



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

Notice of Decision

Decision Date: April 12, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000013079

[REDACTED]

Dear [REDACTED],

On February 21, 2017, you appeared by telephone at an adjourned hearing on your appeal of NY State of Health's December 21, 2015 eligibility determination notice, September 18, 2016 eligibility determination notice, and the November 5, 2016 eligibility determination and enrollment confirmation 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 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: April 12, 2017

NY State of Health Account ID: [REDACTED]
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Issues

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

Does the Appeals Unit of NY State of Health (NYSOH) have the authority to review your appeal of the December 21, 2015 notice of eligibility determination?

Did NYSOH properly determine your eligibility to receive advance payments of the premium tax credit ended effective either October 1, 2016 or November 1, 2016?

Did NYSOH properly determine your eligibility to receive advance payments of the premium tax credit resumed no earlier than December 1, 2016?

Procedural History

On December 21, 2015, NYSOH issued an eligibility determination notice stating you were newly eligible to purchase a qualified health plan at full cost through NYSOH, effective January 1, 2016. The notice indicated you were not eligible to receive APTC or cost-sharing reductions because you did not respond to a renewal notice and did not complete your renewal within the required timeframe.

Your account was updated on February 1, 2016. On February 2, 2016, NYSOH issued a notice of eligibility determination stating you were conditionally eligible to receive up to \$237.00 in advance payments of the premium tax credit (APTC), and conditionally eligible to receive cost-sharing reductions if you enrolled in a

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silver level qualified health plan, effective March 1, 2016. The notice further directed you to provide documentation confirming your income before May 1, 2016.

Also on February 2, 2016, NYSOH issued a notice confirming your enrollment in a qualified health plan with \$237.00 of APTC available, but not applied to the monthly premium.

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

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

On November 4, 2016, you updated your application for financial assistance. That day, a preliminary eligibility determination was prepared stating that you were eligible, for a limited time, to receive up to \$237.00 in APTC and, if you enrolled in a silver level qualified health plan, cost-sharing reductions, effective December 1, 2016.

Also on November 4, 2016, you spoke to NYSOH's Account Review Unit and appealed the termination of your APTC insofar as you were not eligible for APTC for each month of 2016.

On November 5, 2016, NYSOH issued a notice of eligibility determination stating you were eligible, for a limited time, to receive up to \$237.00 in APTC and, if you enrolled in a silver level qualified health plan, cost-sharing reductions, both effective December 1, 2016. The notice directed you to provide proof of your income by February 2, 2017 to confirm your eligibility.

Also on November 5, 2016, NYSOH issued a notice of enrollment confirmation confirming your enrollment in a qualified health plan with \$237.00 available, but not applied to your monthly premium.

On February 14, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. That day a Hearing Officer called you and you indicated you were too ill to proceed with the hearing. The hearing was adjourned to February 21, 2017.

On February 21, 2017, you had an adjourned telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. While under oath, you waived your right to written notice of the hearing. The record was developed during the hearing and closed at the end of the hearing.

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Findings of Fact

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

- 1) On December 21, 2015, NYSOH determined you were no longer eligible to receive APTC because you failed to timely respond to the November 17, 2015 renewal notice. You were enrolled in a full cost qualified health plan, effective January 1, 2016, with no APTC available.
- 2) NYSOH received your updated application for health insurance on February 1, 2016.
- 3) You were determined conditionally eligible to receive up to \$237.00 in APTC, effective March 1, 2016. Income documentation was requested by May 1, 2016.
- 4) You testified, and your account indicates, you receive all your notices from NYSOH by regular mail.
- 5) You testified you do not remember if you received any notices stating your eligibility was only conditional and directing you to provide documentation of your household's income.
- 6) No notices that were sent to the address listed on your NYSOH account have been returned as undeliverable.
- 7) You testified you were aware you needed to submit proof of your income to NYSOH.
- 8) You testified you uploaded a copy of your 2015 tax return to your NYSOH account in April 2016.
- 9) You testified you never received any notice from NYSOH indicating your upload was not successful.
- 10) Your account indicates no documents were uploaded to your account prior to the May 1, 2016 deadline.
- 11) Your eligibility was systematically redetermined on September 17, 2016 and you were found no longer eligible to receive APTC.
- 12) Your account confirms you updated your account on November 4, 2016 and you were determined eligible, for a limited time, to receive APTC of up to \$237.00 as of December 1, 2016.

- 13) You testified you are not sure what months your APTC was revoked because you have always elected not to apply your APTC to your monthly premium amount. You pay the full premium amount every month. You testified you prefer to receive the credit in the form of a tax refund.
- 14) You testified you did not received a refund in 2015. You are not sure if you will receive a refund in 2016.
- 15) You testified you have elected to apply your APTC to your monthly premium payments in 2017.
- 16) Your account indicates a copy of your Form 2040 from your 2015 tax return was not uploaded to your NYSOH account until November 10, 2016.
- 17) You testified you are seeking reinstatement of your APTC for any months in 2016 in which it may have been revoked.

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

Applicable Law and Regulations

Valid Appeal Requests

An applicant has the right to appeal to NYSOH's Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) an eligibility determination for an exemption; (4) a failure by NYSOH to provide timely notice of an eligibility determination; and (5) a denial of a request for a special enrollment period (45 CFR § 155.505, 45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

Individual applicants and enrollees must request a hearing within 60 days of the date of their notice of eligibility determination by NYSOH (45 CFR § 155.520(b)(2); 18 NYCRR § 358-3.5(b)(1)).

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

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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 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)).

Legal Analysis

The first issue is whether the Appeals Unit of NY State of Health (NYSOH) has the authority to review your appeal of the December 21, 2015 notice of eligibility determination.

On December 21, 2015, NYSOH issued an eligibility determination notice stating you were not eligible to receive APTC because you did not respond to a renewal notice and did not complete your renewal within the required timeframe.

You first objected to this determination on November 4, 2016.

However, individual applicants and enrollees must request a hearing within 60 days of the date of their notice of eligibility determination by NYSOH.

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The notice revoking your eligibility to receive APTC was dated December 21, 2015. Your appeal in this matter was not filed until November 4, 2016. This exceeds the 60-day period in which to appeal a determination as provided by the above cited regulations.

Accordingly, there has been no timely appeal of the December 21, 2015 eligibility determination notice, and your appeal on the issue of your eligibility to receive APTC for the months of January and February 2016 is DISMISSED.

The second issue under review is whether NYSOH properly determined your eligibility to receive APTC ended effective either October 1, 2016 or November 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 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 notice issued February 2, 2016, you were advised your eligibility to receive APTC was only conditional, and you needed to confirm your household's income before May 1, 2016.

You testified you did not remember if you received any notices from NYSOH directing you to provide income documentation to confirm your eligibility. Your account confirms you elected to receive notifications by regular mail. However, there is no evidence in the record that any of the notices that were sent to your mailing address were returned as undeliverable. Additionally, you testified that although you did not recall whether you received the February 2, 2016 notice, you were aware that you needed to submit proof of your income to NYSOH.

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

You testified you uploaded a copy of your 2015 tax return to your NYSOH account in April 2016. However, your account indicates that no income documentation was received by NYSOH until November 10, 2016, long after the May 1, 2016 deadline.

If NYSOH remains unable to verify the attestation of the applicant, NYSOH must redetermine eligibility based on the information available from the data sources

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unless the applicant demonstrates they are unable to provide the required documentation. Your NYSOH account indicates that on September 17, 2016, NYSOH systematically redetermined your eligibility and found you were no longer eligible to receive APTC because NYSOH was unable to confirm your 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, your eligibility 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 are unsure of what months your APTC was revoked because you have always elected to pay the full premium amount and not apply your allowable monthly APTC.

Therefore, the September 18, 2016 eligibility determination stating you 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 third issue is whether NYSOH properly determined your eligibility to receive APTC resumed no earlier than December 1, 2016.

On November 4, 2016, an updated application for financial assistance was submitted on your behalf. On November 5, 2016, an eligibility determination was issued stating you were eligible, for a limited time, to receive up to \$237.00 in APTC, effective December 1, 2016. The same day an enrollment confirmation notice was issued indicating you were enrolled in a qualified health plan with \$237.00 of APTC available, but not applied to the monthly premium amount.

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 November 4, 2016, the reinstatement of APTC should have been made effective as of December 1, 2016. Therefore, NYSOH's November 5, 2016 eligibility determination notice stating you were eligible to receive APTC of up to \$237.00, effective December 1, 2016, is correct and is AFFIRMED.

Additionally, the November 5, 2016, enrollment confirmation notice is correct and is AFFIRMED.

Decision

Your appeal of the December 21, 2015 eligibility determination notice is **DISMISSED** as untimely.

The September 18, 2016 eligibility determination stating you 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 November 5, 2016 eligibility determination notice stating you were eligible to receive APTC of up to \$237.00, effective December 1, 2016, is correct and is **AFFIRMED**.

The November 5, 2016 enrollment confirmation notice is correct and is **AFFIRMED**.

Effective Date of this Decision: April 12, 2017

How this Decision Affects Your Eligibility

You were not eligible to receive APTC in January, February, October, or November 2016.

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

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to the Federal Marketplace 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 Federal Marketplace. 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 have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:
Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd.
London, KY 40750-0061
- By fax: 1-877-369-0129

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

Your appeal of the December 21, 2015 eligibility determination notice is **DISMISSED** as untimely.

The September 18, 2016 eligibility determination stating you 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.

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The November 5, 2016 eligibility determination notice stating you were eligible to receive APTC of up to \$237.00, effective December 1, 2016, is correct and is AFFIRMED.

The November 5, 2016, enrollment confirmation notice, is correct and is AFFIRMED.

You were not eligible to receive APTC in January, February, October, or November 2016.

Your eligibility to receive APTC was properly reinstated as of December 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:



Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

中文 (Traditional Chinese)

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您提供相应语种的口译服务。

Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

العربية (Arabic)

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 1-855-355-5777. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجاناً.

বাংলা (Bengali)

এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

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Français (French)

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

हिंदी (Hindi)

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

日本語 (Japanese)

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

नेपाली (Nepali)

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

Polski (Polish)

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

Twi (Twi)

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye&etumi ama wo obi a okyerE kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم 1-855-355-5777 پر کال کریں۔ ہم آپ کو آپ کی مادری زبان میں ایک مفت مترجم فراہم کر سکتے ہیں۔

Tiếng Việt (Vietnamese)

Đây là tài liệu quan trọng. Nếu quý vị cần trợ giúp để hiểu tài liệu này, vui lòng gọi 1-855-355-5777. Chúng tôi có thể cung cấp thông dịch viên miễn phí nói ngôn ngữ của quý vị.

אידיש (Yiddish)

דאס איז א וויכטיגער דאקומענט. אויב איר דארפט הילף עס צו פארשטיין, ביטע רופט 1-855-355-5777. מיר קענען אייך געבן א דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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