



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

## Notice of Decision

Decision Date: March 31, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012493

[REDACTED]

Dear [REDACTED]

On March 16, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's February 11, 2017 eligibility determination.

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: March 31, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012493



## 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 you were not eligible for advance payments of the premium tax credit (APTC), as of your February 10, 2017 application?

## Procedural History

On October 12, 2016, NY State of Health (NYSOH) received your applications for health insurance. That day, a preliminary eligibility determination was prepared regarding the last application submitted, stating that you were eligible to enroll in a qualified health plan (QHP), but did not qualify for APTC or cost-sharing reductions.

Also on October 12, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that preliminary eligibility determination as it related your eligibility for financial assistance through NYSOH.

On October 13, 2016, NYSOH issued an eligibility determination notice based on the information contained in the October 12, 2016 application, stating you were eligible to purchase a QHP at full cost beginning November 1, 2016. It stated that you did not qualify for APTC because you stated that either you were married but not filing taxes jointly, you were married and filing taxes separately from your spouse, or APTC payments were made to you in a previous year for which you did not file a tax return. The notice did not specify which of these three factors, or in fact any other factor, were responsible for your ineligibility. It also stated that

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you did not qualify for cost-sharing reductions because you are not eligible for APTC.

On February 10, 2017, you updated your application for health insurance for 2017.

On February 11, 2017, NYSOH issued an eligibility determination notice stating that you were eligible to purchase a QHP at full cost, effective March 1, 2017. The notice further stated that you did not qualify for APTC because you stated that either you were married but not filing taxes jointly, you were married and filing taxes separately from your spouse, or APTC payments were made to you in a previous year for which you did not file a tax return, and that you were not eligible for cost-sharing reductions because you are not eligible for APTC. Finally, the notice stated that you have until April 11, 2017 to select a qualified health plan for enrollment.

On March 16, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, you testified that you are no longer appealing the October 13, 2016 eligibility determination, as you are not looking to enroll in coverage for 2016, but are appealing the February 11, 2017 eligibility determination. 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 that you are looking to be eligible for financial assistance with the cost of enrolling in a health plan, and that you are looking to enroll in coverage as soon as possible, but not retroactively.
- 2) You testified that you are looking for coverage for yourself only.
- 3) You testified that you will be filing your 2017 income tax return with a tax filing status of head of household, with qualifying individual.
- 4) You testified that you have been filing your tax return as head of household since 2011, and that your tax preparer has always said that it was appropriate to do so.
- 5) You testified that you are currently married, but that you are separated from your spouse, and that you recently filed for divorce.
- 6) You testified that you last lived with your spouse in 2010.

- 7) The record reflects that you have three children who reside with you. They are nineteen, sixteen, and fourteen years old.
- 8) You testified that the oldest child is in school, but lives with you when she is home. You testified that the other two children live with you full-time.
- 9) You testified that you will be claiming all three children as dependents on your 2017 tax return.
- 10) You testified that you pay more than half of the cost of maintaining your household.
- 11) Your February 10, 2017 application stated that your expected 2017 income is approximately \$69,200.00, and you confirmed this in your testimony.
- 12) You testified that you have not enrolled in coverage yet because you have been waiting for the outcome of your appeal.
- 13) Your application states that you live in [REDACTED] County.

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 is available to a person who is eligible to enroll in a qualified health plan QHP and (1) expects to have a household income between 138% and 400% of the applicable 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)).

Additionally, a tax filer who is married must file a joint return with his or her spouse in order to qualify for APTC (45 CFR §§ 155.305(f), 155.310(d); 26 CFR § 1.36B-2).

However, an individual will be treated as not married at the close of the taxable year if the individual

- 1) Is legally separated from his/her spouse under a decree of divorce or of separate maintenance, or

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2) Meets all of the following criteria:

- a. files a separate return from his/her spouse and maintains his/her household as the primary home for a qualifying child;
- b. pays more than one half of the cost of keeping up his/her home for the tax year; and
- c. does not have his/her spouse as a member of the household during the last 6 months of the tax year

(26 USC § 7703).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined that you were not eligible for APTC.

In the eligibility determination notice issued on February 11, 2017, NYSOH denied you APTC because you indicated that you were married but did not plan to file a joint federal income tax return.

To qualify for APTC, a person who is married must either file taxes jointly with his or her spouse or qualify as “not married” at the close of the tax year.

According to the information in the record and your testimony at the hearing, you are still married to your spouse and have not obtained a decree of divorce or of separate maintenance, although you testified that you recently filed for divorce. Also, you confirmed that you do not plan to file a joint federal income tax return with your spouse for the 2017 tax year.

However, there is an exception, as noted above, that allows a tax filer to be treated as “not married” at the close of a taxable year, making the tax filer eligible for APTC.

You credibly testified during the hearing that: (1) you expect to claim your three children as dependents and that the children live with you full-time, (2) you will pay more than one-half of the cost of keeping up your home for 2017, and (3) your spouse has not been a member of the household since 2010 and you expect that to remain the case for 2017. Therefore, the record supports a finding that you are a head of household with qualifying dependents and so qualify to be treated as “not married”.

For this reason, the February 11, 2017 eligibility determination is **RESCINDED**.

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).

Your case is RETURNED to NYSOH to promptly re-determine your eligibility for financial assistance for 2017, based on a household of four with an expected annual income of \$69,200.00, residing in ██████ County.

NYSOH is directed to notify you immediately of your eligibility, and to assist you in enrolling in a QHP, with a plan start date of no earlier than March 1, 2017, should you choose to enroll in a plan.

However, BE AWARE that the IRS is the final decision-maker on how you are allowed to file your taxes. If your testimony was incorrect, it may result in you NOT being eligible to file as “Head of Household” for the 2017 tax year. If this is the case, you should not be treated as “not married” for purposes of obtaining APTC through NYSOH, and your tax return for the 2017 tax year might be affected.

## **Decision**

The February 11, 2017 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to immediately re-determine your eligibility for financial assistance for 2017, based on a four-person household, residing in ██████ County with an expected annual income of \$69,200.00, and a tax filing status of “Head of Household.”

NYSOH is directed to notify you immediately of your eligibility for financial assistance, and to assist you in enrolling in a QHP, with a plan start date as early as March 1, 2017, should you choose to enroll in a plan.

**Effective Date of this Decision:** March 31, 2017

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

NYSOH's determination that you were not eligible to receive APTC on the basis that you were married but filing your taxes separately was not correct.

Your case is being sent back to NYSOH to redetermine your eligibility for financial assistance with the cost of your health insurance, based on your status as Head of Household.

NYSOH will re-determine your eligibility for financial assistance for 2017 based on a household of four, with an expected annual income of \$69,200.00, residing in ██████ County.

NYSOH will inform you of your eligibility and will assist you in enrolling in a health plan with a start date of no earlier than March 1, 2017, should you decide to enroll in a health plan.

## **If You Disagree with this Decision (Appeal Rights)**

This Decision is final unless you submit an appeal request to the Federal Marketplace 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 Federal Marketplace. 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 have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:  
Health Insurance Marketplace  
Attn: Appeals  
465 Industrial Blvd.  
London, KY 40750-0061
- By fax: 1-877-369-0129

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 February 11, 2017 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to immediately re-determine your eligibility for financial assistance for 2017, based on a four-person household, residing in ██████ County with an expected annual income of \$69,200.00, and a tax filing status of "Head of Household."

NYSOH is directed to notify you immediately of your eligibility for financial assistance, and to assist you in enrolling in a QHP, with a plan start date as early as March 1, 2017, should you choose to enroll in a plan.

NYSOH's determination that you were not eligible to receive APTC on the basis that you were married but filing your taxes separately was not correct.

Your case is being sent back to NYSOH to redetermine your eligibility for financial assistance with the cost of your health insurance, based on your status as Head of Household.

NYSOH will re-determine your eligibility for financial assistance for 2017 based on a household of four, with an expected annual income of \$69,200.00, residing in ██████ County.

NYSOH will inform you of your eligibility and will assist you in enrolling in a health plan with a start date of no earlier than March 1, 2017, should you decide to enroll in a health plan.

## **Legal Authority**

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

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



## Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

### Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

### 中文 (Traditional Chinese)

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

### Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

### 中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您提供相应语种的口译服务。

### Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

### 한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

### Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

### العربية (Arabic)

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 1-855-355-5777. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجاناً.

### বাংলা (Bengali)

এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

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### **Français (French)**

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

### **हिंदी (Hindi)**

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

### **日本語 (Japanese)**

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

### **नेपाली (Nepali)**

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

### **Polski (Polish)**

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

### **Twi (Twi)**

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. y&b&tumi ama wo obi a okyer& kasa a woka no ase ama wo kwa a wontua hwee.

### **(Urdu) اردو**

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم 1-855-355-5777 پر کال کریں۔ ہم آپ کو آپ کی مادری زبان میں ایک مفت مترجم فراہم کر سکتے ہیں۔

### **Tiếng Việt (Vietnamese)**

Đây là tài liệu quan trọng. Nếu quý vị cần trợ giúp để hiểu tài liệu này, vui lòng gọi 1-855-355-5777. Chúng tôi có thể cung cấp thông dịch viên miễn phí nói ngôn ngữ của quý vị.

### **אידיש (Yiddish)**

דאס איז א וויכטיגער דאקומענט. אויב איר דארפט הילף עס צו פארשטיין, ביטע רופט 1-855-355-5777. מיר קענען אייך געבן א דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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