



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

Notice of Decision

Decision Date: January 26, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012375

[REDACTED]

Dear [REDACTED]

On December 19, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's September 18, 2016 eligibility redetermination 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
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Decision

Decision Date: January 26, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012375



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 premium tax credits ended effective November 1, 2016?

Procedural History

On February 1, 2016, NYSOH issued a notice of eligibility redetermination stating that you were conditionally eligible to receive up to \$174.00 in advance premium tax credits (APTC) and conditionally eligible to receive cost-sharing reductions if you enrolled in a silver-level qualified health plan, effective March 1, 2016. The notice further directed you to provide documentation confirming your income before April 30, 2016.

Also on February 1, 2016, NYSOH issued a notice confirming your enrollment in a silver-level qualified health plan (QHP) with APTC and cost-sharing reductions, effective March 1, 2016.

On September 18, 2016, NYSOH issued an eligibility redetermination notice stating that you were newly eligible to purchase a QHP at full cost, effective November 1, 2016. The notice stated that you were not eligible to receive APTC or cost-sharing reductions because NYSOH did not receive the income documentation needed to verify the income listed in your application.

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

On October 4, 2016 you spoke to NYSOH's Account Review Unit and appealed the termination of your APTC for the months of October 2016, November 2016 and December 2016.

On December 19, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open up to January 2, 2017, to allow you to submit supporting documents.

As of January 2, 2017, you uploaded to your account two one-page documents. These documents were made part of the record as Appellants Exhibit # 1 and Appellants Exhibit # 2. Appellants Exhibit #1 is a typewritten statement from you. Appellants Exhibit # 2 is a copy of a billing statement from your silver-level QHP dated September 19, 2016. The record is now complete and closed.

Findings of Fact

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

- 1) According to your NYSOH account and your testimony, you receive all of your notices from NYSOH by electronic mail.
- 2) According to your NYSOH account and your testimony, you are applying for insurance for yourself.
- 3) According to your NYSOH account, your January 15, 2016 application lists your expected yearly income as \$29,004.33. You confirmed this amount was accurate at the time of the application.
- 4) According to your NYSOH account, you reside in Queens County, New York.
- 5) According to your NYSOH account and your testimony, on April 30, 2016, you uploaded multiple documents showing income received from various sources during the month of April 2016.
- 6) According to your NYSOH account and your testimony, on April 30, 2016, you uploaded a copy of your 2015 1040 U.S. Individual Income Tax Return, which is password protected and cannot be opened (see Document # [REDACTED])

- 7) According to your NYSOH account and your testimony, you are a self-employed independent contractor and work for multiple companies at various locations throughout the year as a Fitness and Dance Instructor (see Document # [REDACTED]).
- 8) You testified that your work and pay is sporadic and varies from month to month.
- 9) According to your NYSOH account and your testimony, you had not heard anything from NYSOH regarding the documents you submitted on April 30, 2016, so on May 15, 2016 you again submitted multiple documents for the month of April 2016 and up to May 15, 2016 reflecting income you had received during this period.
- 10) According to your NYSOH account, NYSOH did not send any notices stating that the documentation that you had submitted was insufficient.
- 11) According to your NYSOH account, these documents were not verified by NYSOH at all.
- 12) Your NYSOH account indicates that, on September 17, 2016, NYSOH systematically reran your application and you were found no longer eligible for APTC as of November 1, 2016.
- 13) You testified that while the September 18, 2016 eligibility determination notice stated that the change was effective November 1, 2016, your health plan sent you a revised premium invoice that required you to pay the full cost of insurance starting October 1, 2016.
- 14) You testified that you are seeking reinstatement of your APTC for the months of October 2016, November 2016 and December 2016.

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

Applicable Law and Regulations

Verification Process

For all individuals whose income is needed to calculate the household's eligibility, the NYSOH must request data that will allow NYSOH to verify the household's income (45 CFR §155.320(c)(1)(i)).

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If NYSOH cannot verify the income information required to determine eligibility they must attempt to resolve the inconsistency including giving the applicant the opportunity to submit satisfactory documentary evidence (45 CFR §155.315(f)).

Timely Eligibility Determination

When an individual applies for insurance through NYSOH, NYSOH must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 FR § 435.1200(b)(3)(iii)).

To assess whether an eligibility determination was untimely, NYSOH must base the time period from the date of application to the date NYSOH notifies the applicant of its decision (45 CFR § 155.310(e)(2)).

If the applicant submits an incomplete application or there is not sufficient information for NYSOH to make an eligibility determination, then NYSOH must notify that applicant that more information is needed to complete the application (45 CFR § 155.310(k)(1)).

NYSOH must not proceed with the applicant's eligibility determination, or provide advance payments of the premium tax credit or cost-sharing reductions, unless the applicant provides sufficient information for NYSOH to make an eligibility determination (45 CFR § 155.310(k)(3)).

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

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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)).

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).

Electronic Notices

Applicants may choose to receive notices and information from NYSOH by either electronic or 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)).

Legal Analysis

The issue under review is whether NYSOH properly determined that your eligibility for advance premium tax credits 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 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 February 1, 2016, you were advised that your eligibility for APTC was only conditional and that you needed to confirm your household's income before April 30, 2016.

The record reflects that you submitted documentation for proof of income on April 30, 2016 and again in May 2016. This documentation included pay stubs and receipts you had from the multiple sources of employment for April 2016. Although you also submitted a copy of your 2015 Federal Income Tax Return, it is password protected and cannot be opened.

Further, the documentation submitted on April 30, 2016 and May 15, 2016 contained sufficient information for NYSOH to confirm your income and eligibility for APTC.

However, the record reflects that NYSOH did not issue any notice stating that the documentation that you had submitted was insufficient.

In fact, the record is devoid of proof that NYSOH verifying your income at all. Therefore, NYSOH failed to timely verify your income before taking away your monthly APTC.

The record also reflects that your silver-level QHP required you to pay full premium cost with no APTC applied starting October 1, 2016.

Therefore, the September 18, 2016 eligibility determination stating that you are no longer eligible for APTC on the basis that you failed to submit documentation is RESCINDED.

Your case is RETURNED to NYSOH to verify the income documentation you provided on April 30, 2016 and May 15, 2016 to project your 2016 annual income, and to redetermine your eligibility for financial assistance for the months of October 2016, November 2016, and December 2016.

Decision

The September 18, 2016 eligibility redetermination notice is RESCINDED.

Your case is RETURNED to NYSOH to verify the income documentation you provided on April 30, 2016 and May 15, 2016 to project your 2016 annual income, to redetermine your eligibility for financial assistance for the months of

October 2016, November 2016 and December 2016, and to notify you accordingly.

Effective Date of this Decision: January 26, 2017

How this Decision Affects Your Eligibility

NYSOH erred in terminating your APTC effective November 1, 2016.

Your case is being sent back to NYSOH to verify the income documentation you provided on April 30, 2016 and May 15, 2016, to project your 2016 annual income based thereon, and to redetermine your eligibility for financial assistance for the months of October 2016, November 2016 and December 2016. NYSOH will notify you once this has been completed.

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

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- By mail at:
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Summary

The September 18, 2016 eligibility redetermination notice is RESCINDED.

Your case is RETURNED to NYSOH to verify the income documentation you provided on April 30, 2016 and May 15, 2016 to project your 2016 annual income, to redetermine your eligibility for financial assistance for the months of October 2016, November 2016 and December 2016, and to notify you accordingly.

NYSOH erred in terminating your APTC effective November 1, 2016.

Your case is being sent back to NYSOH to verify the income documentation you provided on April 30, 2016 and May 15, 2016, to project your 2016 annual income based thereon, and to redetermine your eligibility for financial assistance for the months of October 2016, November 2016 and December 2016. NYSOH will notify you once this has been completed.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

