



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

Notice of Decision

Decision Date: February 1, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012643

[REDACTED]

Dear [REDACTED]

On January 24, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 18, 2016 eligibility determination notice and the October 20, 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 Date: February 1, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012643

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Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

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

Did NYSOH properly redetermine that you and your spouse were eligible for up to \$298.00 per month in advance payments of the premium tax credit?

Did NYSOH properly redetermine that you and your spouse were not eligible for cost-sharing reductions?

Did NYSOH properly redetermine that your and your spouse's eligibility for advance payments of the premium tax credit was effective December 1, 2016?

Procedural History

On February 2, 2016, NYSOH issued a notice of eligibility determination stating that you and your spouse were conditionally eligible to receive up to \$505.00 per month 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 March 1, 2016. The notice further directed you to provide documentation confirming your and your spouse's income before May 1, 2016.

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Also on February 2, 2016, NYSOH issued a notice confirming your and your spouse's enrollment in a qualified health plan with APTC and cost-sharing reductions, effective February 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 qualified health plan with \$0.00 of APTC applied to your premium.

On October 19, 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 \$298.00 per month in APTC, effective December 1, 2016.

Also on October 19, 2016, you spoke to NYSOH's Account Review Unit and appealed the termination of your and your spouse's APTC for the month of October 2016 and November 2016 as well as the change in the amount of your and your spouse's APTC for December 2016.

On October 20, 2016, NYSOH issued a notice of eligibility determination, based on the October 19, 2016 application, stating that you and your spouse were eligible to receive up to \$298.00 per month in APTC, effective December 1, 2016.

On January 24, 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 account indicates, that you receive all of your notices from NYSOH by regular mail.
- 2) You testified that you believe you did receive the February 2, 2016 notice stating that your and your spouse's eligibility was only conditional and that you needed to provide documentation of your household's income.

- 3) You testified that you provided information regarding your income during your initial application, and you did not realize you needed to submit additional documentation at that time.
- 4) No notices that were sent to the address listed on your NYSOH account have been returned as undeliverable.
- 5) You testified that you did not know that you needed to submit documentation of your income until October 2016 when you received a sizeable bill from your plan.
- 6) Your NYSOH account indicates that on September 18, 2016, your application was run and you were found no longer eligible for APTC as of October 1, 2016.
- 7) You updated the income information in your NYSOH account on October 19, 2016 and also submitted income documentation to NYSOH that same day.
- 8) You testified that you are seeking reinstatement of your and your spouse's APTC of \$505.00 as of October 1, 2016.
- 9) You testified that you paid the full premium amount for your and your spouse's qualified health plan for October 2016 and November 2016, and that the December 2016 premium was reduced by the new APTC amount.
- 10) You testified that you believe that your and your spouse's APTC was retroactively terminated back to February 1, 2016 and that your qualified health plan is now directing you to pay the full premium for coverage dating back to February 1, 2016.
- 11) At the time you completed your February 1, 2016 application, you reported an expected annual household income of \$48,925.00.
- 12) You testified that you expect to file your 2016 taxes with a tax filing status of married filing jointly. You will claim two dependents on that tax return.
- 13) You are seeking insurance for yourself and your spouse, your children are currently enrolled in a Child Health Plus plan through NYSOH.
- 14) The application that was submitted on October 19, 2016 listed annual household income of \$64,925.00, consisting of \$45,000.00 you earn from your employment and \$14,400.00 you receive in rental income, and \$5,525.00 your spouse received in unemployment insurance

benefits. You testified that this amount was an approximation of your 2016 annual household income.

- 15) You testified that your household income changed because your spouse stopped receiving unemployment insurance benefits and you went from working part-time to working full-time and received a raise from \$21.00 per hour to \$22.00 per hour.
- 16) You testified that you will not be taking any deductions on your 2016 tax return.
- 17) You testified that you currently reside in Orange County and resided in Orange County throughout 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 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 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)).

Calculation of the Advance Payments of Premium Tax Credit

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 250% but less than 300% of the 2015 FPL, the expected contribution is between 8.18% and 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

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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).

Cost-Sharing Reductions

Cost-sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a QHP through NYSOH, (2) meets the requirements to receive APTC, (3) is expected to have an annual household income that does not exceed 250% of the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested, and (4) is enrolled in a silver-level QHP (45 CFR § 155.300(a), 45 CFR § 155.305(g)(1)).

Legal Analysis

The first issue under review is whether NYSOH properly determined that you and your spouse's eligibility for advance payments of the premium tax credit (APTC) 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 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 2, 2016, you were advised that you and your spouse's eligibility for APTC was only conditional, and that you needed to confirm your household's income before May 1, 2016.

You testified that you believe you did receive the February 2, 2016 notice from NYSOH telling you that you needed to provide income documentation to confirm your eligibility. You testified, and your NYSOH account confirms, that you elected to receive notifications by regular mail. There is no evidence in the record that any of the notices that were sent to your mailing address were returned as undeliverable.

Therefore, NYSOH properly notified you of an inconsistency in your account and that documentation was needed to confirm the income you listed in the account.

If NYSOH remains unable to verify the attestation of the applicant, NYSOH must redetermine an individual's eligibility based on the information available from the

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data sources unless the applicant demonstrates that they are unable to provide the required documentation. Any changes in APTC are to be made effective the month following the eligibility redetermination notice.

Accordingly, your and your spouse's eligibility for APTC should have ended as of October 1, 2016, the month following the September 17, 2016 eligibility redetermination.

Therefore, the September 18, 2016 eligibility determination notice is MODIFIED to state that you and your spouse were not eligible to receive APTC because NYSOH did not receive the income documentation needed to verify the income listed in your application, effective October 1, 2016.

The second issue is whether NYSOH properly redetermined that you and your spouse were eligible for up to \$298.00 per month in advance payments of the premium tax credit.

The application that was submitted on October 19, 2016 listed an annual household income of \$64,925.00 and the eligibility determination relied upon that information.

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

You reside in Orange County, where the second lowest cost silver plan available for a couple through NYSOH costs \$768.99 per month.

An annual income of \$64,925.00 is 267.73% of the 2015 FPL for a four-person household. At 267.73% of the FPL, the expected contribution to the cost of the health insurance premium is 8.70% of income, or \$470.97 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 primary subscriber and one dependent in your county (\$768.99 per month) minus your expected contribution (\$470.97 per month), which equals \$298.02 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined you and your spouse to be eligible for up to \$298.00 per month in APTC.

The third issue is whether you and your spouse were properly redetermined ineligible for cost-sharing reductions. Cost-sharing reductions are available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$64,925.00 is 267.73% of the applicable FPL, NYSOH correctly redetermined you and your spouse to be ineligible for cost sharing reductions.

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The fourth issue is whether NYSOH properly determined that you and your spouse's eligibility for advance premium tax credits was effective December 1, 2016.

On October 19, 2016, you updated the income information in your NYSOH account. On October 20, 2016 a notice of eligibility redetermination was issued stating that you and your spouse were eligible to receive up to \$298.00 per month in APTC, effective December 1, 2016.

As stated above, any changes in APTC are to be made effective the month following the eligibility redetermination notice.

Since you updated your application on October 19, 2016, any changes in APTC should have been made effective as of November 1, 2016.

Therefore, NYSOH's October 20, 2016 eligibility determination is correct and is **AFFIRMED** insofar as it found you and your spouse eligible for up to \$298.00 per month in APTC. However, the October 20, 2016 eligibility determination notice is **MODIFIED** to reflect that you and your spouse were eligible to receive up to \$298.00 per month in APTC, effective November 1, 2016.

Your case is **RETURNED** to NYSOH to reinstate your and your spouse's \$298.00 per month APTC as of November 1, 2016.

During the hearing you testified that your and your spouse's APTC was retroactively terminated back to February 1, 2016 and that your qualified health plan is now directing you to pay the full premium for coverage dating back to February 1, 2016. Any changes in APTC are to be made effective the date following the eligibility determination notice. Accordingly, your APTC should have only been effected as of October 1, 2016, the month following the September 17, 2016 eligibility redetermination. NYSOH Appeals Unit does not have authority to hear issues involving qualified health plan billing and payments. Therefore, your case is **RETURNED** to Plan Management in order to investigate whether or not your and your spouse's plan is incorrectly billing you for months when you should have been receiving APTC.

Decision

The September 18, 2016 notice of eligibility determination is **MODIFIED** to state that you and your spouse were not eligible to receive APTC because NYSOH did not receive the income documentation needed to verify the income listed in your application, effective October 1, 2016.

The October 20, 2016 notice of eligibility determination is AFFIRMED in so far as it found you and your spouse eligible to receive up to \$298.00 per month in APTC.

The October 20, 2016 notice of eligibility determination is MODIFIED to reflect that you and your spouse were eligible to receive up to \$298.00 per month in APTC, effective November 1, 2016.

Your case is RETURNED to NYSOH to reinstate your and your spouse's \$298.00 per month APTC as of November 1, 2016.

Your case is RETURNED to Plan Management in order to investigate whether or not your plan is incorrectly billing you for months when you and your spouse should have been receiving APTC.

Effective Date of this Decision: February 1, 2017

How this Decision Affects Your Eligibility

NYSOH properly found you and your spouse ineligible to receive APTC effective October 1, 2016 because you did not provide documentation of your household's income.

NYSOH properly redetermined your and your spouse's APTC to be up to \$298.00 per month.

NYSOH properly redetermined you and your spouse ineligible for cost-sharing reductions.

You and your spouse are eligible for up to \$298.00 per month in APTC effective November 1, 2016.

Your case is being sent back to NYSOH to reinstate your and your spouse's \$298.00 per month APTC as of November 1, 2016.

Your case is also being sent back so that Plan Management can investigate your claim that your qualified health plan retroactively terminated your and your spouse's APTC.

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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- By fax: 1-855-900-5557

Summary

The September 18, 2016 notice of eligibility determination is MODIFIED to state that you and your spouse were not eligible to receive APTC because NYSOH did not receive the income documentation needed to verify the income listed in your application, effective October 1, 2016.

NYSOH properly found you and your spouse ineligible to receive APTC effective October 1, 2016 because you did not provide documentation of your household's income.

The October 20, 2016 notice of eligibility determination is AFFIRMED in so far as it found you and your spouse eligible to receive up to \$298.00 per month in APTC.

NYSOH properly redetermined your and your spouse's APTC to be up to \$298.00 per month.

The October 20, 2016 notice of eligibility determination is MODIFIED to reflect that you and your spouse were eligible to receive up to \$298.00 per month in APTC, effective November 1, 2016.

You and your spouse are eligible for up to \$298.00 per month in APTC effective November 1, 2016.

Your case is RETURNED to NYSOH to reinstate your and your spouse's \$298.00 per month APTC as of November 1, 2016.

Your case is RETURNED to Plan Management in order to investigate whether or not your plan is incorrectly billing you for months when you and your spouse should have been receiving APTC.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

