



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

Notice of Decision

Decision Date: September 12, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000007764

[REDACTED]

Dear [REDACTED],

On August 30, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's December 23, 2015 enrollment confirmation notice, January 27, 2016 eligibility determination and the March 15, 2016 disenrollment 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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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 you were auto-enrolled into a qualified health plan at full cost, effective January 1, 2016?

Did NYSOH properly determine that your disenrollment from your qualified health plan was effective March 1, 2016 and not granted a special enrollment period to reenroll into coverage?

Procedural History

On October 22, 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.

You then submitted your updated application for financial assistance on November 9, 2015.

On November 10, 2015, an eligibility determination notice was issued finding you eligible to receive advance premium tax credits up to \$77.00 per month effective December 1, 2015. This determination was based on your attested household income of \$36,950.00.

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No enrollments were submitted for January 1, 2016.

On December 21, 2015, an eligibility determination notice was issued finding you newly eligible to purchase a qualified health plan at full cost effective January 1, 2016. The determination stated you were eligible to purchase a qualified health plan at full cost, because you did not respond to the renewal notice within the required time frame. As a result, you no longer qualified to receive financial assistance.

On December 23, 2015, an enrollment confirmation notice was issued confirming your enrollment in a Gold level qualified health plan with a premium responsibility of \$433.70 per month effective January 1, 2016.

On January 26, 2016, NYSOH received your updated application for financial assistance.

On January 27, 2016, a notice was issued finding you newly eligible to receive advance premium tax credits of up to \$71.00 per month effective March 1, 2016. This determination was based on your attested household income of \$36,950.00.

Also on January 27, 2016, an enrollment confirmation notice was issued confirming your enrollment in a Gold level qualified health plan with a premium responsibility of \$362.70 per month starting March 1, 2016.

Additionally on January 27, 2016, a disenrollment notice was issued stating your request to end insurance coverage with your health plan was received, and you would no longer have coverage with your health plan effective January 31, 2016.

On March 8, 2016, you spoke to NYSOH's Account Review Unit and appealed the fact that you were automatically renewed and enrolled in a qualified health plan effective January 1, 2016.

On March 15, 2016, a cancellation notice was issued terminating your coverage in your gold level qualified health plan because a premium payment had not been received by your Gold level health plan effective March 1, 2016.

On August 30, 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) You testified you are seeking disenrollment from your full cost qualified health plan effective January 1, 2016.
- 2) You testified you are seeking to be allowed to enroll effective September 1, 2016.
- 3) Your NYSOH account indicates that you receive notices from NYSOH by regular mail.
- 4) No notices sent to you at the address listed on your NYSOH account have been returned as undeliverable.
- 5) You testified that you did not authorize an enrollment in a qualified health plan when you updated your application on November 9, 2015.
- 6) You testified you did not sign up for automatic renewal of your coverage.
- 7) Your NYSOH account indicates you requested automatic renewal of your coverage for two years.
- 8) You testified that you updated the information in your NYSOH account on January 26, 2016. That day you also enrolled into the same Gold level qualified health plan effective March 1, 2016.
- 9) The record shows you were canceled for non-payment of premium for not paying a premium responsibility for January 1, 2016 with the same Gold level qualified health plan.
- 10) You testified that your premium payment you made for your March, 1, 2016 enrollment was applied by your Gold level health plan to your January, 2016 premium responsibility.

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

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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 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 15th 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 15th of a given month will take effect the month after the following month.

End of Tax Year Reconciliation

At the end of a tax year, a person who elects to take APTC 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 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 maximum entitlement, based on gross income, will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

Termination of a Qualified Health Plan; Enrollee Initiated

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The NYSOH must permit an enrollee to terminate his or her coverage with a qualified health plan coverage, with appropriate notice to the NYSOH or qualified health plan (45 CFR § 155.430(b)(1)(i)).

For enrollee-initiated terminations, the last day of coverage is either:

- 1) The termination date specified by the enrollee, if the enrollee provides reasonable notice (at least 14 days before the requested termination date);
- 2) Fourteen days after the enrollee requests the termination, if they do not provide reasonable notice; or
- 3) On a date on or after the date the enrollee requests the termination, if the enrollee's qualified health plan issuer and the enrollee agree to such a date

(45 CFR § 155.430(d)(2)(i)-(iii)).

Termination of a Qualified Health Plan; Exchange Initiated

The NYSOH may initiate termination of an enrollee's coverage in a qualified health plan and must permit a qualified health plan issuer to terminate such coverage: (1) When the enrollee is no longer eligible for coverage in a qualified health plan through the NYSOH; or (2) The enrollee's coverage is cancelled due to non-payment of premiums (45 CFR § 155.430(b)(2)(i) and (ii)).

