



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

Notice of Decision

Decision Date: August 25, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP00000007779

[REDACTED]

Dear [REDACTED],

On August 19, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health’s January 9, 2016 eligibility determination and enrollment confirmation 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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DEPARTMENT OF HEALTH
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Decision

Decision Date: August 25, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP00000007779

[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 your enrollment in a qualified health plan with up to \$99.38 in advance payments of the premium tax credit was effective January 1, 2016 and the application of advance payments of the premium tax credit of \$148.00 were effective no earlier than February 1, 2016?

Procedural History

According to your NY State of Health (NYSOH), your enrollment in a Health Republic qualified health plan ended effective November 30, 2015, because it was no longer authorized to do business in New York State. A disenrollment notice to this effect was issued on November 4, 2015.

On November 10, 2015, NYSOH issued an eligibility redetermination notice that stated, based on your reported income of \$32,225.00, you were eligible to receive up to \$134.00 in advance payments of the premium tax credit (APTC), effective December 1, 2015.

Also on November 10, 2015, NYSOH issued an enrollment notice confirming that you were enrolled in a Health first platinum-level qualified health plan with an enrollment start date of December 1, 2015 and a monthly premium amount of \$403.48 after your APTC of \$134.00 had been applied.

On November 17, 2015, NYSOH issued a renewal notice that stated you could keep your current health plan with Healthfirst and were re-enrolled for another year, effective January 1, 2016 if all the information in your NYSOH account was accurate. That notice included an eligibility redetermination that stated you were eligible to receive up to \$99.38 per month in APTC effective January 1, 2016 because your income was within the range of \$16,243.00 and \$47,080.00 for a one-person household.

On November 23, 2015, NYSOH issued a disenrollment notice informing you that your 2015 coverage with Healthfirst would end December 31, 2016.

On November 25, 2015, NYSOH issued an enrollment notice confirming that your enrollment in your platinum-level qualified health plan with Healthfirst would begin January 1, 2016 and your APTC of \$99.38 would be applied as of that date, leaving you with a premium responsibility of \$492.62.

On January 9, 2016, based on your January 8, 2016 updated application, NYSOH issued an eligibility redetermination notice that stated you were eligible to receive up to \$148.00 per month in APTC, effective February 1, 2016. This APTC adjustment was based on your reported household income of \$30,888.00.

Also on January 9, 2016, NYSOH issued an enrollment notice confirming that your APTC amount of \$148.00 would be applied as of February 1, 2016, leaving you with a monthly premium responsibility of \$444.00.

On March 8, 2016, you spoke to a representative from NYSOH's Account Review Unit and appealed the eligibility determination insofar as it began your financial assistance of \$148.00 of APTC in your qualified health plan as of February 1, 2016; whereas your subsidy was \$99.38 of APTC in January 2016.

On March 16, 2016, based on your updated application and reported income of \$32,103.00, NYSOH issued an eligibility redetermination that stated you were eligible to receive up to \$132.00 per month in APTC, effective April 1, 2016. The corresponding enrollment notice indicated that, after the \$132.00 in APTC was applied, your monthly premium responsibility would be \$460.00 as of April 1, 2016.

On August 19, 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:

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- 1) You testified that you are a freelancer and periodically update the amount of income you expect to make in 2016.
- 2) According to your NYSOH account, as of November 16, 2015, your reported income was \$32,225.00. You testified this amount was accurate at the time.
- 3) According to your NYSOH account, as of January 8, 2016, your reported income was \$30,888.00. You testified this amount was accurate at the time.
- 4) According to your NYSOH account, as of March 15, 2016, your reported income was \$32,103.00. You testified this amount was accurate at the time.
- 5) You testified that you had paid \$403.38 in premium for each of the months of December 2015 and January 2016.
- 6) You testified that you did not understand why there was an increase in premium for January 2016, but your health plan said you had to pay the difference owed on the premium of \$492.62 for that month or your coverage would be cancelled.
- 7) You testified you paid the difference but were disputing that the APTC amount to which you were entitled as of February 1, 2016 of \$148.00 was not fully applied in January 2016, when only the APTC amount of \$99.38 was applied.
- 8) You are seeking to have the difference applied to your monthly premiums in the upcoming months.
- 9) You testified that you believe you will become Medicare eligible in November 2016 because your birthdate is [REDACTED], and you will be 65 years of age as of [REDACTED]

