



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

## Notice of Decision

Decision Date: February 10, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009145

[REDACTED]

Dear [REDACTED]

On January 20, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's April 17, 2016 eligibility determination 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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## Decision

Decision Date: February 10, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000009145

[REDACTED]

## 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 your spouse was eligible to receive up to \$96.00 per month in advance payments of the premium tax credits, effective May 1, 2016?

Did NYSOH properly determine that your spouse was not eligible for cost-sharing reductions?

Did NYSOH properly determine that your spouse was not eligible for the Essential Plan?

## Procedural History

On April 6, 2016, NYSOH received an update to your application for health insurance.

On April 7, 2016, NYSOH issued an eligibility determination notice based on the information contained in the April 6, 2016 application. The notice stated that your spouse was newly conditionally eligible to receive up to \$96.00 per month in advance payments of the premium tax credit (APTC); newly conditionally eligible for cost-sharing reductions (CSR), provided he selected a silver-level plan; and, ineligible for the Essential Plan, effective May 1, 2016. The notice requested that you provide income documentation before July 5, 2016 to confirm your spouse's eligibility for APTC and CSR.

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On April 13, 2016, NYSOH redetermined your spouse's eligibility.

On April 16, 2016, NYSOH received four earnings statements issued to your spouse by his employer, [REDACTED], between February 19, 2016 and April 1, 2016.

On April 17, 2016, NYSOH issued an eligibility determination which stated that your spouse was eligible to receive up to \$96.00 per month in APTC, without condition, effective May 1, 2016. The notice also stated that your spouse was ineligible for the Essential Plan.

On April 25, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of the April 17, 2016 eligibility determination insofar as your spouse was not found eligible for the Essential Plan.

On January 20, 2017, 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) You testified that you expect to file your 2016 taxes with a tax filing status of married filing jointly. You will claim your child as a dependent on that tax return.
- 2) You are seeking insurance for your spouse.
- 3) The application that was submitted on April 6, 2016 listed annual household income of \$45,000.00, consisting solely of income your spouse expected to receive from his employer, [REDACTED], during 2016. You testified that this amount was correct.
- 4) You testified, and provided four earnings statements issued to your spouse by his employer, dated between February 19, 2016 and April 1, 2016, reflecting his bi-weekly income was \$1,730.78.
- 5) Your application reflected that you will not be taking any deductions on your 2016 tax return.
- 6) You live in Queens County, New York.
- 7) You testified that you were seeking for your spouse to be eligible for the Essential Plan, rather than APTC and CSR, since the qualified health

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plans available through NYSOH are unaffordable for you. You also testified that you were puzzled as to why the notice stated that your spouse was not eligible for the Essential Plan since the eligibility determination notice that his income of \$45,000.00 was less than the Essential Plan allowable income limit of \$48,500.00.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

## **Applicable Law and Regulations**

### Household Composition

For purposes of advance premium tax credit (APTC) and cost-sharing reductions (CSR), the household size equals the number of individuals for whom the taxpayer is allowed a deduction under 26 USC § 151 for the taxable year, which typically includes: (1) the taxpayer, (2) his or her spouse, and (3) any claimed dependents (26 USC § 36B(d)(1)).

### Advance Payments of Premium Tax Credit

Advance payments of the premium tax credit (APTC) are generally available to a person who is eligible to enroll in a qualified health plan (QHP) and (1) expects to have a household income between 138% and 400% of the applicable federal poverty level (FPL), (2) expects to file a tax return and claim a personal exemption deduction for a person who meets the eligibility requirements to enroll in a QHP, and (3) is not otherwise eligible for minimum essential coverage except through the individual market (see 45 CFR § 155.305(f), 42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

The maximum amount of APTC that can be authorized equals:

- 1) the cost of the health insurance premium for the taxpayer's coverage family in the second lowest cost silver plan offered through NY State of Health in the county where the taxpayer resides

*minus*

- 2) the taxpayer's expected contribution amount

(see 26 USC § 36B, 26 CFR § 1.36B-3).

The taxpayer's expected contribution amount is the amount that the taxpayer is expected to spend on health insurance premiums. The expected contribution for 2016 is set by federal law at 2.03% to 9.66% of household income (26 USC §

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36B(b)(3)(A), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc. 2014-37, IRS Rev. Proc. 2014-62).

