



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

Notice of Decision

Decision Date: April 17, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012494

[REDACTED]

Dear [REDACTED],

On January 25, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's October 8, 2016 and October 13, 2016 eligibility redetermination 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 Date: April 17, 2017

NY State of Health Account ID: [REDACTED]
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Issue

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

Did NY State of Health properly determine that your and your spouse's eligibility for advance payments of the premium tax credit ended effective November 1, 2016?

Procedural History

On December 6, 2015, State of Health (NYSOH) issued an eligibility determination notice, based on your December 1, 2015 application, stating that you and your spouse were eligible to share in advance payments of the premium tax credit (APTC) in an amount of up to \$373.00 per month, effective January 1, 2016.

On December 15, 2015, NYSOH issued an enrollment notice confirming yours and your spouse's enrollment in a silver-level qualified health plan (QHP) with a monthly premium of \$393.00 per month after your APTC was applied, effective January 1, 2016.

On October 1, 2016, NYSOH issued an enrollment notice confirming your and your spouse's enrollment in a silver-level QHP with an increased monthly premium of \$766.00 per month.

On October 8, 2016, NYSOH issued an eligibility redetermination notice stating that you and your spouse were newly eligible to enroll in a full price QHP, effective November 1, 2016. That notice also stated that you and your spouse

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are not eligible for a tax credit and cost sharing reduction because APTC was paid to your health insurance company to reduce your premium costs in a prior year and NYSOH was unable to tell if a federal tax return was filed for that year.

On October 12, 2016, you updated your application for health insurance. That day, a preliminary eligibility redetermination was made finding you and your spouse remained eligible for a full price QHP, effective November 1, 2016.

Also on October 12, 2016, you spoke to NYSOH's Account Review Unit and appealed that preliminary redetermination insofar as you and your spouse were no longer eligible for APTC.

On October 13, 2016, NYSOH issued an eligibility redetermination notice stating that you and your spouse were newly eligible to enroll in a full price QHP, effective November 1, 2016. That notice also stated that you and your spouse are not eligible for a tax credit and cost sharing reduction because APTC was paid to your health insurance company to reduce your premium costs in a prior year and NYSOH is unable to tell if a federal tax return was filed for that year.

Also on October 13, 2016, NYSOH issued an enrollment notice confirming your and your spouse's enrollment in a silver-level QHP with a monthly premium of \$766.00 per month.

On January 25, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open until April 9, 2017 for submittal of your 2015 IRS Account Record Transcript.

On January 25, 2017, you submitted proof of filing your tax return (see Document [REDACTED]). No further documentation was received by April 9, 2017 and the record was closed as of that date.

Findings of Fact

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

- 1) According to your NYSOH account, you and your spouse were determined eligible for APTC on December 6, 2015, with an effective date of January 1, 2016.
- 2) You testified that you received a postcard from your health plan advising you to prepare for 2017 and make sure your income is accurate.
- 3) According to your NYSOH account and your testimony, you updated your account on September 30, 2016. You testified that you only changed the

income in your application by about \$300.00 to \$500.00 and, as a result, you and your spouse were found ineligible for APTC, effective November 1, 2016.

- 4) You testified that you were told by a NYSOH representative that you and your spouse didn't file your 2015 taxes. On January 25, 2017, you testified and submitted a statement from your accountant reflecting that your tax return was acknowledged as accepted by the IRS on September 20, 2016.
- 5) You testified that you and your spouse terminated your health coverage as of November 2016, per the advice of a NYSOH representative; however, the health plan backdated the loss of APTC and you and your spouse had to pay your full premium for the month of October 2016. You are seeking reinstatement of your APTC only for that month.

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)).

NYSOH may not authorize APTC when it was paid on behalf of the tax filer or it's spouse, for a year which the tax data would be utilized for verification of household income and size, and that tax filer and his spouse did not file a tax return for that year (45 CFR §155.305(f)(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 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

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compatible with the income data NYSOH obtains, NYSOH must request additional information from the applicant 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)).

End of Tax Year Reconciliation

At the end of a tax year, a person who elects to take the APTC to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to NYSOH and their actual gross income for that year. A person who received less tax credit than her maximum entitlement, based on gross income, may receive an income tax refund, or owe less in taxes. A person who received more tax credit than his maximum entitlement, based on gross income, will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

Legal Analysis

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

According to your NYSOH account, you and your spouse were enrolled in a silver-level QHP beginning January 1, 2016, at a monthly premium rate of \$393.00, after APTC of \$373.00 was applied.

On September 30, 2016 and October 12, 2016, NYSOH received your updated applications for health insurance.

On September 30, 2016 and October 12, 2016, NYSOH received information that you had not filed a tax return for 2015.

On October 8, 2016 and October 13, 2016, two eligibility redetermination notices were issued, both stating that you and your spouse were eligible to purchase a

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full cost QHP through NYSOH, effective November 1, 2016, as NYSOH had received information that APTC had been paid on your behalf for a year in which you did not file a tax return.

If income data is unavailable, NYSOH must request additional information from the applicant to resolve the inconsistency. You testified and submitted documentation that shows that you filed your 2015 tax return on September 20, 2016 with the help of an accountant.

However, this documentation you submitted as proof that you filed your 2015 federal tax return was insufficient because only an official IRS Account Transcript is acceptable. As of September 30, 2016 and October 12, 2016, NYSOH did not receive any further documentation and, therefore, could not assess whether you had filed your 2015 federal tax return based on the documentation you submitted.

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. Since the data sources reflected that a return was not filed as of the September 30, 2016 and October 12, 2016 applications, the October 8, 2016 and October 13, 2016 eligibility redetermination notices are correct and must be **AFFIRMED**.

During the hearing, you testified that your and your spouse's APTC was retroactively terminated by the QHP back to October 1, 2016 and you had to pay the full premium for the month of October 2016. You are seeking to have APTC applied to the premium for October 2016, and to be reimbursed in that amount. Any changes in APTC are to be made effective the first day of the month following the eligibility redetermination notice. Accordingly, your loss of APTC should have only taken effect as of November 1, 2016, the month following the October 8 and 13, 2016 eligibility redetermination notices.

However, because it is past the end of the 2016 policy year, no further action by NYSOH is required as of this Decision. Instead, at the end of a tax year, a person who elects to take APTC to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to NYSOH and their actual gross income for that year, which may also result in a tax credit or reduction in tax liability if the full amount of APTC to which a person is entitled is not taken throughout the year. Conversely, if a person received more APTC than their maximum entitlement, based on gross income, they might owe the excess as an additional income tax liability. The amount of APTC to which you were entitled can be reconciled at the time you file your 2016 federal tax return.

Decision

The October 1, 2016 enrollment notice is AFFIRMED.

The October 8, 2016 eligibility redetermination notice is AFFIRMED.

The October 13, 2016 eligibility redetermination and enrollment notices are AFFIRMED.

Your APTC for the month of October 2016 can be reconciled when you file your federal income tax return for 2016.

Effective Date of this Decision: April 17, 2017

How this Decision Affects Your Eligibility

This decision does not change your or your spouse's eligibility to share in APTC during 2016.

The amount of APTC to which you and your spouse should have been entitled to receive in the month of October 2016 can be reconciled when you file your federal income tax return for 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)).

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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:
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- By fax: 1-855-900-5557

Summary

The October 1, 2016 enrollment notice is AFFIRMED.

The October 8, 2016 eligibility redetermination notice is AFFIRMED.

The October 13, 2016 eligibility redetermination and enrollment notices are AFFIRMED.

Your APTC for the month of October 2016 can be reconciled when you file your federal income tax return for 2016.

This decision does not change your or your spouse's eligibility to share in APTC during 2016.

The amount of APTC to which you and your spouse should have been entitled to receive in the month of October 2016 can be reconciled when you file your federal income tax return for 2016.

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:

