrollment in a QHP due to the error of a NYSOH representative qualifies as a triggering event.

Therefore, NYSOH's June 16, 2016 that you do not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this Decision.

## **Decision**

The February 9, 2016 eligibility determination notice is AFFIRMED.

The February 9, 2016 notice of enrollment is AFFIRMED.

The June 16, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this Decision.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage.

**Effective Date of this Decision:** August 12, 2016

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

Your enrollment in your qualified health plan, and your eligibility for APTC properly began as of March 1, 2016.

You qualify for a special enrollment period.

You have 60 days from the date of this Decision to enroll into a plan.

## **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 9, 2016 eligibility determination notice is AFFIRMED.

The February 9, 2016 notice of enrollment is AFFIRMED.

The June 16, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a special enrollment period until 60 days from the date of this Decision.

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Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage.

Your enrollment in your qualified health plan, and your eligibility for APTC properly began as of March 1, 2016.

You qualify for a special enrollment period.

You have 60 days from the date of this Decision to enroll into a plan.

### **Legal Authority**

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

**A Copy of this Decision Has Been Provided To:**