In an analysis of APTC eligibility, the determination is based on the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested (45 CFR §§ 155.300(a), 155.305(f)(1)(i)). On the date of your application, that was the 2015 FPL, which is \$20,090.00 for a three-person household (80 Federal Register 3236, 3237).

For annual household income in the range of at least 200% but less than 250% of the 2015 FPL, the expected contribution is between 6.41% and 8.18% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37, IRS Rev. Proc. 2014-62).

### Cost-Sharing Reductions

Cost-sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a QHP through NYSOH, (2) meets the requirements to receive APTC, (3) is expected to have an annual household income that does not exceed 250% of the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested, and (4) is enrolled in a silver-level QHP (45 CFR § 155.300(a), 45 CFR § 155.305(g)(1)).

### Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

## **Legal Analysis**

The first issue is whether NYSOH properly determined that your spouse was eligible for an APTC of up to \$96.00 per month.

The application that was submitted on April 6, 2016 listed an annual household income of \$45,000.00 and the eligibility determination relied upon that information.

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Your spouse is in a three-person household for purposes of eligibility for APTC, CSR and the Essential Plan. Your spouse expects to file his 2016 income taxes as married filing jointly and will claim your 3-year-old child as a dependent on that tax return. While you attested in your April 6, 2016 application to expecting one child, an unborn child cannot increase your spouse's household for his eligibility for APTC, CSR, and the Essential Plan because unborn children are not permitted to be claimed as a dependent on a tax return.

You reside in Queens County, where the second lowest cost silver plan available for an individual through NYSOH costs \$368.26 per month.

An annual income of \$45,000.00 is 223.99% of the 2015 FPL for a three-person household. At 223.99% of the FPL, the expected contribution to the cost of the health insurance premium is 7.26% of income, or \$272.22 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through NYSOH for an individual in your county (\$368.26 per month) minus your expected contribution (\$272.22 per month), which equals \$96.04 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined your spouse to be eligible for up to \$94.00 per month in APTC.

The second issue is whether your spouse properly found eligible for CSR.

CSR is available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$45,000.00 is 223.99% of the applicable FPL, NYSOH correctly found you to be eligible for cost sharing reductions.

The final issue is whether NYSOH properly determined that your spouse was ineligible for the Essential Plan.

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$20,090.00 for a three-person household. Since an annual household income of \$45,000.00 is 223.99% of the 2015 FPL, NYSOH properly found your spouse to be ineligible for the Essential Plan.

We note that the April 17, 2016 eligibility determination notice erroneously stated that the income threshold for your spouse's eligibility for the Essential Plan was \$48,500.00 since this was based on a four-person household, rather than a three-person household. However, since the April 17, 2016 eligibility determination properly stated that, based on the information you provided, your

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spouse was eligible for up to \$96.00 per month in APTC, eligible for CSR, and ineligible for Essential Plan, it is otherwise correct and must be AFFIRMED.

Since this Decision is being issued within days of the conclusion of the open enrollment period for 2016, your spouse is awarded a special enrollment period to enroll in a health plan within 60 days of the effective date of this Decision.

## **Decision**

The April 17, 2016 eligibility determination notice is AFFIRMED.

Since this Decision is being issued within days of the conclusion of the open enrollment period for 2016, your case is RETURNED to DOH so that your spouse is awarded a special enrollment period to enroll in a health plan within 60 days of the effective date of this Decision.

**Effective Date of this Decision:** February 10, 2017

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

Your spouse was properly found eligible for up to \$96.00 per month in APTC and, if he had selected a silver-level plan, eligible for CSR.

Your spouse was ineligible for the Essential Plan.

## **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)).

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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 April 17, 2016 eligibility determination notice is **AFFIRMED**.

Your spouse was properly found eligible for up to \$96.00 per month in APTC and, if he had selected a silver-level plan, eligible for CSR.

Your spouse was ineligible for the Essential Plan.

Since this Decision is being issued within days of the conclusion of the open enrollment period for 2016, your case is **RETURNED** to DOH so that your spouse is awarded a special enrollment period to enroll in a health plan within 60 days of the effective date of this Decision.

## **Legal Authority**

We are sending you this notice in accordance with 45 CFR § 155.545.

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

