



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: AP000000007359

[REDACTED]

Dear [REDACTED]

On August 9, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 13, 2016 cancellation notice, and February 17, 2016 and February 19, 2016 eligibility determination notices.

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 17, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007359



## Issues

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

Can the NY State of Health (NYSOH) Appeals Unit consider your appeal regarding the cancellation of your enrollment in your qualified health plan effective February 1, 2016 because of non-payment of premiums?

Did NYSOH properly determine that you were eligible to receive up to \$51.00 per month in advance payments of the premium tax credit, effective April 1, 2016?

Did NYSOH properly determine that you were not eligible for cost-sharing reductions?

Did NYSOH properly determine that you did not qualify to select a health plan outside of the open enrollment period for 2016?

## Procedural History

On November 24, 2015, NYSOH issued an eligibility determination notice stating that you were found conditionally eligible to receive up to \$51.00 per month in advance payments of the premium tax credit (APTC), effective January 1, 2016.

On January 8, 2016, NYSOH issued a notice of enrollment confirming that your new qualified health plan (QHP) coverage would begin effective February 1, 2016.

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On February 8, 2016, NYSOH received (1) a Form SSA-1099 Social Security Benefit Statement for 2015 and (2) a Form 1099-R Distributions From Pensions, Annuities, Retirements or Profit-Sharing Plan, IRAs, Insurance Contracts, etc. for 2015.

On February 13, 2016, NYSOH issued a cancellation notice confirming that your QHP coverage had been terminated effective February 1, 2016 due to non-payment of premiums.

On February 16, 2016, NYSOH received a revised application for health insurance.

On February 17, 2016, NYSOH issued an eligibility redetermination notice based on the information contained in the February 16, 2016 application. It stated that you were found conditionally eligible to receive an APTC of up to \$51.00 per month and that you were ineligible for CSR. The notice also stated that you did not qualify to select a health plan outside of the open enrollment period. This eligibility determination was effective April 1, 2016.

On February 19, 2016, NYSOH issued an eligibility redetermination notice , stating again that you were found conditionally eligible to receive up to \$51.00 per month in APTC and that you were ineligible for CSR, effective April 1, 2016.

On February 24, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of the February 13, 2016 cancellation notice and February 17, 2016 eligibility determination notice.

On August 9, 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) The record reflects that you selected your QHP for enrollment on or about January 8, 2016. Your coverage was scheduled to begin on February 1, 2016.
- 2) You testified that you had difficulty in making the total premium payment for your first month's coverage, February 2016. You further testified that you made arrangements with the insurance carrier to make two separate payments to begin your coverage that month.

- 3) You testified that you did not believe you made those payments on a timely basis to the insurance carrier.
- 4) You were disenrolled from your QHP coverage effective February 1, 2016 for non-payment of premiums.
- 5) You revised your application on February 16, 2016.
- 6) You testified that you expect to file your 2016 taxes with a tax filing status of single. You will claim no dependents on that tax return.
- 7) You are seeking insurance for yourself only.
- 8) The application that was submitted on February 16, 2016 listed annual household income of \$39,432.00, consisting of \$1,346.00 you receive in monthly Social Security Benefits and \$1,940.00 you receive in monthly taxable pension benefits paid by your former employer. You testified that this amount was accurate.
- 9) Your application states that you will not be taking any deductions on your 2016 tax return.
- 10) You live in Queens County, New York.
- 11) You testified that you were not only seeking to be found eligible for more tax credits, but also to be able to reenroll in a plan for the remainder of the 2016 plan year.

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

## **Applicable Law and Regulations**

### 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)).

## Advance Payments of Premium Tax Credit

APTC is 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 Federal Register 3236, 3237).

For annual household income in the range of at least 300% but less than 400% of the 2015 FPL, the expected contribution is 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)).

### Enrollment in a Qualified Health Plan

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, NYSOH 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 generally permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent involuntarily loses certain health insurance coverage:
  - (a) Health insurance considered to be minimum essential coverage;
  - (b) Enrolled in any non-calendar year health insurance policy, 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

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- (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 a non-Exchange entity providing enrollment assistance or conducting enrollment activities; 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 has a 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 is an Indian, as defined by section 4 of the Indian Health Care Improvement Act, and 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;

(45 CFR § 155.420(d)).

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP (45 CFR § 155.420(c)(1)).

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 is whether the Appeals Unit of NYSOH can consider your appeal regarding the cancellation of your enrollment in your qualified health plan effective February 1, 2016 because of non-payment of premiums.

On February 13, 2016, NYSOH issued a disenrollment notice stating that your coverage in your qualified health plan was terminated effective February 1, 2016 because of non-payment of premiums.

The NYSOH Appeals Unit only has the authority to review issues related to an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; an eligibility determination for an exemption; a failure by the Exchange to provide timely notice of an eligibility determination; and the denial of a request for a special enrollment period

Since the NYSOH Appeals Unit is not given the authority to review the cancellation of coverage due to non-payment of premiums, we cannot reach the merits as to whether or not you were properly terminated from your health plan for non-payment of premiums. Therefore, your appeal of the February 13, 2016 cancellation notice is DISMISSED as a non-appealable issue.

The second issue is whether NYSOH properly determined that you were eligible for up to \$51.00 per month in APTC.

The application that was submitted on February 16, 2016 listed an annual household income of \$39,432.00 and the eligibility determination relied upon that information.

You are in a one-person household. You expect to file your 2016 income taxes as single and will claim no dependents on that tax return.

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

An annual income of \$39,432.00 is 335.02% of the 2015 FPL for a one-person household. At 335.02% of the FPL, the expected contribution to the cost of the health insurance premium is 9.66% of income, or \$317.43 per month.

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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 (\$317.43 per month), which equals \$50.83 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined you to be eligible for up to \$51.00 per month in APTC.

The third issue is whether you were properly found ineligible for CSR.

CSR is available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$39,432.00 is 335.02% of the applicable FPL, NYSOH correctly found you to be ineligible for CSR.

The final issue is whether NYSOH properly determined that you did not qualify to select a health plan outside of the open enrollment period for 2016.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on November 18, 2015. Therefore, you completed your application during the open enrollment period.

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, your enrollment was terminated effective February 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. As discussed above, the Appeals Unit does not have the authority to decide whether or not your premiums were in fact made on time.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2016, no other triggering events have occurred that would qualify you for a special enrollment period.

Since the February 17, 2016 eligibility determination notice properly stated that, based on the information you provided, you were eligible for up to \$51.00 per month in APTC, ineligible for CSR, and did not qualify for a special enrollment period, it is correct and is AFFIRMED.

## **Decision**

Your appeal of the February 13, 2016 cancellation notice is **DISMISSED** as a non-appealable issue.

The February 17, 2016 eligibility determination notice is **AFFIRMED**.

**Effective Date of this Decision:** August 17, 2016

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

You remain for up to \$51.00 per month in APTC.

You are ineligible for CSR.

You did not qualify for a special enrollment period.

## **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**

Your appeal of the February 13, 2016 cancellation notice is **DISMISSED** as a non-appealable issue.

The February 17, 2016 and February 19, 2016 eligibility determination notices are **AFFIRMED**.

You remain for up to \$51.00 per month in APTC.

You are ineligible for CSR.

You did not qualify for a special enrollment period.

## **Legal Authority**

We are sending you this notice in accordance with 45 CFR § 155.545.

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