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,

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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 \$99.38, 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 November 17, 2015, 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 \$99.38, effective January 1, 2016. The notice also informed you that you were being re-enrolled in the same Healthfirst platinum-level qualified health plan that you had in 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 8, 2016 and reported an annual household income of \$30,888.00. 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, effective February 1, 2016, 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 \$148.00 would be applied to your monthly premium effective February 1, 2016.

When an individual changes information in their application from the 1st to the 15th of any month, NYSOH must make the redetermination that results from the change effective the first day of the following month.

Therefore, the January 9, 2016 eligibility redetermination and enrollment notices were correct and must be AFFIRMED, strictly adhering to federal regulations.

This leads to the second issue under review, that is, whether or not the APTC amount listed in the January 9, 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 a platinum-level qualified health plan with Healthfirst would begin January 1, 2016 and your APTC of \$99.38 would be applied as of that date, leaving you with a premium responsibility of \$492.62. It is unclear from the record what income amount NYSOH used in calculating the amount of APTC to which you were entitled, but based on the range of incomes you reported in November 2015 of \$32,225.00 and in January 2016 of \$30,888.00, it does not appear to have been correct. Absent the income amount, however, an analysis of the calculation cannot be made.

However, 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 (\$99.38 in January 2016) had you received APTC for the entire 12 months of the year.

However, in your case, it is notable that the APTC amount to which you were entitled has since adjusted twice to \$148.00 on January 8, 2016, effective February 1, 2016, and \$132.00 on March 15, 2016, effective April 1, 2016.

Equally notable is that you may not have coverage through NYSOH for a full 12 months because you turn 65 years of age in [REDACTED] and will become Medicare eligible.

Ordinarily a case may be returned to NYSOH to recalculate the amount of APTC to which you were entitled for the 11 months of the year for which you received (or will receive) APTC on a prorate basis, instead of being calculated for 12 months.

However, since your income fluctuates throughout the year, as you periodically reported in your NYSOH account and as you credibly testified, it is more prudent

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for any difference in the amount of APTC to which you were entitled versus received to be adjusted at the time you file your 2016 federal tax return. Any amount of APTC that you did not receive but were entitled to can then be used to offset any tax liability you may have or will be refunded as a tax credit.

Decision

The November 17, 2015 eligibility determination lacks sufficient evidence to be analyzed and will not be disturbed.

The January 9, 2016 eligibility redetermination and enrollment notices are **AFFIRMED**.

Any adjustments to the amount of APTC to which you were entitled in 2016 can be made at the time you file your 2016 federal tax return.

Effective Date of this Decision: August 25, 2016

How this Decision Affects Your Eligibility

The amount of APTC to which you were entitled in January 2016, will remain at \$99.38.

Any difference in the amount of APTC to which you were entitled versus received can be adjusted at the time you file your 2016 federal tax return. Any amount of APTC that you did not receive but were entitled to can then be used to offset any tax liability you may have or will be refunded as a tax credit.

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

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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 November 17, 2015 eligibility determination lacks sufficient evidence to be analyzed and will not be disturbed.

The January 9, 2016 eligibility redetermination and enrollment notices are **AFFIRMED**.

Any adjustments to the amount of APTC to which you were entitled in 2016 can be made at the time you file your 2016 federal tax return.

The amount of APTC to which you were entitled in January 2016, will remain at \$99.38.

Any difference in the amount of APTC to which you were entitled versus received can be adjusted at the time you file your 2016 federal tax return. Any amount of APTC that you did not receive but were entitled to can then be used to offset any tax liability you may have or will be refunded as a tax credit.

Legal Authority

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

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A Copy of this Decision Has Been Provided To:

