



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

Notice of Decision

Decision Date: February 28, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012363

[REDACTED]

Dear [REDACTED]

On January 23, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 18, 2016 eligibility determination notice and the October 5, 2016 enrollment confirmation 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 28, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012363

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Issue

The issue 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 ended effective September 30, 2016, and did not resume until November 1, 2016?

Procedural History

On December 10, 2015, NYSOH issued a notice of eligibility determination stating you and your spouse were conditionally eligible to receive up to \$469.00 in advance payments of the premium tax credit (APTC), effective January 1, 2016. The notice further directed you to provide documentation confirming your income before March 8, 2016, or you might lose your eligibility to enroll in insurance through NYSOH or to receive financial assistance.

You and your spouse were enrolled in a qualified health plan with APTC, effective January 1, 2016.

On February 22, 2016, a copy of the form 1040 from your 2014 joint tax return was uploaded to your NYSOH account.

This documentation was verified on March 3, 2016 and NYSOH redetermined your eligibility on the same day.

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On March 4, 2016, NYSOH issued a notice of eligibility determination stating you and your spouse were eligible to receive up to \$326.00 in APTC, effective April 1, 2016, based on annual household income of \$55,232.00, without conditions.

On March 10, 2016, NYSOH received your updated application for health insurance to change your household income to \$42,064.00, the amount noted as your adjusted gross income on your 2014 tax return.

On March 11, 2016, NYSOH issued a notice of eligibility determination stating you and your spouse were conditionally eligible to receive up to \$469.00 in APTC, effective April 1, 2016. The notice further directed you to provide documentation confirming your income before June 8, 2016, or you might lose your eligibility to enroll in insurance through NYSOH or to receive financial assistance. Attached to this notice was an insert that describes the documents that could be used to prove income; a form 1040 is not included.

On March 26, 2016, NYSOH issued a notice of enrollment confirmation stating you and your spouse were enrolled in a qualified health plan, effective April 1, 2016, with APTC applied.

No additional income information was received by NYSOH before June 8, 2016.

On September 17, 2016, NYSOH redetermined your eligibility.

On September 18, 2016, NYSOH issued a notice of eligibility determination stating you and your spouse were newly eligible to purchase a qualified health plan at full cost, effective November 1, 2016. The notice further stated you and your spouse do not qualify to receive APTC because NYSOH did not receive the income documentation needed to verify the income listed in your application in time. The notice indicated NYSOH could not determine if you and your spouse were eligible for help paying for health insurance coverage without this information.

Also on September 18, 2016, NYSOH issued a notice of enrollment confirmation stating you and your spouse were enrolled in a qualified health plan with no APTC.

On October 3, 2016, NYSOH received your updated application for health insurance. On the same date NYSOH prepared a preliminary determination, based on your updated application, stating you and your spouse were conditionally eligible to receive APTC up to \$469.00 monthly, effective November 1, 2016.

Also on October 3, 2016, you spoke to NYSOH's Account Review Unit and appealed the termination of your APTC for the month of October 2016.

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On October 5, 2016, NYSOH issued a notice of enrollment confirmation stating you and your spouse were enrolled in a qualified health plan and your APTC would be applied to your monthly premium, effective November 1, 2016.

On October 9, 2016, NYSOH issued a notice of eligibility determination, based on your October 3, 2016 updated application, stating you and your spouse were conditionally eligible to receive up to \$469.00 in APTC, effective November 1, 2016. The notice further directed you to provide documentation confirming your income before January 1, 2017.

On October 10, 2016, you submitted a copy of your 2015 tax return, this time with various schedules attached.

On January 23, 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, and your account indicates, you receive all of your notices from NYSOH by regular mail.
- 2) You testified you received the December 8, 2015 notice stating eligibility for you and your spouse was only conditional and you needed to provide documentation of your household's income by March 6, 2016.
- 3) You testified you were unable to upload documents to your NYSOH account so you gave your "tax information" to your broker who agreed to provide the documents to NYSOH.
- 4) Your account reflects your 2014 joint tax return was uploaded to your NYSOH account on February 22, 2016; however, only the 1040 form was submitted.
- 5) Your 2014 tax return listed gross income of \$55,265.00, including \$33.00 in taxable interest, and adjusted gross income of \$42,064.00.
- 6) On March 3, 2016, NYSOH verified the income documentation submitted and updated your application utilizing the gross income amount of \$55,265.00 from your 2014 tax return.

- 7) The same day, NYSOH redetermined your eligibility, on the basis of the updated income amount, and determined you and your spouse fully eligible for a decreased level of APTC of \$323.00 monthly.
- 8) On March 10, 2016, your broker contacted NYSOH to update your application by decreasing your attested household income amount to \$42,064.00, the adjusted gross income amount from your 2014 tax return.
- 9) Following this update, NYSOH determined you and your spouse conditionally eligible for an increased level of APTC of \$469.00 monthly. You were again directed to submit documentation confirming your income by June 8, 2016.
- 10) You testified, and the record reflects, following this update you and your spouse were inadvertently enrolled in a bronze level qualified health plan. Thereafter, NYSOH corrected the enrollment and you and your spouse were enrolled back into your gold level health plan, effective April 1, 2016.
- 11) The record reflects NYSOH received no additional income documentation by June 8, 2016.
- 12) You testified you do not recall whether you received the March 11, 2016 and March 26, 2016 eligibility determination notices indicating your eligibility for APTC was only conditional and directing you to provide documentation to confirm your income by June 8, 2016. You further testified that if you were required to provide documentation you would have given it to your broker who would then have provided it to NYSOH.
- 13) You testified you learned your APTC was revoked when you received a bill from your health plan for the full premium amount for October 2016.
- 14) You testified you paid the full premium amount to your health plan for the month of October 2016.
- 15) You testified, and the record reflects, you contacted NYSOH on October 3, 2016 to update your account wherein you were determined conditionally eligible for APTC, effective November 1, 2016
- 16) You testified, and the record reflects, APTC was reinstated to your account beginning November 1, 2016.

