



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

## Notice of Decision

Decision Date: January 24, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000010832

[REDACTED]

Dear [REDACTED],

On December 9, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's June 25, 2016 eligibility determination notice and July 14, 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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## Decision

Decision Date: January 24, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000010832

[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 \$157.00 per month in advance payments of the premium tax credit, effective July 1, 2016?

Did NYSOH properly determine that your spouse's enrollment in his QHP ended effective July 31, 2016?

Did NYSOH properly determine that your spouse's enrollment in his Essential Plan was effective August 1, 2016 and not July 1, 2016?

## Procedural History

On June 25, 2016, NYSOH issued an eligibility determination notice, based on the information contained in your June 24, 2016 application, stating that your spouse was eligible to receive advance premium tax credits (APTC) in an amount up to \$157.00 per month.

Also on June 25, 2016, NYSOH issued an enrollment confirmation notice, based on your June 24, 2016 plan selection, confirming your spouse's enrollment in a bronze-level QHP at a cost of \$165.21 per month, effective July 1, 2016.

On June 28, 2016, NYSOH issued an eligibility redetermination notice, based on the information contained in the June 24, 2016 application, stating that additional

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information was needed to confirm your spouse's eligibility for health insurance. That notice also stated that you must provide proof of income by July 9, 2016.

On July 6, 2016, you uploaded proof of your household income; which was subsequently invalidated on July 12, 2016.

On July 13, 2016, you updated your application. On that date, a preliminary eligibility determination was prepared with regard to the updated application, stating that your spouse has conditionally eligible for the Essential Plan, effective August 1, 2016.

Also on July 13, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that preliminary eligibility determination as it related to your spouse's eligibility for financial assistance for the month of July 2016 and the disenrollment date of your spouse's QHP, requesting that disenrollment date be made effective July 1, 2016.

On July 14, 2016, NYSOH issued an eligibility determination notice based on the information contained in the July 13, 2016 application, stating that your spouse was conditionally eligible to enroll in the Essential Plan, effective August 1, 2016.

Also on July 14, 2016, NYSOH issued an enrollment confirmation notice, based on your July 13, 2016 plan selection, confirming your spouse's enrollment in an Essential Plan at a cost of \$20.00 per month, effective August 1, 2016.

Also on July 14, 2016, NYSOH issued a disenrollment notice indicating that coverage in your spouse's QHP would end effective July 31, 2016.

Also on July 14, 2016, NYSOH issued a cancellation notice, based on your July 13, 2016 request to cancel the Essential Plan, effective August 1, 2016.

On December 9, 2016, you had a telephone hearing with a Hearing Officer from the NYSOH's Appeals Unit. The record was held open until December 24, 2016 for submission of additional proof of income for the month of July 2016. As of December 24, 2016, the Appeals Unit did not receive any of these documents from you nor were they visible in your NYSOH account. Therefore, the record was closed that day and this decision is based on the record as developed at the time of hearing.

## **Findings of Fact**

A review of the record supports the following findings of fact:

- 1) According to your NYSOH account, this appeal relates to your spouse's eligibility for financial assistance and his enrollment in a QHP for the month of July 2016.
- 2) According to your NYSOH account, you and your spouse expect to file your household's 2016 taxes with a tax filing status of married filing jointly and will claim one dependent on that tax return.
- 3) The application that was submitted on June 24, 2016 listed annual household income of \$41,331.00, consisting of \$13,500.00 you earn from your employment and \$27,831.00 your spouse earns from his employment. You testified that this amount was an estimate and that your spouse's income was not correct.
- 4) You provided documentation reflecting that, as of June 23, 2016, your household's income was \$51,363.00 and consisted of \$13,198.00 you earned from your employment and \$38,165 your spouse received from his employment. You testified that this amount was correct.
- 5) You testified that your spouse lost his job and that his last day of employment was June 18, 2016 and, at the time of his June 24, 2016 application, he was unemployed. You further testified that he began a new job in August 2016 and declined unemployment benefits for the month of July 2016. You weren't sure what your household's monthly income was for July 2016.
- 6) According to your NYSOH account, you and your spouse will not be taking any deductions on your 2016 tax return.
- 7) Your application states that you and your spouse live in [REDACTED]  
[REDACTED]
- 8) According to your NYSOH account and your testimony, on July 13, 2016 the following events occurred: (a) You contacted NYSOH to disenroll your spouse from his QHP through NYSOH; (b) You updated your account and your spouse was found conditionally eligible for the Essential Plan, effective August 1, 2016; (c) Your spouse enrolled in an Essential Plan that day; and (d) You cancelled his Essential Plan coverage that same day because he was eligible for insurance through his employer as of August 1, 2016.
- 9) You testified that your spouse paid the July 2016 monthly premium to his QHP. You are seeking retroactive disenrollment from your spouse's QHP, effective July 1, 2016 and believe that your spouse should be refunded the premium he paid for that month.

10) You testified that you were told by a NYSOH representative that your spouse qualified for free insurance, he could provide an estimate for his income, and, once the documentation was verified, he would have his coverage backdated to the date of the application.

11) You testified that another NYSOH representative stated that your spouse was given an incorrect eligibility determination in June 2016 and that he should have been retroactively placed in the Essential Plan as of July 1, 2016

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

## **Applicable Law and Regulations**

### 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 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 \$ 20,090.00 for a three-person household (80 Federal Register 3236, 3237).

For annual household income in the range of at least 250% but less than 300% of the 2015 FPL, the expected contribution is between 8.18% 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).

#### Essential Plan Effective Date

For individuals seeking enrollment in an Essential Plan, New York State has elected to follow the same rules that NYSOH uses in determining effective dates for individuals seeking enrollment in QHPs (NY Social Services Law § 369-gg(4)(c); New York's Basic Health Plan Blueprint, p. 16, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

The effective date of coverage by an Essential 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); see also 42 CFR § 600.320). 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)).

#### Termination of a Qualified Health Plan

NYSOH must permit an enrollee to terminate his or her coverage with a QHP coverage, with appropriate notice to the NYSOH or QHP (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 QHP issuer and the enrollee agree to such a date

(45 CFR § 155.430(d)(2)(i)-(iii)).

NYSOH must permit an enrollee to retroactively terminate or cancel their enrollment in a QHP if:

- 1) The enrollee demonstrates that they attempted to terminate their coverage and experienced a technical error that did not allow the coverage to be terminated, and requests retroactive termination within 60 days after they discovered the technical error.
- 2) The enrollment in the QHP was unintentional, inadvertent, or erroneous and was the result of the error or misconduct of an officer, employee, or agent of NYSOH or HHS, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities. Such enrollee must request cancellation within 60 days of discovering the unintentional, inadvertent, or erroneous enrollment.
- 3) The enrollee was enrolled in a QHP without their knowledge or consent by any third party, including third parties who have no connection with the Exchange, and requests cancellation within 60 days of discovering of the enrollment.

(45 CFR § 155.430(b)(2)(iv)(A-C)).

NYSOH permits a QHP to terminate an individual's coverage if (1) the enrollee is no longer eligible for coverage or (2) non-payment of the premiums by the enrollee (45 CFR § 155.430(b)(2)(i)-(ii)).

## **Legal Analysis**

The first issue under review is whether NYSOH properly determined that your spouse was eligible for APTC of up to \$157.00 per month.



The application that was submitted on June 24, 2016 listed an annual household income of \$41,331.00 and the eligibility determination relied upon that information on that date.

Your spouse is in a three-person household for purposes of this analysis. This is because he expects to file his 2016 income taxes as married filing jointly and will claim one dependent on that tax return.

Your spouse resides in Orange County, where the second lowest cost silver plan available for an individual through NYSOH costs \$384.49 per month.

An annual income of \$41,331.00 is 205.73% of the 2015 FPL for a three-person household. At 205.73% of the FPL, the expected contribution in 2016 to the cost of the health insurance premium is 6.61% of income, or \$227.66 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 spouse's county (\$384.49 per month) minus his expected contribution (\$357.40 per month), which equals \$156.83 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined that your spouse was eligible for up to \$157.00 per month in APTC, based on the income information in your account at that time, and the June 25, 2016 eligibility determination notice must be AFFIRMED as correct when made.

This is so, despite you providing documentation on July 13, 2016 reflecting that as of June 23, 2016, your household income was \$51,363.00. For APTC purposes, any changes are reconciled with the household's actual income when the 2016 federal tax return is filed.

The second issue is whether NYSOH properly determined that your spouse's enrollment in his Essential Plan was effective August 1, 2016 and not July 1, 2016.

You testified, and the record indicates, that due to your spouse's loss of employment, you updated your spouse's NYSOH application on July 13, 2016. As a result, your spouse was found conditionally eligible for the Essential Plan as of August 1, 2016, and you selected and enrolled him in a plan that day with an August 1, 2016 start date.

The date on which enrollment in an Essential Plan can take effect depends on the day a person selects the plan for enrollment.

A plan that is selected from the first day to and including the fifteenth day of a month goes into effect on the first day of the following month. A plan that is selected from the sixteenth day of the month to the end of the month goes into effect on the first day of the second following month.

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On July 13, 2016, you selected an Essential Plan, so your spouse's enrollment properly took effect on the first day of the first month following July 2016; that is, on August 1, 2016. Therefore, the July 14, 2016 enrollment confirmation notice is AFFIRMED.

Although you are seeking, in part, that his Essential Plan be backdated to July 1, 2016, there is no mechanism in the law to allow for his coverage in the Essential Plan you had originally selected on July 13, 2016 to be backdated to July 1, 2016.

Therefore, the sole remaining issue turns to whether NYSOH properly disenrolled your spouse from his QHP, effective July 31, 2016.

On July 14, 2016, NYSOH issued a disenrollment notice indicating your spouse would be disenrolled from his QHP effective July 31, 2016. This disenrollment was a result of the July 13, 2016 eligibility redetermination finding your spouse eligible for the Essential Plan, effective August 1, 2016.

You testified that your spouse is seeking retroactive disenrollment from his QHP to July 1, 2016.

NYSOH must permit an enrollee to be retroactively disenroll from their QHP if the enrollee demonstrates that there was a technical error that should have allowed them to terminate coverage earlier, or if their enrollment in the plan was unintentional, inadvertent, or erroneous and was the result of the error or misconduct of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities, or the enrollee was enrolled into a QHP without their knowledge or consent by a third party.

There is no indication in the record that your spouse's enrollment in a QHP as confirmed in the June 25, 2016 enrollment notice was unintentional, inadvertent, or erroneous, nor was your spouse's enrollment in a QHP the result of the error or misconduct of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities. Furthermore, there is no indication that your spouse's enrollment in a QHP as confirmed in the June 25, 2016 enrollment notice was without your knowledge or consent.

Therefore, there is no basis to find that NYSOH must permit you to retroactively terminate or cancel your spouse's enrollment in a QHP to July 1, 2016.

The record reflects that on July 13, 2016, you contacted NYSOH and requested that your spouse be disenrolled from his QHP as he no longer wanted to remain enrolled.

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Enrollees must be allowed to terminate their coverage with a QHP at the date they specify if they provide reasonable notice to NYSOH or to their health plan. Reasonable notice is defined as at least 14 days prior to the requested termination date.

NYSOH terminated your spouse's insurance coverage with your QHP effective July 31, 2016, which is the last day of the month following your July 13, 2016 request.

Since your spouse does not qualify to be retroactively disenrolled from his QHP coverage and he did not provide reasonable notice to NYSOH for coverage to end as of July 1, 2016, NYSOH properly determined that his disenrollment from his QHP was effective July 31, 2016. Therefore, the July 14, 2016, disenrollment notice is AFFIRMED.

## **Decision**

The June 25, 2016 eligibility determination notice is AFFIRMED as correct when made.

The July 14, 2016 enrollment confirmation notice is AFFIRMED.

The July 14, 2016 disenrollment notice is AFFIRMED.

**Effective Date of this Decision:** January 24, 2017

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

Your spouse was eligible for APTC in an amount of up to \$157.00 per month, effective July 1, 2016. Any reconciliation of that amount will occur when you file your 2016 income tax return.

This decision does not change your spouse's disenrollment date from his QHP. Your spouse's enrollment in his QHP ended as of July 31, 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.

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 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 QHPs, s, 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:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

The June 25, 2016 eligibility determination notice is AFFIRMED as correct when made.

The July 14, 2016 enrollment confirmation notice is AFFIRMED.

The July 14, 2016 disenrollment notice is AFFIRMED.

Your spouse was eligible for APTC in an amount of up to \$157.00 per month, effective July 1, 2016. Any reconciliation of that amount will occur when you file your 2016 income tax return.

This decision does not change your spouse's disenrollment date from his QHP. Your spouse's enrollment in his QHP ended as of July 31, 2016.

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## **Legal Authority**

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

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

