



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

Notice of Decision

Decision Date: December 8, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009099

[REDACTED]

Dear [REDACTED],

On November 22, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's December 31, 2015 eligibility determination notice, April 6, 2016 disenrollment notice, and the April 18, 2016 denial of the ability to enroll in a qualified health plan outside of the open enrollment period for 2016.

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).

This page intentionally left blank.



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

Decision

Decision Date: December 8, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009099



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 your advance premium tax credits, was effective February 1, 2016?

Did NYSOH properly terminate your enrollment in your qualified health plan effective January 31, 2016 because of non-payment of premiums?

Did NYSOH properly determine on April 18, 2016, that you were not eligible to select a health plan outside of the open enrollment period?

Procedural History

On October 23, 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 the financial assistance you were receiving might end.

No updates were made to your account by December 15, 2015.

On December 21, 2015, NYSOH issued an eligibility determination notice stating that you were newly eligible to purchase a qualified health plan at full cost through NYSOH, effective January 1, 2016. This same notice found that you were not eligible for Medicaid, Child Health Plus, or to receive tax credits or cost-

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).

sharing reductions to help pay for the cost of insurance. This was because you had not responded to the renewal notice and had not completed your renewal within the required time frame. Your eligibility for financial assistance ended December 31, 2015.

On December 24, 2015, NYSOH issued an enrollment notice confirming your enrollment in a qualified health plan with a monthly premium responsibility of \$314.40, effective January 1, 2016.

On December 30, 2015, NYSOH received your updated application for health insurance.

On December 31, 2015, NYSOH issued a notice of eligibility redetermination stating that you were newly eligible to receive up to \$242.00 per month in advance payment of the premium tax credit (APTC) and, if you selected a silver-level qualified health plan, for cost-sharing reductions (CSR). This eligibility was effective February 1, 2016.

Also on December 31, 2015, NYSOH issued an enrollment notice confirming your enrollment in a qualified health plan with a monthly premium responsibility of \$72.40, after your APTC of \$242.00 was applied, effective January 1, 2016.

On April 6, 2016, NYSOH issued a disenrollment notice terminating your enrollment in your qualified health plan effective January 31, 2016 for failure to pay your premiums.

On April 18, 2016, you contacted NYSOH to reenroll into a qualified health plan. Your request was denied as you were disenrolled due to non-payment of premiums. You were verbally denied permission to enroll in a qualified health plan outside of the open enrollment period for 2016 (incident # [REDACTED]).

On April 22, 2016, you spoke to NYSOH's Account Review Unit and appealed the eligibility determination insofar as you were disenrolled from your qualified health plan and denied permission to reenroll in a qualified health plan outside of the open enrollment period for the remainder of 2016.

On November 14, 2016, you were scheduled for a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. You requested that day that the hearing be adjourned to a later date.

On November 22, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Under oath, you waived your right to a formal notice of the hearing. 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) You testified, and the record reflects, that you renewed your application for health insurance on December 30, 2015.
- 2) You testified that at that time, you were told your new premium payment amount would be \$72.40. You testified that you made a premium payment that same day.
- 3) On December 31, 2015, NYSOH sent you an enrollment notice confirming your enrollment in your qualified health plan effective January 1, 2016, with application of your advance premium tax credits effective January 1, 2016, and a monthly premium responsibility of \$72.40.
- 4) You testified that you also made a premium payment on January 19, 2016 of \$115.13, and a premium payment on March 4, 2016 of \$72.40.
- 5) You testified that you learned that your coverage had been terminated when you received the disenrollment notice from NYSOH in April 2016.
- 6) You testified and your NYSOH account indicates that you receive notices from NYSOH by regular mail.
- 7) You testified that you did not receive the October 23, 2015, notice 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.
- 8) No notices sent to you at the address listed on your NYSOH account have been returned as undeliverable.
- 9) You testified that you became eligible for Medicare on November 7, 2016, when you turned age 65.
- 10) You testified that you are seeking either to be reinstated into your previous qualified health plan, or to be permitted to enroll in a qualified health plan for the months for which you were not enrolled.
- 11) You testified that you have medical bills from March of 2016.
- 12) You testified that you contacted your qualified health plan directly, but they would not let you make the additional payments and be reinstated into your plan.

13) There is no notice in your NYSOH account denying a special enrollment period. There is an April 18, 2016 incident # [REDACTED] acknowledging your request to reenroll in a qualified health plan outside of the open enrollment period for 2016.

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 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

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).

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).

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)).

Appealable Issues

An applicant has the right to appeal to NYSOH's Appeals Unit: (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 45 CFR § 155.505, and (5) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

De Novo Review

The Marketplace Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “De novo review means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

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).

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
- (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 advance premium tax credits 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 23, 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

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).

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 your and your spouse's enrollment in a qualified health plan with APTC was terminated effective December 31, 2015.

You testified that you did not receive 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 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 December 30, 2016 you updated the information in your NYSOH account.

When an individual changes information in their application after the 15th of any month, NYSOH will make the redetermination that results from the change effective the first day of the second following month. Additionally, the date on which a qualified health plan can take effect depends on the day a person selects the plan for enrollment. A plan that is selected after the fifteenth day of a month goes into effect on the first day of the second following month.

Therefore, NYSOH's December 31, 2015 eligibility determination notice properly found you eligible for APTC as of February 1, 2016.