Appealable Issues

An applicant has the right to appeal: (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) a denial of a request to vacate dismissal made by the NYSOH Appeals Unit (45 CFR § 155.505).

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:

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; (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)).

Legal Analysis

The first issue is whether NYSOH properly determined that you were auto-enrolled into a qualified health plan at full cost, effective January 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 22, 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.

You then submitted your updated application for financial assistance on November 9, 2015. Based on that application a preliminary eligibility determination notice was issued finding you eligible to receive advance premium

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tax credits (APTC) up to \$77.00 per month effective December 1, 2015. This determination was based on your attested household income of \$36,950.00.

You testified that you did not authorize an enrollment in a qualified health plan when you updated your application on November 9, 2015 and that you did not sign up for automatic renewal of your coverage. However, your NYSOH account indicates you requested automatic renewal of your coverage for two years.

The record indicates that on December 22, 2015 you were automatically enrolled in a full cost qualified health plan effective January 1, 2016, there was no APTC applied to this health plan because NYSOH stated that you failed to respond to the October 22, 2015 renewal notice.

Since you updated the information in your NYSOH account on November 9, 2015, you provided enough information for NYSOH to provide you an eligibility determination effective January 1, 2016. Your application of APTC should have begun as of January 1, 2016.

Because your application indicates that you had elected to be automatically renewed, NYSOH was proper in reenrolling you into your qualified health plan even though when you updated your November 9, 2015 application you did not specifically request enrollment.

Therefore the December 23, 2015 enrollment confirmation notice and the January 27, 2016 eligibility determination stating that you are newly eligible to receive advance premium tax credits of up to \$71.00 per month is MODIFIED to reflect your eligibility is effective January 1, 2016.

The second issue is whether you were properly disenrolled from your qualified health plan effective March 1, 2016 and not granted a special enrollment period to reenroll into coverage.

You testified that you updated the information in your NYSOH account on January 26, 2016. That day, your enrollment in your Gold level qualified health plan was updated. An enrollment confirmation notice was issued confirming your enrollment in a qualified health plan effective March 1, 2016. You were then canceled due to non-payment of premium effective March 1, 2016, by NYSOH. You testified that your premium payment you made for your March, 1, 2016 enrollment was applied by your Gold level health plan to your January, 2016 premium responsibility.

You testified that you are now seeking to be allowed to reenroll into a health plan effective September 1, 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

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health plan offered in NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

A special enrollment period can be granted if a qualified individual's enrollment or non-enrollment into a qualified health plan 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.

You provided a new application and enrollment in a Gold level qualified health plan to begin March 1, 2016, within the open enrollment period. You testified you did not pay the premium responsibility for your automatically enrolled qualified health plan for January, 2016 but your health plan applied your premium payment for March 2016 to the January, 2016 premium responsibility.

A special enrollment period can be granted if a qualified individual's enrollment or non-enrollment into a qualified health plan 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 record indicates that NYSOH did not accurately represent your new enrollment which was completed within the open enrollment period. The enrollment confirmation notice issued on January 27, 2016 indicated that your coverage would start March 1, 2016. You were not properly informed that your coverage in your qualified health plan for the months of January and February 2016 was still active and premiums would need to be paid in order for your coverage to continue March 1, 2016.

Therefore, NYSOH's March 15, 2016 disenrollment notice is **RESCINDED**, and 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.

During the hearing, you testified that you are concerned about receiving a tax penalty as a result of being without coverage.

Sometimes after an appeal decision, an appellant can claim an exemption from the requirement to have health insurance. You might qualify for a health coverage exemption in 2016 if you didn't have health coverage while you were waiting for an appeal decision about coverage eligibility or savings and your appeal was eventually successful.

You must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, NYSOH does not accept hardship exemption applications.

You will find the information you need to claim the exemption due to an appeal decision at <https://www.healthcare.gov/exemptions-tool/#/results/2016/details/eligible-based-on-appeal>. You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word “pending” in column “c” and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

Decision

The December 23, 2015 enrollment confirmation notice is MODIFIED to reflect that you should have had APTC applied to your premium as of January 1, 2016.

The January 27, 2016 eligibility determination is MODIFIED to state that your eligibility for APTC is effective as of January 1, 2016.

The March 15, 2016 disenrollment notice is RESCINDED

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: September 12, 2016

How this Decision Affects Your Eligibility

Your enrollment in your qualified health plan, and your eligibility for APTC is effective January 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)

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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:
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- By fax: 1-855-900-5557

Summary

The December 23, 2015 enrollment confirmation notice is MODIFIED to reflect that you should have had APTC applied to your premium as of January 1, 2016.

The January 27, 2016 eligibility determination is MODIFIED to state that your eligibility for APTC is effective as of January 1, 2016.

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 is effective January 1, 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