- 17) You testified you are seeking reinstatement of your APTC for the month of October 2016 because you provided proof of income prior to the original March 6, 2016 deadline.
- 18) A review of your account indicates that NYSOH was not able to confirm that you filed any federal income tax return until October 2016, when a response came regarding your 2015 tax return that did not include your household income.

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

Applicable Law and Regulations

Modified Adjusted Gross Income

NYSOH bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). The term “modified adjusted gross income” means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3) Social Security benefits that were excluded from gross income under 26 USC § 86 (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

“Adjusted gross income” means, in the case of an individual taxpayer, gross federal taxable income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from time savings accounts, deductions attributable to royalties, and certain retirement savings (26 USC § 62(a)).

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 individuals 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)).

When an eligibility redetermination results in a change in the amount of APTC for the benefit year, the Marketplace must recalculate the amount of APTC in such a manner as to account for any advance payments already made on behalf of the tax filer, such that the recalculated advance payment amount is projected to result in total advance payments for the benefit year that correspond to the tax filer's total projected premium tax credit for the benefit year (45 CFR § 155.330(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 CFR § 155.310(f), 45 CFR § 155.330(e), (f)(1)(i)).

Legal Analysis

The issue under review is whether NYSOH properly determined that your eligibility for APTC ended effective September 30, 2016, and did not resume until November 1, 2016.

An individual requesting financial assistance to help pay for the cost of coverage provided through NYSOH is required to attest to their 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 December 8, 2015, you were advised your eligibility for APTC was only conditional, and you needed to confirm your household's income before March 6, 2016.

You testified you received this notice and gave your "tax information" to your broker, who agreed to provide the documents to NYSOH. The record reflects that part of your 2014 joint tax return had previously been uploaded to your NYSOH account on February 22, 2016; the schedules were not included, and no further documents were submitted until October 2016.

According to your NYSOH account, NYSOH verified this income documentation on March 3, 2016, and updated your application by increasing your household income amount to \$55,232.00, the income amount listed on your 2014 tax return, less taxable interest.

It is noted that NYSOH bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code. The record reflects you contacted NYSOH on March 10, 2016 to update the attested income amount in your application to \$42,064.00, the adjusted gross income amount listed on your verified 2014 tax return. Thereafter, NYSOH issued a notice of eligibility determination on March 11, 2016 stating you were only conditionally eligible for APTC pending receipt of documentation confirming your income before June 8, 2016.

It appears this conditional eligibility was based on the fact the declared income amount was unable to be confirmed by federal or state data sources, which is required by regulation, and because no schedules were attached to the 1040 form you submitted.

Therefore, at the time it was issued, the March 11, 2016 eligibility determination notice was correct, insofar as it found you only conditionally eligible for that level of APTC.

Since no further documentation was submitted, nor is there any evidence you tried to contact NYSOH regarding what further documentation was needed, the September 18, 2016 eligibility determination notice stating you and your spouse were no longer eligible for APTC was correct, because you failed to provide the requested information, and must be AFFIRMED.

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Although that decision did not provide the date your APTC would end, federal regulations require that any change in eligibility for APTC goes into effect the first day of the month following the determination, in this case, October 1, 2016. Therefore, your receipt of APTC appropriately ended on September 30, 2016.

Similarly, when the October 5, 2016 notice of enrollment confirmation found that you were once again eligible for APTC, it was properly applied to your monthly premium effective November 1, 2016, resulting in a one-month gap in your receipt of APTC.

However, when eligibility for APTC is redetermined mid-year, NYSOH is required to consider the amounts of APTC previously received (or not received) and the newly estimated overall annual tax credit, and prorate upcoming monthly amounts to ensure that the APTC you receive during the year is as close as possible to the overall tax credit you will be entitled to when you file your taxes for the 2016 tax year.

It appears that NYSOH did not do this. Instead, it simply found you eligible for the monthly amount to which you would have been entitled had you received APTC for the entire 12 months of the year based on your income.

Because you testified at the hearing that you paid your full premium payment for your and your spouse's QHP for the month October 2016, your receipt of APTC should have been recalculated for the remaining months of the year with consideration for what you would have been entitled to in October.

Therefore, your case must be RETURNED to NYSOH to recalculate the amount of APTC you should have received for November and December of 2016, based on your having paid the full cost for coverage for October, and the failure of NYSOH to recalculate your APTC amount for the remainder of the year.

It is noted NYSOH Appeals Unit was unable to verify with state or federal data sources that your 2015 tax return has been filed. Please be aware, you may lose eligibility for continuing APTC if your 2015 tax return is not filed.

Decision

The September 18, 2016 eligibility determination notice and the October 5, 2016 notice of enrollment confirmation are AFFIRMED. However, your case is RETURNED to NYSOH for a redetermination of APTC for November and October 2016.

Effective Date of this Decision: February 28, 2017

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How this Decision Affects Your Eligibility

You were not eligible for APTC in October 2016.

However, your case is being sent back to NYSOH to recalculate your eligibility for APTC for November and December 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

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Summary

The September 18, 2016 eligibility determination notice and the October 5, 2016 notice of enrollment confirmation are **AFFIRMED**. However, your case is **RETURNED** to NYSOH for a redetermination of APTC for November and October 2016.

You were not eligible for APTC in October 2016.

However, your case is being sent back to NYSOH to recalculate your eligibility for APTC for November and December 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

