



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

### Notice of Decision

Decision Date: August 26, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007466

[REDACTED]

Dear [REDACTED],

On August 22, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's January 14, 2016 eligibility determination notice and the January 14, 2016 enrollment confirmation notice as well as the March 16, 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 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

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NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007466



## Issues

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

Did NY State of Health (NYSOH) properly determine that the application of advance premium tax credits (APTC) to your premium amount was effective February 1, 2016?

Did NYSOH properly determine that you were not eligible to select a health plan outside of the open enrollment period?

## Procedural History

On October 25, 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 receiving at that time.

No updates were made to your account by December 15, 2015 and your eligibility for your previous APTC ended December 31, 2015.

On December 21, 2015, NYSOH issued an eligibility determination notice stating that you were eligible to enroll in a qualified health plan at full cost, effective January 1, 2016. This was because you had not responded to the renewal notice and had not completed your renewal within the required time frame.

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Also on December 21, 2015, an enrollment confirmation notice was issued stating that you were enrolled in a full pay qualified health plan, effective January 1, 2016.

On January 13, 2016, NYSOH received your updated application for health insurance.

On January 14, 2016, NYSOH issued a notice of eligibility redetermination stating that you were newly eligible to receive up to \$213.00 per month in APTC. This eligibility was effective February 1, 2016.

On January 14, 2016, NYSOH issued a letter confirming your enrollment in a qualified health plan with a monthly premium responsibility of \$160.31, after your APTC of \$213.00 was applied, effective February 1, 2016.

On February 18, 2016 NYSOH issued a cancellation notice indicating that your qualified health plan was cancelled effective January 1, 2016 as your qualified health plan had not received a premium payment.

On February 27, 2016 you spoke to NYSOH's Account Review Unit and appealed the eligibility determination insofar as it began your financial assistance eligibility on February 1, 2016, and not January 1, 2016, as well as the denial of a special enrollment period.

On March 16, 2016, NYSOH issued a notice of eligibility determination that stated that you remained eligible to receive an APTC of up to \$213.00 per month. It further stated that you do not qualify to select a health plan outside of the open enrollment period for 2016.

On August 22, 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) Your NYSOH account indicates that you receive notices from NYSOH by regular mail.
- 2) You testified that you do not know if you received 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 received a bill from your qualified health plan.
- 5) The record indicates that on January 13, 2016 you updated the information in your NYSOH account. That day you also updated your enrollment into a qualified health plan.
- 6) The record indicates that on February 18, 2016 your coverage in your qualified health plan was cancelled effective January 1, 2016 as your qualified health plan had not received a premium payment.
- 7) You testified that you did not pay a premium to your qualified health plan in either January 2016 or February 2016.
- 8) You testified that there have been no changes in your household or residence since filing your application with NYSOH.
- 9) You testified that your income has changed since filing your application with NYSOH as you currently anticipate that your 2016 income will be approximately \$60,000.00.

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 and projected eligibility provided in the annual

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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.

### 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, 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:

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- (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
  - (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 under review is whether NYSOH properly determined that your eligibility for APTC was effective February 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 25, 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, your eligibility for financial assistance and you were enrolled into a qualified health plan at full cost, effective January 1, 2016.

You testified that you could not recall if you received 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

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of the notices that were sent to your mailing address were returned as undeliverable.

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

The record shows that on January 13, 2016 you updated the information in your NYSOH account and submitted a request to enroll in a qualified health plan.

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 January 14, 2016 eligibility determination notice and enrollment confirmation notices are AFFIRMED insofar as they properly began your eligibility for APTC on February 1, 2016.

The second issue under review is whether NYSOH properly denied you a special enrollment period, as stated in the March 16, 2016 eligibility determination notice.

NYSOH provided an open enrollment period 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 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 January 1, 2016 because you did not pay your premiums to your qualified health plan. NYSOH 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.

Furthermore, the Appeals Unit is not given the authority to review termination of enrollment due to non-payment of premiums, so we cannot reach the merits as to whether or not you were properly terminated from your health plan for non-payment of premiums.

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

Therefore, the March 16, 2016 eligibility determination notice is AFFIRMED because the Marketplace properly denied your request for a special enrollment period.

## **Decision**

The January 14, 2016 eligibility determination notice is AFFIRMED.

The January 14, 2016 enrollment confirmation notice is AFFIRMED.

The March 16, 2016 eligibility determination is AFFIRMED

**Effective Date of this Decision:** August 26, 2016

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

This decision does not change your eligibility.

Your enrollment in your eligibility for APTC properly began as of February 1, 2016.

You do not qualify to select a health plan outside of the open 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

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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 14, 2016 eligibility determination notice is AFFIRMED.

The January 14, 2016 enrollment confirmation notice is AFFIRMED.

This decision does not change your eligibility.

Your enrollment in your eligibility for APTC properly began as of February 1, 2016.

The March 16, 2016 eligibility determination is AFFIRMED.

You do not qualify for a special enrollment period at this time.

### **Legal Authority**

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

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