However, NYSOH's December 31, 2015 enrollment confirmation notice found that your APTC of up to \$242.00 per month would be applied to your monthly premium effective January 1, 2016. As per the December 31, 2015 enrollment confirmation notice, NYSOH has voluntarily elected to apply your APTC of up to \$242.00 per month earlier than is required.

In as much as the December 31, 2015 eligibility determination notice finding you eligible for APTC of up to \$242.00 per month effective February 1, 2016 is inconsistent with the December 31, 2015 enrollment confirmation notice, the December 31, 2015 eligibility determination notice is MODIFIED to reflect that your eligibility for APTC of up to \$242.00 per month is effective as of January 1, 2016.

The second issue under review is whether NYSOH properly terminated your enrollment in your qualified health plan effective January 31, 2016 because of non-payment of premiums.

The record indicates that you were enrolled into your qualified health plan effective January 1, 2016. You testified that you made premium payments on December 30, 2015, January 19, 2016 and March 4, 2016.

On April 6, 2016 NYSOH issued a cancellation notice stating that your insurance with your qualified health plan had been cancelled effective January 30, 2016 because a premium payment was not received by your plan within the required time frame.

The New York State of Health Appeals Unit only has the authority to review issues related to the following: (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 special enrollment period.

Since the Appeals Unit is not given the authority to review termination of enrollment 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 April 6, 2016 cancellation notice is DISMISSED as a non-appealable issue.

The third issue under review is whether NYSOH properly denied you the ability to reenroll in a qualified health plan outside of the open enrollment period on April 18, 2016.

On April 18, 2016, you spoke with NYSOH's Account Review Unit and requested to be permitted to reenroll into a health plan for the remainder of 2016. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period. It does contain an April 18, 2016 incident # [REDACTED] which indicates that you are seeking to reenroll in a qualified health plan outside of the open enrollment period as well as an April 23, 2016 notice in which NYSOH acknowledges receipt of an appeal request and identifies the issue on appeal as "Eligibility Determination".

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH's failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination.

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).

The text of incident # [REDACTED] which acknowledges that you were seeking to be able to reenroll in a plan for the remainder of 2016, permits an inference that NYSOH did deny your special enrollment request.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued. Therefore, the issue under review is whether you were properly denied the ability to enroll in a qualified health plan outside of the open enrollment period for 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.

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 credible evidence of record indicates that you reasonably relied upon assertions by an NYSOH representative that your premium would be \$72.40, as confirmed by the December 31, 2015 enrollment confirmation notice which stated that your premium would be \$72.40 and your advance premium tax credits would be applied as of January 1, 2016.

Because of this misrepresentation, your premiums were not calculated correctly, and you were disenrolled from your qualified health plan and not permitted to enroll in a plan outside of the open enrollment period for 2016.

Therefore, NYSOH's April 18, 2016 preliminary eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 contained in incident # [REDACTED] is MODIFIED to reflect that you are eligible for a special enrollment period as of February 1, 2016.

The case is RETURNED to NYSOH to assist you in reenrolling into a health plan and to apply your APTC of up to \$242.00 per month to your monthly premium effective January 1, 2016. You may reenroll in coverage with an effective date of February 1, 2016, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate coverage.

The record indicates that NYSOH's failure to grant you a special enrollment period resulted in you being without insurance coverage for part of the 2016 coverage year.

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).

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 31, 2015 eligibility determination notice is MODIFIED to reflect that you are eligible for APTC of up to \$242.00 per month effective January 1, 2016.

Your appeal of the April 6, 2016 cancellation notice is DISMISSED.

The April 18, 2016 preliminary eligibility determination contained in incident # [REDACTED] is MODIFIED to reflect that you are eligible for a special enrollment period as of February 1, 2016.

Your case is RETURNED to NYSOH to assist you in reenrolling into a plan for 2016 health coverage and to make your APTC of up to \$242.00 per month effective January 1, 2016.

You may reenroll in coverage with an effective date of February 1, 2016, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate coverage.

Effective Date of this Decision: December 8, 2016

How this Decision Affects Your Eligibility

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).

You are eligible for APTC of up to \$242.00 per month effective January 1, 2016.

Your case has been returned to NYSOH to assist you in reenrolling into a plan for 2016 health coverage and to make your APTC of up to \$242.00 per month effective January 1, 2016.

You qualify for a special enrollment period, to enroll in a qualified health plan, effective February 1, 2016.

You may reenroll in coverage with an effective date of February 1, 2016, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate coverage.

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:

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).

NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211

- By fax: 1-855-900-5557

Summary

The December 31, 2015 eligibility determination notice is MODIFIED to reflect that you are eligible for APTC of up to \$242.00 per month effective January 1, 2016.

You are eligible for APTC of up to \$242.00 per month effective January 1, 2016.

Your appeal of the April 6, 2016 cancellation notice is DISMISSED.

The April 18, 2016 preliminary eligibility determination contained in incident # [REDACTED] is MODIFIED to reflect that you are eligible for a special enrollment period as of February 1, 2016.

You qualify for a special enrollment period, to enroll in a qualified health plan, effective February 1, 2016.

You may reenroll in coverage with an effective date of February 1, 2016, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate coverage.

Your case is RETURNED to NYSOH to assist you in reenrolling into a plan for 2016 health coverage and to make your APTC of up to \$242.00 per month effective January 1, 2016.

Your case has been returned to NYSOH to assist you in reenrolling into a plan for 2016 health coverage and to make your APTC of up to \$242.00 per month 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:

