



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

Notice of Decision

Decision Date: March 17, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012349 & AP000000011060

[REDACTED]

Dear [REDACTED],

On January 30, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's July 19, 2016 and October 8, 2016 eligibility determination 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.

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Decision

Decision Date: March 17, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012349 & AP000000011060



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 eligibility for advance payments of the premium tax credit (APTC), and your enrollment in a qualified health plan (QHP), began on September 1, 2016?

Did NYSOH properly determine that you were not eligible to enroll in a QHP outside of the 2016 open enrollment period?

Procedural History

On July 7, 2016, you updated your NYSOH application.

On July 16, 2016, NYSOH issued a notice stating that your application of July 7, 2016 had been reviewed, but that more information was necessary in order to make a determination regarding your eligibility. The notice further directed you to provide documentation of your income by July 30, 2016.

Also on July 16, 2016, NYSOH issued a notice of disenrollment stating that your enrollment in your platinum-level QHP was ending effective July 31, 2016.

On July 18, 2016, you updated your NYSOH application several times.

On July 19, 2016, NYSOH issued a notice of eligibility determination in response to your final application of July 18, 2016, stating that you were eligible to receive up to \$170.00 per month in APTC for cost-sharing reductions, effective

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September 1, 2016. The notice also stated that you qualified to select a health plan outside of the 2016 open enrollment period, until September 16, 2016.

Also on July 19, 2016, NYSOH issued a notice of enrollment confirmation, stating that your enrollment in an individual platinum-level QHP would begin on September 1, 2016, and that your APTC would be applied to your QHP premium beginning September 1, 2016.

On July 26, 2016, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as your enrollment in your QHP, and the application of your APTC, began on September 1, 2016, and not August 1, 2016.

On September 18, 2016, NYSOH issued a cancellation notice stating that your enrollment in your QHP was cancelled, effective September 1, 2016, because a premium payment had not been received by your health plan.

On September 30, 2016, you updated your NYSOH account. That same day, you spoke to NYSOH's Account Review Unit and appealed the fact that you were not allowed to enroll in health plan outside of the 2016 open enrollment period.

On October 1, 2016, NYSOH issued a notice denying your request for help with paying medical bills for the month of August 2016 because you the program you were eligible for could not pay for any care you received in the past.

On October 8, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to receive APTC of up to \$170.00 per month, and eligible for cost-sharing reductions, effective November 1, 2016. The notice also stated that you did not qualify to select a health plan outside of the 2016 open enrollment period.

On January 30, 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) Your NYSOH account indicates that you were enrolled in a full cost individual platinum-level QHP as of January 1, 2016.
- 2) You testified that you had lost your job in June 2016, and contacted NYSOH in early July 2016 because you wanted to see if you were eligible for any kind of "discount" on your health insurance payments.

- 3) Your NYSOH account reflects that you updated your application on July 7, 2016, and requested financial assistance in that application.
- 4) Your NYSOH account reflects that, in your July 7, 2016 application, you requested that your eligibility be determined based on current monthly income, and you listed an income for July 2016 of \$500.00.
- 5) You testified that, when you called to update your application and request financial assistance, you were informed that there was a problem with the computer system, and that your application could not be completed on that day.
- 6) You testified that you were told by the NYSOH representative who updated your application that the issue required them to contact IT, and that they would escalate the issue to the proper place so that it could be fixed.
- 7) You testified that you called back every couple of days to find out what was happening with your application.
- 8) You testified that, toward the end of July, NYSOH got the issue fixed and told you that you would be eligible for a tax credit, but that it would not go into effect until September 1, 2016.
- 9) You testified that, in the meantime, NYSOH dropped you from coverage, so your current coverage was ending as of July 31, 2016.
- 10) You testified that you filed an appeal because you needed coverage as of August 1, 2016, and NYSOH told you that they could not backdate your coverage.
- 11) You testified that you paid your July 2016 QHP premium in June 2016, and that, as far as you knew, you did not have coverage in August 2016, so you did not pay a premium for that month.
- 12) You testified that you waited through the end of August to receive an invoice from your QHP, but you did not receive one.
- 13) You testified that you contacted your QHP and were told that they had no record of your new enrollment, and only showed that your insurance ended as of the end of July 2016.
- 14) You testified that you contacted NYSOH and were told that you did not have insurance because you were cancelled for nonpayment of your August 2016 premium.

- 15) You testified that you told the NYSOH representative that you did not pay an August 2016 premium because you were told that your new coverage would not start until September 1, 2016.
- 16) Notes in NYSOH's system under Incident # [REDACTED] indicate that you spoke with NYSOH on July 26, 2016, and told NYSOH that you were looking for your coverage to be backdated so that it would start on August 1, 2016. The notes indicate that you informed NYSOH that you were willing to pay the full premium for August 2016 if your enrollment start date could be backdated to August 1, 2016.
- 17) Further notes in Incident # [REDACTED] entered on July 29, 2016, indicate that your QHP full pay enrollment was extended so that it would end at the end of August 2016, instead of the end of July 2016. The notes also indicate that someone from NYSOH left you a voicemail on July 29, 2016 at approximately 3:48PM to ask you to call NYSOH. The note further states "Consumer needs to be advised that their Independent Health QHP is now active [REDACTED] per their request. Consumer also needs to call the insurance company re: August premium."
- 18) There is no indication in NYSOH's system that anyone was ever able to reach you to communicate that your QHP enrollment had been reinstated for the month of August 2016.
- 19) You testified that you are not looking, at this point, to retroactively enroll in a health plan for the months you were without coverage in 2016, as the outstanding doctor bills that you owe are less than the amount of money you would have to pay for coverage.
- 20) You testified that you are proceeding with this appeal because you want a determination stating that you were correct, as you could have been put in a bad position due to what happened with your coverage.

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

Applicable Law and Regulations

Advance Payments of the Premium Tax Credit

APTC are generally available to a person who is eligible to enroll in a qualified health plan 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 qualified health plan, and (3) is not otherwise eligible

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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)).

Upon making an eligibility redetermination, NYSOH must notify the applicant and implement any changes in eligibility to APTC effective as of the first day of the month following the date of the notice (45 § 155.310(f), 45 CFR § 155.330(e), (f)(1)(i)).

Enrollment in a Qualified Health Plan

The effective date of coverage by a QHP 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)).

Open Enrollment Period

NYSOH must provide annual open enrollment periods during which time qualified individuals may enroll in a 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 (SEPs) to qualified individuals. During a SEP, a qualified individual may enroll in a QHP, and an enrollee may change their enrollment to another plan. This is generally permitted when certain triggering events occur, including the following:

- (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

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(c) Pregnancy-related coverage; or

(d) Medically needy coverage.

(2) 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

(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)).

Legal Analysis

The first issue under review is whether NYSOH properly determined that your eligibility for APTC, and your enrollment in your QHP, began on September 1, 2016.

The record reflects that you were enrolled in full cost QHP as of January 1, 2016, and that you first attempted to update your application in order to apply for financial assistance on July 7, 2016. The application that was filed on that day requested that the eligibility be based on current monthly income, and listed monthly income of \$500.00 for July 2016. You testified that NYSOH was unable to run your application on July 7, 2016 because of a computer system problem, and information in your NYSOH account supports this testimony, as there was no response to your July 7, 2016 application until a notice requesting further information was issued on July 16, 2016.

It appears from the information in your account that, because you requested your eligibility to be determined based on monthly income of \$500.00, you were placed in a "pending Medicaid" status, which is why you were asked for further income documentation. It also appears that this caused your enrollment in your QHP to terminate as of July 31, 2016, as this "pending Medicaid" status made you ineligible to remain enrolled in your QHP.

When you updated your application again on July 18, 2016, you changed your application to request that your eligibility be based on annual expected income. As a result, you were found eligible for up to \$170.00 in APTC, and eligible for cost-sharing reductions.

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The effective date of coverage by a QHP 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. 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.

You reselected a QHP on July 18, 2016. Therefore, under ordinary circumstances, your enrollment in that QHP properly began on September 1, 2016. This is because this was treated as a new enrollment, as your original July 7, 2016 request for your eligibility to be based on current monthly income caused you to be disenrolled from your previous QHP coverage, effective July 31, 2016.

However, your NYSOH account reflects that you asked NYSOH to allow you to enroll in coverage as of August 1, 2016, even if it meant paying the full premium. It appears that NYSOH, in its discretion, granted this request on July 29, 2016, and decided to extend your full-pay QHP coverage until August 31, 2016. However, it does not appear that any notice was issued, advising you of this change.

Upon making an eligibility redetermination, NYSOH must notify the applicant and implement any changes in eligibility to APTC effective as of the first day of the month following the date of the notice.

Since NYSOH reinstated your QHP coverage for August 2016, this should have affected the start date of your eligibility for APTC and cost-sharing reductions, as it was no longer a new enrollment.

Therefore, the July 19, 2016 eligibility determination is MODIFIED to state that you were eligible for up to \$170.00 per month in APTC, and eligible for cost-sharing reductions, effective August 1, 2016. Additionally, the July 19, 2016 enrollment confirmation notice is MODIFIED to state that your enrollment in your QHP began on August 1, 2016.

The second issue under review is whether NYSOH properly denied you an SEP, effective September 1, 2016.

Once the annual open enrollment period ends, a health plan enrollee must qualify for an SEP in order to enroll in, or change to another health plan offered in NYSOH. In order to qualify for an SEP, a person must experience a triggering event.

The record reflects that on September 18, 2016, NYSOH issued a notice stating that your enrollment in your QHP was terminated, effective September 1, 2016, because your health plan had not received a premium payment.

However, as stated above NYSOH failed to properly notify you that your enrollment in a QHP was effective as of August 1, 2016.

An SEP can be granted if a qualified individual's enrollment or non-enrollment into a QHP 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.

Therefore, the record supports a finding that NYSOH erred in properly informing you of your enrollment and an SEP should have been granted to you as a result of this error.

Therefore, NYSOH's October 8, 2016 eligibility determination that you do not qualify to select a health plan outside of the open enrollment period for 2016 is MODIFIED to reflect that you are eligible for a SEP beginning September 1, 2016.

NYSOH's failure to grant you a special enrollment period resulted in you being without insurance coverage for part of the 2017 coverage year.

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 2017 if you did not 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.

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Decision

The July 19, 2016 eligibility determination is MODIFIED to state that you were eligible for APTC of up to \$170.00 per month, and eligible for cost-sharing reductions, effective August 1, 2016.

The July 19, 2016 enrollment confirmation notice is MODIFIED to state that your enrollment in your QHP, with the application of your APTC, began on August 1, 2016.

The October 8, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a SEP beginning September 1, 2016. You have 60 days from the date of this decision to select a QHP for enrollment as of September 1, 2016.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage, should you choose to do so.

Effective Date of this Decision: March 17, 2017

How this Decision Affects Your Eligibility

Your eligibility for APTC and cost-sharing reductions should have started as of August 1, 2016.

Your enrollment in your QHP should have started as of August 1, 2016.

You qualify for a special enrollment period beginning September 1, 2016.

You have 60 days from the date of this decision to enroll into a plan for 2016, if you choose to do so.

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.

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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):

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- By calling the Customer Service Center at 1-855-355-5777
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Summary

The July 19, 2016 eligibility determination is MODIFIED to state that you were eligible for APTC of up to \$170.00 per month, and eligible for cost-sharing reductions, effective August 1, 2016.

The July 19, 2016 enrollment confirmation notice is MODIFIED to state that your enrollment in your QHP, with the application of your APTC, began on August 1, 2016.

The October 8, 2016 eligibility determination is MODIFIED to reflect that you are eligible for a SEP beginning September 1, 2016. You have 60 days from the date of this decision to select a QHP for enrollment as of September 1, 2016.

Your case is RETURNED to NYSOH to assist you in enrolling into a plan for 2016 health coverage, should you choose to do so.

Your eligibility for APTC and cost-sharing reductions should have started as of August 1, 2016.

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Your enrollment in your QHP should have started as of August 1, 2016.

You qualify for a special enrollment period beginning September 1, 2016.

You have 60 days from the date of this decision to enroll into a plan for 2016, if you choose to do so.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

