



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

Notice of Decision

Decision Date: December 12, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000010107

[REDACTED]

Dear [REDACTED] and [REDACTED],

On November 29, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's May 12, 2016 eligibility determination and disenrollment 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 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.

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DEPARTMENT OF HEALTH
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Decision

Decision Date: December 12, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000010107



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 and your spouse were newly eligible for advance premium tax credits of up to \$315.00 per month effective June 1, 2016?

Did NYSOH properly determine you were no longer eligible for the Essential Plan effective May 31, 2016?

Did NYSOH give you proper notice that you and your spouse were no longer eligible for the Essential Plan effective May 31, 2016?

Procedural History

On December 15, 2015, NYSOH received your updated application for financial assistance.

On December 16, 2015, NYSOH issued an eligibility determination based on the December 15, 2015 application, stating that you and your spouse are eligible to enroll in the Essential Plan, effective January 1, 2016. The determination was based on your attested household income of \$27,852.00.

On December 18, 2015, NYSOH issued an enrollment confirmation notice confirming you and your spouse's enrollment on December 16, 2015 in an Essential Plan 1 for a premium responsibility of \$20.00 per month starting January 1, 2016.

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On May 11, 2016, NYSOH received your updated application for financial assistance. This update was made as a result of your spouse contacting NYSOH to update his income.

On May 12, 2016, NYSOH issued an eligibility determination notice based on your May 11, 2016 application. The determination found you and your spouse were newly eligible to receive advance premium tax credits up to \$315.00 per month effective June 1, 2016. The notice further stated you both qualified to select a health plan outside of the open enrollment period for 2016. You would need to select a health plan no later than June 30, 2016. The determination was based on your attested annual household income of \$58,252.00.

Also on May 12, 2016, a disenrollment notice was issued terminating you and your spouse's enrollment in your Essential Plan 1, effective May 31, 2016.

On June 6, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that eligibility determination insofar as you were no longer eligible for the Essential Plan, and had not been given enough time to select another health plan.

On November 29, 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) You testified that you expect to file your 2016 taxes with a tax filing status of married filing jointly.
- 2) You are seeking insurance for you and your spouse.
- 3) Your December 15, 2015, application you attested to an annual household income of \$27,852.00.
- 4) You testified you would like to remain enrolled in your Essential Plan until June 30, 2016.
- 5) The application that was submitted on May 11, 2016, which requested financial assistance, listed annual household income of \$58,252.00, consisting of \$27,852.00 you earn from your employment and \$30,400.00 your spouse receives in earned income. You testified that this amount was correct at the time.

- 6) You testified your spouse's income increased due to new employment. That is why you updated your application on May 11, 2016, with a higher income amount.
- 7) You testified you were not informed by a NYSOH agent that your enrollment in the Essential Plan would no longer continue effective May 31, 2016. You stated you were told that your Essential Plan would continue until the end of the year.
- 8) The record supports you contacted NYSOH to appeal your May 11, 2016 eligibility determination on June 6, 2016.
- 9) You were provided a special enrollment period until June 30, 2016 to choose a qualified health plan with the application of advance premium tax credits.
- 10) You testified, and the record reflects, that you receive all of your notices from NYSOH via electronic mail.
- 11) You testified that you did not receive any electronic alerts regarding any notice in your NYSOH account telling you that you had until June 30, 2016 to enroll in and choose a qualified health plan.
- 12) A review of the May 11, 2016 call your spouse made to NYSOH shows that he updated his income amount. The result of the updated income made you both eligible for advance premium tax credits and allowed you to choose a qualified health plan. This information was not communicated to you. The NYSOH representative stated you could stay on your Essential Plan until the end of 2016, and did not have to enroll in a qualified health plan at that time.
- 13) Your application states that you live in Oswego County.

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

Applicable Law and Regulations

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

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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).

In an analysis of Essential Plan eligibility, the determination is based on the FPL in effect on the first day of the benefit year for which coverage is requested (45 CFR § 155.300(a)). On the date of your application, that was the 2016 FPL, which is \$16,020.00 for a two-person household (81 Fed. Reg. 4036).

A person who has a household income greater than 150% of the FPL or below 200% of the FPL has a \$20.00 per month premium contribution (New York's Basic Health Plan Blueprint, as approved January 2016).

The Essential Plan is considered minimum essential coverage therefore, a person who is eligible for the Essential Plan is not eligible for any premium tax credit because they are eligible for minimum essential coverage through the individual market (see 26 CFR § 1.36B-2(c)(1), 26 USC § 5000A(f)(1)(C)).

Advance 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 § 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 \$15,930.00 for a two-person household (80 Federal Register 3236, 3237).

For annual household income in the range of at least 300% but less than 400% of the 2015 FPL, the expected contribution is between 9.66% and 9.66 % 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).

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on NYSOH application) with their actual income (stated on their federal income tax return). Those who take less tax credit in advance than they claim on the tax return may get the rest of it as an income tax refund or have their tax bill reduced. Those who take more tax credit in advance than they can claim on their tax return will owe the difference as additional income taxes (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)).

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; or

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; (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)).

Electronic Notices

Applicants may choose to receive notices and information from NYSOH either by electronic alerts or by regular mail. If the applicant elects to receive electronic notices, NYSOH must send an email or other electronic communication alerting the individual that a notice has been posted to the applicant's account (45 CFR § 155.230(d); 42 CFR §435.918(b)(4)).

Legal Analysis

The first issue is whether NYSOH properly determined that you and your spouse were eligible for an APTC of up to \$315.00 per month effective June 1, 2016.

The application that was submitted on May 11, 2016 listed an annual household income of \$58,252.00, and the eligibility determination relied upon that information. During your telephone hearing, you explained that your spouse had his income increase due to new employment, so you updated your application on May 11, 2016.

You and your spouse are in a two-person household. You expect to file your 2015 income taxes as married filing jointly and will claim no dependents on that tax return.

You reside in Oswego County, where the second lowest cost silver plan available for a couple through NYSOH costs \$783.96 per month.

An annual income of \$58,252.00 is 365.67% of the 2015 Federal Poverty Level (FPL) for a two-person household. At 365.67% of the FPL, the expected contribution to the cost of the health insurance premium is 9.66% of income, or \$468.93 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 a couple in your county (\$783.96 per month) minus your expected contribution (\$468.93 per

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month), which equals \$315.03 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined you and your spouse to be eligible for up to \$315.00 per month in APTC.

The second issue under review is whether NYSOH properly determined you and your spouse were no longer eligible for the Essential Plan effective May 31, 2016.

The application that was submitted on May 11, 2016, listed an annual household income of \$58,252.00 and the eligibility determination relied upon that information.

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. Since an annual household income of \$58,252.00 is 365.67% of the 2015 FPL, NYSOH properly found you and your spouse to be ineligible for the Essential Plan effective May 31, 2016.

The date on which eligibility for and enrollment in the Essential Plan can take effect depends on the day a person updates the information in their NYSOH account.

Accounts that are updated between the first day to and including the fifteenth day of a month go into effect on the first day of the following month.

Since the updates to your account were made on May 11, 2016, any changes to your eligibility or enrollment in an Essential Plan should have been made effective June 1, 2016.

Since the May 12, 2016, eligibility determination finding you and your spouse eligible for advance premium tax credits of up to \$315.00 per month effective June 1, 2016, and no longer eligible for the Essential Plan it was proper is AFFIRMED.

The May 12, 2016, disenrollment notice finding you and your spouse no longer eligible to remain enrolled in your Essential Plan effective May 31, 2016 was proper and is AFFIRMED.

The third issue is whether NYSOH gave you proper notice that you and your spouse were no longer eligible for the Essential Plan effective May 31, 2016.

A review of the May 11, 2016 call your spouse made to NYSOH shows that he updated his income amount which made you both eligible for advance premium tax credits and allowed you to choose a qualified health plan. You were subsequently disenrolled from your Essential Plan.

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This information was not communicated to you. The NYSOH representative stated you could stay on your Essential Plan until the end of the year, and did not have to enroll in a qualified health plan at that time.

You testified and the record reflects that you elected to receive alerts regarding notices from NYSOH electronically. You credibly testified that you did not receive any electronic alert regarding the notice that communicated you were both now eligible for advance premium tax credits, and could pick a plan by June 30, 2016, and no longer eligible for the Essential Plan effective May 31, 2016. There is no evidence in your account showing that any email alert was sent to you regarding the need to renew your application, that any such electronic notice failed, or that the notice was later sent to you by regular mail.

Therefore, it is concluded that NYSOH did not provide the required notice to you that you needed to choose a new health. Furthermore, it was in error that the NYSOH representative stated to you that you could remain enrolled in your Essential Plan until December 31, 2016.

A special enrollment period can be granted to an individual if that 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.

Your case is RETURNED to NYSOH to allow you to choose a qualified health plan to enroll in effective June 1, 2016, with the application of \$315.00 of APTC. You will be responsible for any premium payment owed.

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. 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.

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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 May 12, 2016 eligibility determination notice and disenrollment notice are **AFFIRMED**.

Your case is **RETURNED** to NYSOH to assist you and your spouse in enrolling into a plan for 2016 health coverage effective June 1, 2016.

Effective Date of this Decision: December 12, 2016

How this Decision Affects Your Eligibility

You and your spouse were eligible for advance premium tax credits up to \$315.00 per month effective June 1, 2016.

This decision has no effect on subsequent determinations made after May 12, 2016.

You and your spouse qualify for a special enrollment period.

You have 60 days from the date of this decision to enroll into a plan for June 1, 2016.

You will be responsible for any premium payments required by your health plan for the month of June, 2016.

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.

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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 after 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 May 12, 2016 eligibility determination notice and disenrollment notice are **AFFIRMED**.

Your case is **RETURNED** to NYSOH to assist you and your spouse in enrolling into a plan for 2016 health coverage effective June 1, 2016.

You and your spouse were eligible for advance premium tax credits up to \$315.00 per month effective June 1, 2016.

This decision has no effect on subsequent determinations made after May 12, 2016.

You and your spouse qualify for a special enrollment period.

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You have 60 days from the date of this decision to enroll into a plan for June 1, 2016.

You will be responsible for any premium payments required by your health plan for the month of June, 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided To:



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