



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

Notice of Decision

Decision Date: January 12, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012595

[REDACTED]

[REDACTED]

On January 6, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 3, 2016 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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NY State of Health Account ID: [REDACTED]
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Issues

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 were eligible to receive up to \$315.00 per month in advance payments of the premium tax credit, effective October 1, 2016?

Procedural History

On September 2, 2016, NYSOH redetermined your and your spouse's eligibility for financial assistance with health insurance.

On September 3, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible to receive up to \$315.00 in APTC as well as cost sharing reductions, effective October 1, 2016. This eligibility was based on a household income of \$78,026.24.

On October 17, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that eligibility determination insofar as you and your spouse were no longer eligible for a greater amount of APTC.

On December 29, 2016, you were scheduled for a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. You requested that day that the hearing be adjourned to a later date.

On January 6, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Under oath, you waived your right to formal notice of the

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hearing. 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 and your spouse expect to file your 2016 taxes with a tax filing status of married filing jointly. You will claim two dependents on that tax return.
- 2) The record reflects that on September 2, 2016, NYSOH redetermined your and your spouse's eligibility for financial assistance with health insurance based on an annual household income of \$78,026.24.
- 3) You testified that your 2016 annual gross income would be between \$50,000.00 and \$51,000.00. You testified that you had no other sources of income in 2016.
- 4) You testified that you are not sure what your spouse's annual gross income for 2016 will be. You explained that your spouse was self-employed through July of 2016 and earning wages from October 2016 until the end of 2016. You testified that your spouse had no other sources of income in 2016.
- 5) You testified that neither of your two children had any income in 2016.
- 6) You testified that you believe you and your spouse will claim deductions on your 2016 tax return for tuition paid, however, you are not yet sure of the amount of the deductions that you will claim.
- 7) You testified that you resided in Nassau County throughout 2016.

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

Applicable Law and Regulations

Advance Payments of Premium Tax Credit

Advance payments of the premium tax credit (APTC) are generally 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 federal poverty level (FPL), (2) expects to file a tax return and claim a personal

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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)).

The maximum amount of APTC that can be authorized equals:

- 1) the cost of the health insurance premium for the taxpayer's coverage family in the second lowest cost silver plan offered through NY State of Health in the county where the taxpayer resides

minus

- 2) the taxpayer's expected contribution amount

(see 26 USC § 36B, 26 CFR § 1.36B-3).

The taxpayer's expected contribution amount is the amount that the taxpayer is expected to spend on health insurance premiums. The expected contribution for 2016 is set by federal law at 2.03% to 9.66% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc. 2014-37, IRS Rev. Proc. 2014-62).

In an analysis of APTC eligibility, the determination is based on the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested (45 CFR §§ 155.300(a), 155.305(f)(1)(i)). On the date of your application, that was the 2015 FPL, which is \$24,250.00 for a four-person household (80 Federal Register 3236, 3237).

For annual household income in the range of at least 300% but less than 400% of the 2015 FPL, the expected contribution is 9.66 % of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37, IRS Rev. Proc. 2014-62).

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).

Legal Analysis

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The first issue is whether NYSOH properly determined that you and your spouse were eligible for an APTC of up to \$315.00 per month.

On September 2, 2016, NYSOH redetermined your and your spouse's eligibility based on an annual household income of \$78,026.24

You and your spouse are in a four-person household. You and your spouse expect to file your 2016 income taxes as married filing jointly and will claim two dependents on that tax return.

You reside in Nassau County, where the second lowest cost silver plan available for a couple through NYSOH costs \$770.46 per month.

An annual income of \$78,026.24 is 321.76% of the 2015 FPL for a four-person household. At 321.76% of the FPL, the expected contribution to the cost of the health insurance premium is 9.66% of income, or \$628.11 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through NYSOH for a couple in your county (\$770.46 per month) minus your expected contribution (\$628.11 per month), which equals \$142.35 per month. Therefore, rounding to the nearest dollar, NYSOH should have determined you and your spouse to be eligible for up to \$142.00 per month in APTC.

Since the September 3, 2016 eligibility determination incorrectly stated that, you and your spouse were eligible for up to \$315.00 per month in APTC, it is **RESCINDED**.

As we are now in the 2017 enrollment period, the NYSOH Appeals Unit cannot direct NYSOH to redetermine your eligibility for 2016. As you have used APTC to help pay health insurance premiums in 2016, you must file a federal tax return. Your APTC, regardless of whether correctly or incorrectly determined by NYSOH, will be reconciled on your 2016 tax return by the IRS.

Decision

The September 3, 2016 eligibility determination notice is **RESCINDED**.

Effective Date of this Decision: January 12, 2017

How this Decision Affects Your Eligibility

You must file a 2016 federal tax return. The IRS will reconcile your APTC.

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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:
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Summary

The September 3, 2016 eligibility determination notice is RESCINDED.

You must file a 2016 federal tax return. The IRS will reconcile your APTC.

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A Copy of this Decision Has Been Provided To:

