



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

## Notice of Decision

Decision Date: March 22, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012707

[REDACTED]

Dear [REDACTED],

On February 14, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 18, 2016 eligibility determination notice, the October 6, 2016 enrollment confirmation notice, and the October 10, 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 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 22, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012707

[REDACTED]

## Issues

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

Did NY State of Health (NYSOH) properly determine the eligibility for you and your spouse to receive advance payments of the premium tax credit ended effective either October 1, 2016 or November 1, 2016?

Did NYSOH properly determine the eligibility for you and your spouse to receive advance payments of the premium tax credit resumed no earlier than November 1, 2016?

## Procedural History

On December 5, 2015, NYSOH issued a notice of eligibility determination stating you and your spouse were conditionally eligible to receive up to \$497.00 in advance payments of the premium tax credit (APTC), effective January 1, 2016. The notice further directed you and your spouse to provide documentation confirming your income before February 28, 2016.

On December 20, 2015, NYSOH issued a notice confirming enrollment for you and your spouse in a qualified health plan with APTC, effective January 1, 2016.

NYSOH did not receive documentation confirming your household's income by the February 28, 2016 deadline.

On September 17, 2016, NYSOH systematically redetermined eligibility for you and your spouse.

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

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

You submitted an updated application for health insurance on October 5, 2016.

On October 6, 2016, NYSOH issued a notice of enrollment confirmation stating you and your spouse were enrolled in a qualified health plan with \$551.00 of APTC applied to the monthly premium amount beginning November 1, 2016.

On October 10, 2016, NYSOH issued an eligibility determination notice, based on your October 5, 2016 updated application, stating you and your spouse were conditionally eligible to receive up to \$551.00 in monthly APTC for a limited time, effective November 1, 2016. The notice directed you and your spouse to provide proof of income by January 3, 2016 or you might lose your insurance or receive less help paying for your coverage.

On October 21, 2016 you spoke to NYSOH's Account Review Unit and appealed the termination of your APTC for October 2016.

On February 14, 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, you receive all of your notices from NYSOH by electronic mail.
- 2) You testified you do not recall whether you received an electronic alert notifying you of a December 5, 2015 notice in your NYSOH account stating the eligibility for you and your spouse to receive APTC was only conditional and directing you to provide documentation of your income.

- 3) You testified you receive many email alerts concerning notices from NYSOH so you do not have a specific recollection as to whether you received an alert for the December 5, 2016 electronic notice.
- 4) You testified you do not know whether you read the December 5, 2016 electronic notice.
- 5) Your account confirms the December 5, 2015 electronic notice in your NYSOH account has been opened.
- 6) You testified that if you received notification from NYSOH requesting income documentation you would have submitted it by fax the same day.
- 7) You testified you have sent documentation of your household's income to NYSOH on several occasions but you do not know when this occurred.
- 8) Your NYSOH account indicates that on September 17, 2016, NYSOH systematically redetermined eligibility for you and your spouse and you were both found ineligible to receive APTC because NYSOH was unable to confirm your household's income.
- 9) You testified you learned your APTC had been terminated when you received an October 2016 invoice from your health plan for the full premium amount.
- 10) You testified you contacted your health plan who advised you to pay the full premium amount for October 2016 and further advised you would receive a credit on the next statement. You testified this did not occur.
- 11) You testified you first learned you needed to submit documentation of your household's income when you contacted NYSOH in October 2016.
- 12) Your account indicates you contacted NYSOH on October 5, 2016 and an updated application for health insurance was submitted on behalf of you and your spouse. Thereafter, you and your spouse were determined conditionally eligible to receive APTC, effective November 1, 2016. You were again directed to submit proof of your household's income.
- 13) Your NYSOH account reflects that paystubs for you and your spouse were first faxed to NYSOH on October 5, 2016 and later uploaded to

your account on October 17, 2016. This is the earliest income documentation available in your NYSOH account.

- 14) You testified you paid the full premium amount to the health plan for the month of October 2016.
- 15) You testified the health plan sent you an invoice for November 2016 with a different amount of APTC applied.
- 16) You testified you did not pay the health plan the premium for the months of November and December 2016.
- 17) You testified you and your spouse switched health plans with the new health plan becoming effective in February 2017.
- 18) You testified you are seeking reinstatement of your APTC for October 2016.
- 19) You testified you were having technical difficulties with the NYSOH website for approximately two years; rather than updating your existing application with new information, you were inadvertently submitting new applications each time.

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 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 first issue under review is whether NYSOH properly determined the eligibility for you and your spouse to receive APTC ended, whether this was effective October 1, 2016 or otherwise.

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.

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In the eligibility determination notice issued December 5, 2015, you were advised the eligibility for you and your spouse to receive APTC was only conditional, and you needed to confirm your household's income before February 28, 2016.

The record reflects NYSOH did not receive the requested income documentation prior to this deadline.

You testified, and your account confirms, that you elected to receive alerts regarding notices from NYSOH electronically. You further testified you do not have a specific recollection as to whether you received an electronic alert notifying you of the December 5, 2015 eligibility determination notice, but you did say you had received multiple alerts.

Further, according to your account, the December 5, 2015 electronic notice in your NYSOH inbox has been opened. Given this evidence and the lack of any evidence to support a finding that no alert was sent to you regarding the relevant notice, it is concluded NYSOH provided you with proper notice that you were required to submit documentation of your income to confirm the eligibility for you and your spouse to continue receiving APTC.

Although you testified you have sent documentation of your household's income to NYSOH on several occasions, you were unable to provide testimony or other evidence as to when this occurred. According to your NYSOH account, the earliest income documentation available was faxed on October 5, 2016 and later uploaded to the account on October 17, 2016. This is long after the February 28, 2016 deadline for such information as provided in the December 5, 2015 eligibility determination notice.

If NYSOH remains unable to verify the attestation of the applicant, NYSOH must redetermine eligibility based on the information available from the data sources unless the applicant demonstrates they are unable to provide the required documentation. Your NYSOH account indicates that on September 17, 2016, NYSOH systematically redetermined eligibility for you and your spouse and you were both found no longer eligible to receive APTC because NYSOH was unable to confirm your household income.

Pursuant to the above cited regulations, any changes in APTC are to be made effective the first day of the month *immediately* following the eligibility redetermination notice, regardless of when during the month the eligibility changes. Since NYSOH was unable to verify the income information listed in your application, the eligibility for you and your spouse to receive APTC should have ended as of October 1, 2016, the first day of the month following the September 18, 2016 eligibility redetermination. You testified you were required to pay the full premium payment to the health plan for the month of October 2016.

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Therefore, the September 18, 2016 eligibility determination stating you and your spouse were no longer eligible for APTC because you failed to submit documentation is MODIFIED only to clarify that your eligibility for APTC ended October 1, 2016.

The second issue is whether NYSOH properly determined the eligibility for you and your spouse to receive APTC resumed no earlier than November 1, 2016.

On October 5, 2016, an updated application for financial assistance was submitted on behalf of you and your spouse. On October 6, 2016, an enrollment confirmation notice was issued indicating you and your spouse were enrolled in a qualified health plan with \$551.00 of APTC applied to the monthly premium amount, beginning November 1, 2016.

As cited above, any changes in APTC are to be made effective the first day of the month following the eligibility redetermination notice.

Since you updated your application on October 5, 2016, the reinstatement of APTC should have been made effective as of November 1, 2016. Therefore, NYSOH's October 6, 2016 enrollment confirmation notice is correct and is AFFIRMED.

Additionally, the October 10, 2016, eligibility determination notice stating you and your spouse were conditionally eligible to receive up to \$551.00 in monthly APTC for a limited time, effective November 1, 2016, is correct and is AFFIRMED.

## **Decision**

The September 18, 2016 notice of eligibility determination is MODIFIED only to clarify that your eligibility for APTC ended October 1, 2016.

The October 6, 2016 enrollment confirmation notice is AFFIRMED.

The October 10, 2016 eligibility determination notice is AFFIRMED.

**Effective Date of this Decision:** March 22, 2017

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

You and your spouse were not eligible to receive APTC in October 2016.

The eligibility for you and your spouse to receive APTC was properly reinstated as of November 1, 2016. Any discrepancy can be reconciled when you file your tax return for the 2016 tax year.

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).

## **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:  
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 MODIFIED only to clarify that your eligibility for APTC ended October 1, 2016.

The October 6, 2016 enrollment confirmation notice is AFFIRMED.

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The October 10, 2016 eligibility determination notice is AFFIRMED.

You and your spouse were not eligible to receive APTC in October 2016.

The eligibility for you and your spouse to receive APTC was properly reinstated as of November 1, 2016. Any discrepancy can be reconciled when you file your tax return for the 2106 tax year.

## **Legal Authority**

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

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

