



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

**Notice of Decision**

Decision Date: February 8, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012594

[REDACTED]

Dear [REDACTED],

On February 2, 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 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 8, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012594



## 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 and your spouse's eligibility for advance payments of the premium tax credit ended effective October 1, 2016?

## Procedural History

On December 16, 2015, NYSOH issued a notice of eligibility determination stating that you and your spouse were conditionally eligible to receive up to \$468.00 in advance payments of the premium tax credit (APTC) and conditionally eligible to receive cost-sharing reductions if you enrolled in a silver level qualified health plan, effective January 1, 2016. The notice further directed you and your spouse to provide documentation confirming your income before March 14, 2016.

Also on December 16, 2015, NYSOH issued a notice confirming your and your spouse's enrollment in a silver level qualified health plan with APTC and cost-sharing reductions, effective January 1, 2016.

On September 18, 2016 NYSOH issued an eligibility determination notice stating that you and your spouse were newly eligible to purchase a qualified health plan at full cost. 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. This eligibility was effective November 1, 2016.

Also on September 18, 2016, NYSOH issued an enrollment confirmation notice stating that you and your spouse were enrolled in a Silver level qualified health plan with \$0.00 of APTC applied to your premium.

On October 17, 2016, you updated your application for financial assistance. That day, a preliminary eligibility determination was prepared stating that you and your spouse were eligible to receive up to \$468.00 in APTC and eligible to receive cost-sharing reductions if you enrolled in a silver level qualified health plan, effective December 1, 2016.

Also on October 17, 2016, you spoke to NYSOH's Account Review Unit and appealed the termination of your APTC for the month of October 2016.

On October 18, 2016, NYSOH issued a notice of eligibility determination, based on the October 17, 2016 application, stating that you and your spouse were eligible to receive up to \$468.00 in APTC and eligible to receive cost-sharing reductions if you enrolled in a silver level qualified health plan, effective December 1, 2016.

Also on October 18, 2016 NYSOH issued an enrollment confirmation notice stating that you and your spouse were enrolled in a Silver level qualified health plan with \$468.00 of APTC applied to your premium, effective November 1, 2016.

On February 2, 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 NYSOH account confirms, that you receive all of your notices from NYSOH by electronic mail.
- 2) You testified that you did not receive any electronic alerts notifying you of any notice in your NYSOH account stating that your and your spouse's eligibility was only conditional and that you needed to provide documentation of your income.
- 3) You testified that you did not know that you needed to submit documentation of your household's income until you received a bill from Fidelis for approximately \$1,200.00.

- 4) Your NYSOH account indicates that on September 17, 2016 your application was run and you and your spouse were found no longer eligible for APTC as of October 1, 2016.
- 5) You updated the income information in your NYSOH account on October 17, 2016 and reapplied APTC to your and your spouse's monthly income.
- 6) You submitted income documentation to NYSOH on December 1, 2016, which consisted of a tax return for 2015.
- 7) You testified that you are seeking reinstatement of your APTC as of October 1, 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

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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 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 spouse's eligibility for advance payments of the premium tax credit ended effective October 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 December 16, 2015, you were advised that your and your spouse's eligibility for APTC was only conditional, and that you needed to confirm your household's income before March 14, 2016.

The record reflects that NYSOH did not receive the requested income documentation before the deadline.

However, you testified that you elected to receive alerts regarding notices from NYSOH electronically. You credibly testified that you did not receive any

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electronic alert regarding the eligibility determination notice, which directed you that your and your spouse's eligibility was only conditional and that you needed to submit documentation to confirm your household's income.

There is also no evidence in your account documenting that any email alert was sent to you 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 and your spouse's eligibility for APTC.

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

Your case is RETURNED to NYSOH to reinstate your and your spouse's APTC as of October 1, 2016.

## **Decision**

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

Your case is RETURNED to NYSOH to reinstate your and your spouse's APTC as of October 1, 2016.

**Effective Date of this Decision:** February 8, 2017

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

NYSOH erred in terminating your and your spouse's APTC effective October 1, 2016, without the proper notice.

Your case is being sent back to NYSOH to reinstate your and your spouse's APTC as of October 1, 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.

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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**.

NYSOH erred in terminating your and your spouse's APTC effective October 1, 2016, without the proper notice.

Your case is **RETURNED** to NYSOH to reinstate your and your spouse's APTC as of October 1, 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:**

