



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

## Notice of Decision

Decision Date: February 13, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012300

[REDACTED]

Dear [REDACTED],

On January 20, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 18, 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 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 13, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012300



## Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NY State of Health (NYSOH) properly determine that your eligibility for advance payments of the premium tax credit ended effective October 31, 2016?

## Procedural History

On March 16, 2016, NYSOH issued a notice of eligibility redetermination stating that you and your son were conditionally eligible to receive up to \$395.00 in advance payments of the premium tax credit (APTC), and conditionally eligible to receive cost-sharing reductions (CSR) if you enrolled in a silver level qualified health plan, effective April 1, 2016. The notice further directed you to provide documentation confirming your income before June 13, 2016.

Also on March 16, 2016, NYSOH issued a notice confirming your and your son's enrollment in your family's silver level qualified health plan (QHP), with your new APTC amount to be applied as of April 1, 2016.

On March 30, 2016, documentation was uploaded to your NYSOH account.

On April 7, 2016, NYSOH issued a notice stating that the documentation you submitted had been reviewed, but that it was not sufficient to resolve the request. The notice directed you to provide proof of income for yourself and your children.

On June 5, 2016, NYSOH re-ran your eligibility for financial assistance.

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On June 6, 2016, NYSOH issued a notice of eligibility redetermination stating that you and your son were conditionally eligible to receive up to \$395.00 per month in APTC, and to receive CSR, effective July 1, 2016. The notice further directed you to submit documentation confirming your income before June 13, 2016.

On June 7, 2016, NYSOH issued a notice confirming your and your son's enrollment in your family's silver level QHP, with the application of your APTC beginning on April 1, 2016.

On September 17, 2016, NYSOH re-ran your eligibility for financial assistance.

On September 18, 2016, NYSOH issued a notice of eligibility determination stating that you and your son were newly eligible to purchase a QHP at full cost through NYSOH. The notice stated that you were not eligible to receive APTC or CSR because NYSOH did not receive the income documentation needed to verify the income listed in your application. This eligibility was effective November 1, 2016.

Also on September 18, 2016, NYSOH issued an enrollment confirmation notice stating that you and your son were enrolled in a QHP with \$0.00 of APTC applied to your premium.

On September 29, 2016, documentation was uploaded to your NYSOH account.

Also on September 29, 2016, you spoke to NYSOH's Account Review Unit and appealed the termination of your and your son's APTC and CSR.

On October 30, 2016, NYSOH issued a disenrollment notice for you and your son, stating that your coverage in your QHP was terminated effective April 30, 2016 because premium payments were not received by your health 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) Your NYSOH account reflects that you are enrolled to receive electronic alerts notifying you of any notices in your NYSOH account.

- 2) You testified that you thought you were receiving notices from NYSOH by regular mail, but that it was possible you were enrolled to receive email notices as well.
- 3) During the hearing, the Hearing Officer read aloud the email address listed on your NYSOH account. You testified that this email address belonged to your husband, who passed away two years ago, and that you were not aware that emails were going to that address. You further testified that no one checks that email address anymore.
- 4) You testified that a broker has been assisting you with your NYSOH application, and that you thought he would have brought something like this to your attention.
- 5) You testified that you were not aware that NYSOH was asking for additional income documentation, and that you thought everything was fine with your account until you received a bill from your health plan in September 2016 for \$4,762.00.
- 6) You testified that you had enrolled in auto-pay with your health plan, and your premiums (after your APTC was applied) were paid each month, for the months of April through October 2016.
- 7) Your NYSOH account reflects that the following income documentation was uploaded to your NYSOH account on March 30, 2016:
  - a. Two bi-weekly paystubs in your name, for pay dates of March 11 and March 25, 2016 [REDACTED]);
  - b. A letter dated March 30, 2016 and signed by you, stating that your two children are students, and that they do not receive any Social Security benefits nor do they have their own source of income [REDACTED]);
  - c. A Form SSA-1099 showing net benefits of \$4,629.00 for your daughter in 2015 [REDACTED]);
  - d. A copy of a 2015 W-2 for your daughter showing gross earnings of \$1,789.88 [REDACTED]).
- 8) You testified that you provided this documentation to the broker who assisted you with your application in March 2016.
- 9) You testified that your daughter became eligible for Social Security benefits under her deceased father's account and received two months of payments. You testified that the payments stopped after that because of an old overpayment on her father's account.

- 10) You testified that your son was already 18 years old when his father passed away, so he was never eligible for Social Security benefits on his father's account.
- 11) You testified that your daughter did not receive any benefits from Social Security in 2016.
- 12) You testified that the 2015 W-2 you provided for your daughter was from a part-time, seasonal, weekend job that she had at a farm stand, and that this job ended in October or November of 2015.
- 13) According to your NYSOH account, this documentation was reviewed and deemed insufficient, per a notice dated April 7, 2016.
- 14) You testified that you do not recall receiving this notice, and that you thought everything was okay with your account and your coverage after you applied in March 2016.
- 15) Your NYSOH account indicates that on September 17, 2016, your application was run and you and your son were found no longer eligible for APTC as of November 1, 2016.
- 16) You testified that, when you received a bill from your QHP for \$4,762.00 in September 2016, you contacted your broker, and were told that your tax credit had been taken back retroactively.
- 17) Your NYSOH account reflects that a notice was issued on October 30, 2016 stating that your and your son's coverage in your QHP was terminated, retroactive to April 30, 2016, because premium payments were not received by your health plan.
- 18) You testified that you have not paid any of the \$4,762.00 bill from your health plan, as you were waiting to see what would happen in the appeal.
- 19) You testified that you and your son now have coverage outside of NYSOH as of November 1, 2016, and that you are now appealing to have your and your son's APTC and CSR reinstated, along with coverage in your QHP, for May 1, 2016 through October 31, 2016.

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

## **Applicable Law and Regulations**

### Verification of Eligibility for 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 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)).

An applicant is required to attest to their household's projected annual income for purposes of determining their eligibility for APTC (45 CFR § 155.320(c)(3)(ii)(B)). For all individual's whose household income is needed, NYSOH must request tax return data from the Secretary of the Treasury and data regarding Social Security benefits from the Commissioner of Social Security in order to confirm that the information the applicant is attesting to is accurate (45 CFR § 155.320(c)(1)(i); 45 CFR § 155.320(c)(3)(ii)(A)).

If income data is unavailable, or if an applicant's attestation is not reasonably compatible with the income data NYSOH obtains, NYSOH must request additional information from the applicant in order to resolve the inconsistency (45 CFR § 155.320 (c)(3)(iii), (iv)).

NYSOH must provide the applicant with notice of the inconsistency in their account and 90 days to provide satisfactory documentary evidence to resolve the inconsistency (45 CFR § 155.315 (f)(2)). If NYSOH remains unable to verify the attestation of the applicant, NYSOH must redetermine the applicant's eligibility based on the information available from the data sources unless the applicant demonstrates that they are unable to provide the required documentation (45 CFR § 155.315(f)(2), (g)).

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)).

### Electronic Notices

Applicants may choose to receive notices and information from NYSOH by either electronic or regular mail. If the individual elects electronic communications, NYSOH must send an email or other electronic communication alerting the individual when a notice has been posted to his or her account and send a notice

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by regular mail within three business days if the electronic communication cannot be delivered (45 CFR § 155.230(d); 42 CFR § 435.918(b)(4), (5)).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined that you and your son's eligibility for APTC and CSR ended effective November 1, 2016.

An individual requesting financial assistance to help pay for the cost of coverage provided through NYSOH is required to attest to his or her household's projected annual income. For individuals seeking APTC, NYSOH must request income data from federal data sources in order to verify an individual's income attestation.

If NYSOH cannot verify an individual's attestation, it must provide the individual with notice of the inconsistency and provide a period of 90 days from the date notice is received to resolve the inconsistency.

In the eligibility determination issued on March 16, 2016, you were advised that your and your son's eligibility for APTC was only conditional, and that you needed to confirm your household's income before June 13, 2016.

The record reflects that you uploaded income documentation, as outlined above, on March 30, 2016.

NYSOH issued a notice on April 7, 2016 stating that the income documentation that you submitted was not sufficient. You testified that you never received this notice, and that you were relying on the assistance of a broker throughout your application process, who never indicated to you that the income documentation you provided was insufficient. Additionally, you testified that you did not know that you were enrolled to receive electronic alerts from NYSOH, and that the email address that NYSOH has on record for you belongs to your deceased husband. You testified that no one in your household checks that email address, and that you don't know why the broker never brought to your attention that this email address was still on file.

There is also no evidence in your account documenting that any email alert was sent to any email address regarding the need to submit documentation, or that the notice was later sent to you by regular mail.

Therefore, it is concluded that NYSOH did not give you the proper notice that you needed to submit documentation of your income in order to confirm your eligibility for APTC.



Moreover, the income documentation that you submitted on March 30, 2016, which consisted of 4 weeks' worth of income information for yourself, and a letter detailing that your children did not have any income, signed by you, should have been sufficient. You credibly testified that, though your daughter had some Social Security benefits in 2015 and a part-time, seasonal job, she did not have income at the time of your March 2016 application, nor did your son. There is no evidence in the record to refute this testimony, and the letter you submitted on March 30, 2016 is in keeping with this testimony.

Since you were not made aware of and did not receive proper notice that there was an inconsistency in your NYSOH account, AND since you submitted sufficient income documentation on March 30, 2016, the September 18, 2016 eligibility determination stating that you and your son are no longer eligible for APTC because you failed to submit documentation is RESCINDED.

Ordinarily, your case would be sent back to NYSOH to reinstate you and your son in your APTC and CSR as of November 1, 2016. However, during the hearing you testified that you and your son had coverage outside of NYSOH as of November 1, 2016. Therefore, you and your son are no longer eligible to receive APTC and CSR.

During the hearing you testified that your and your son's APTC was retroactively terminated back to April 30, 2016, and that your QHP billed you for the full premiums for coverage dating back to May 1, 2016. The October 30, 2016 disenrollment notice supports this testimony, as it states that you were disenrolled retroactively to April 30, 2016. You testified that you are appealing because you want your and your son's APTC and CSR to be reinstated for those months, and you want you and your son to be re-enrolled in your QHP coverage for the period of May 1, 2016 through October 31, 2016.

Any changes in APTC are to be made effective the date following the eligibility determination notice. Accordingly, your APTC should have only been effected for October 2016, the month following the September 18, 2016 eligibility redetermination. NYSOH Appeals Unit does not have authority to hear issues involving qualified health plan billing and payments. Therefore, your case is RETURNED to Plan Management in order to investigate whether or not your plan is incorrectly billing you for months when you should have been receiving APTC, and whether this may have caused you and your son to be improperly disenrolled from coverage as of April 30, 2016.

## **Decision**

The September 18, 2016 notice of eligibility determination is RESCINDED.

Your case is RETURNED to Plan Management in order to investigate whether or not your plan is incorrectly billing you for months when you should have been receiving APTC, and whether this may have caused you and your son to be improperly disenrolled from coverage as of April 30, 2016.

**Effective Date of this Decision:** February 13, 2017

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

NYSOH erred in terminating your and your son's APTC effective November 1, 2016 without the proper notice, and despite your submission of sufficient income documentation.

Your case is being sent back so that Plan Management can investigate your claim that your QHP retroactively terminated your APTC, and whether this may have caused you and your son to be improperly disenrolled from your QHP as of April 30, 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.

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

## **Summary**

The September 18, 2016 notice of eligibility determination is RESCINDED.

Your case is RETURNED to Plan Management in order to investigate whether or not your plan is incorrectly billing you for months when you should have been receiving APTC, and whether this may have caused you and your son to be improperly disenrolled from coverage as of April 30, 2016.

NYSOH erred in terminating your and your son's APTC effective November 1, 2016 without the proper notice, and despite your submission of sufficient income documentation.

Your case is being sent back so that Plan Management can investigate your claim that your qualified health plan retroactively terminated your APTC, and whether this may have caused you and your son to be improperly disenrolled from your QHP as of April 30, 2016.

## **Legal Authority**

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

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

