



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

Notice of Decision

Decision Date: July 21, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007377

[REDACTED]

Dear [REDACTED]

On July 8, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's October 23, 2015 eligibility redetermination and November 25, 2015 enrollment 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.

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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NY State of Health Account ID: [REDACTED]
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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 on October 23, 2015 that you were eligible to receive up to \$25.15 per month in advance payments of the premium tax credit, effective January 1, 2016, and properly re-enroll you in your silver-level qualified health plan as of that date, as stated in the November 25, 2015 enrollment notice?

Should the amount of the advance payment of the premium tax credits stated in the January 23, 2016 eligibility redetermination notice be applied to the January 2016 and February 2016 premiums for your health plan coverage that month?

Procedural History

According to your NY State of Health account, in 2015 you received \$319.00 per month in advance payments of the premium tax credit (APTC) and had health insurance coverage in a silver-level qualified health plan (QHP) through Fidelis Care from April 1, 2015 through October 31, 2015.

On October 23, 2015, NYSOH issued a renewal notice that stated you could keep your present health insurance for the next year, 2016, and you were automatically re-enrolled in your current health plan and didn't need to do anything more. The enrollment start date in the same silver-level QHP through Fidelis Care was listed as January 1, 2016.

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That notice also contained an eligibility redetermination that stated, based on federal and state data sources that showed your income was between \$16,243.00 and \$47,080.00, you qualify for up to \$25.15 in APTC, effective January 1, 2016. It also stated that you were not eligible for Medicaid or cost sharing reductions because you were over-income for these programs.

On November 25, 2015, NYSOH issued an enrollment notice confirming that you had been re-enrolled in the same silver-level QHP through Fidelis Care that you had in 2015, with a monthly premium responsibility of \$348.16 after the APTC amount of \$25.15 was applied and your enrollment start date was January 1, 2016.

On January 23, 2016, based on your January 22, 2016 updated application and reported income of \$28,000.00, NYSOH issued an eligibility redetermination notice that stated you were eligible to receive up to \$216.00 per month of APTC and were newly eligible for cost sharing reductions, effective March 1, 2016.

Also on January 23, 2016, NYSOH issued an enrollment notice confirming your enrollment in Fidelis Care Silver as of January 1, 2016, and that your APTC would be applied effective February 1, 2016, leaving you with a \$161.65 monthly premium responsibility.

On February 19, 2016, NYSOH received your written request for a hearing insofar as your monthly APTC of \$216.00 was not applied to the premiums for January 2016 or February 2016.

On July 8, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeal 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) According to your NYSOH account, you were automatically re-enrolled in Fidelis Care Silver, effective January 1, 2016, and the APTC of \$25.15 as calculated by NYSOH on October 23, 2015 was applied as of that date.
- 2) You testified that you did not pay the monthly premium of \$348.16 for January 2016 and February 2016, after the APTC amount of \$25.15 was applied until Fidelis Care recently invoiced you for the full premium of \$348.16 in January 2016 and your portion of the premium responsibility of \$161.65 for February 2016.

- 3) You testified that you timely paid your premium responsibility of \$161.65 for March 2016, after your monthly APTC amount was adjusted to \$216.00 for that month.
- 4) You are seeking to have your monthly APTC of \$216.00 applied to your January 2016 monthly premium.

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 that it will use to redetermine a qualified individual's eligibility for that year (45 CFR § 155.335(c)(3)). The notice must allow a reasonable amount of time for the qualified individual to respond and for NYSOH to implement any changes that the individual has elected (45 CFR § 155.335(d)(2)(ii)). 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(h)(i)). NYSOH must ensure this redetermination is effective on the first day of the coverage year (45 CFR § 155.335(i)).

Redetermination During a Benefit Year

When a redetermination is issued as a result of a change in an applicant's information, NYSOH must generally make that redetermination effective on the first day of the month following the date it is notified of the change (45 CFR § 155.330 (f)(1)(ii)). However, NYSOH may adopt a policy that any change made after the 15th of any month will not be effective until the first of the next following month (45 CFR § 155.330 (f)(2)), and it has elected to do so (13 OHIP/ADM-03).

When an eligibility redetermination results in a change in the amount of advance premium tax credit (APTC) for the benefit year, NYSOH must recalculate the amount of APTC in such a manner as to account for any advance payments already 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 benefit year (45 CFR § 155.330(g)).

Enrollment in a Qualified Health Plan

The effective date of coverage by a qualified health 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)). 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)).

End of Tax Year Reconciliation

At the end of a tax year, a person who elects to take the advance premium tax credit to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to NYSOH and their actual gross income for that year. A person who received less tax credit than his or her maximum entitlement, based on gross income, may receive an income tax refund, or owe less in taxes. A person who received more tax credit than his or her maximum entitlement, based on gross income, will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

Legal Analysis

The first issue is whether NYSOH properly determined that you were eligible to enroll in a qualified health plan with a monthly APTC of \$25.15, effective January 1, 2016.

NYSOH must redetermine qualified individuals' eligibility for health insurance and financial assistance to help pay for that health insurance annually.

NYSOH must issue a renewal notice that contains the information that it will use to determine individual's eligibility. If the individual do 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 a renewal notice that contained information about your annual eligibility redetermination that was based on information from federal and state sources. That information said you were eligible for APTC of up to \$25.15, effective January 1, 2016. The notice also informed you that you were being re-enrolled in the same Fidelis Care Silver health plan that you had in

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2015, as of January 1, 2016. This information was further confirmed in the November 25, 2015 enrollment notice.

The record reflects that you then updated your NYSOH application on January 22, 2016 and reported an annual household income of \$28,000.00. Based on this update information, NYSOH redetermined your eligibility for APTC and found you were eligible for up to \$216.00 per month in APTC as stated in the January 23, 2016 eligibility redetermination notice.

On January 23, 2016, NYSOH issued an enrollment notice confirming your enrollment in your qualified health plan, effective January 1, 2016, and that the monthly APTC amount of \$216.00 would be applied to your monthly premium effective February 1, 2016.

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

Although the January 23, 2016 enrollment confirmation notice incorrectly stated that your APTC amount would be applied as of February 1, 2016, when it should have mirrored the January 23, 2016 eligibility redetermination notice that provided a March 1, 2016 effective date, you have the right to rely on the information as stated in that January 23, 2016 enrollment confirmation notice. As such, your APTC of \$216.00 should have been applied to the February 2016 monthly premium, which it appears did occur in your case.

This leads to the second issue under review, that is, whether or not the APTC amount listed in the January 23, 2016 eligibility redetermination notice should be applied to the premium amount for January 2016. Initially, APTC generally cannot be applied retroactively.

On November 25, 2015, NYSOH issued an enrollment notice confirming that you were enrolled in Fidelis Care Silver, effective January 1, 2016, and had a premium responsibility of \$348.16 per month after the monthly APTC of \$25.15 was applied.

The record reflects that on January 22, 2016, you updated the information in your NYSOH account. This resulted in a January 23, 2016 eligibility redetermination notice that stated you were eligible for up to \$216.00 in APTC per month, effective March 1, 2016. When an individual changes information in their application after the 15th of any month, NYSOH must make the redetermination that results from that change effective the first day of the second following month. Therefore, NYSOH's January 23, 2016 eligibility redetermination notice was correct in finding that you were not eligible for APTC in the amount of \$216.00 in January 2016 and February 2016, strictly adhering to federal regulations.

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As noted above, you credibly testified that you paid the monthly premium of \$348.16 for January 2016 after the APTC amount of \$25.15 was applied and paid your portion of the premium in February 2016 after the full APTC amount of \$216.00 was applied.

In the case when APTC is recalculated mid-year, as here, NYSOH is required to prorate monthly amounts to reflect APTC that has already been received and to ensure that the APTC you receive during the remainder of the year is as close as possible to the overall tax credit you will be entitled to when you file your taxes for the 2016 tax year. It appears in your case that NYSOH did not do this. Instead, it simply found you eligible for the monthly amount to which you would have been entitled (\$216.00 per month) had you received APTC for the entire 12 months of the year.

Therefore, the January 23, 2016 notices of eligibility redetermination and enrollment are MODIFIED to state you were eligible to receive APTC effective March 1, 2016, at only a **tentative** rate of \$216.00 per month (emphasis added).

Your case is RETURNED to NYSOH to recalculate the amount of APTC to which you are eligible for the 11 months of the year for which you received (or will receive) APTC, by dividing your annual expected tax credit by 11 months of 2016, instead of 12 months, after deducting the 1 month of APTC of \$25.15 that was applied in January 2016. The amount of APTC to which you are entitled may increase prospectively on a pro rata basis. NYSOH will notify you accordingly.

Decision

The January 23, 2016 notices of eligibility redetermination and enrollment are MODIFIED to reflect that you are tentatively entitled to up to \$216.00 per month in APTC, effective February 1, 2016.

Your case is RETURNED to NYSOH to recalculate the amount of APTC to which you are eligible for the 11 months of the year for which you received (or will receive) APTC, by dividing your annual expected tax credit by 11 months of 2016, instead of 12 months, after deducting the 1 month of APTC of \$25.15 that was applied in January 2016. The amount of APTC to which you are entitled may increase prospectively on a pro rata basis. NYSOH will notify you accordingly.

Effective Date of this Decision: July 21, 2016

How this Decision Affects Your Eligibility

You were eligible to enroll in a QHP with APTC, effective January 1, 2016, and were enrolled in your silver-level QHP, effective January 1, 2016.

You are tentatively eligible to share up to \$216.00 in APTC effective February 1, 2016; this amount may change depending on NYSOH's mid-year recalculation.

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 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

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Summary

The January 23, 2016 notices of eligibility redetermination and enrollment are MODIFIED to reflect that you are tentatively entitled to up to \$216.00 per month in APTC, effective February 1, 2016.

Your case is RETURNED to NYSOH to recalculate the amount of APTC to which you are eligible for the 11 months of the year for which you received (or will receive) APTC, by dividing your annual expected tax credit by 11 months of 2016, instead of 12 months, after deducting the 1 month of APTC of \$25.15 that was applied in January 2016. The amount of APTC to which you are entitled may increase prospectively on a pro rata basis. NYSOH will notify you accordingly.

You were eligible to enroll in a QHP with APTC, effective January 1, 2016, and were enrolled in your silver-level QHP, effective January 1, 2016.

You are tentatively eligible to share up to \$216.00 in APTC effective February 1, 2016; this amount may change depending on NYSOH's mid-year recalculation.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

