



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

Notice of Decision

Decision Date: March 17, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000013124

[REDACTED]

Dear [REDACTED],

On February 17, 2017, you and your husband appeared by telephone at a hearing on your appeal of NY State of Health's September 18, 2016 eligibility determination notice, and October 19, 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: March 17, 2017

NY State of Health Account ID: [REDACTED]
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[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 that your eligibility for advance payments of the premium tax credit (APTC) ended effective September 30, 2016?

Did NYSOH properly determined that you and your spouse were not eligible to receive APTC as of November 1, 2016 because you had not filed a 2015 federal income tax return?

Procedural History

On December 6, 2015, NYSOH issued a notice of eligibility determination stating that you and your spouse were conditionally eligible to receive up to \$486.00 per month in APTC, effective January 1, 2016. The notice further directed you to provide documentation confirming your and your spouse's income before March 1, 2016.

Also on December 6, 2015, NYSOH issued a notice confirming your and your spouse's enrollment in qualified health plan (QHP) with APTC, 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 QHP at full cost, effective November 1, 2016. The notice did not state how NYSOH arrived at this decision.

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

On October 18, 2016, you updated your application for financial assistance.

On October 19, 2016, NYSOH issued an eligibility determination stating that you and your spouse were eligible to purchase a QHP at full cost through NYSOH, effective December 1, 2016. The notice stated that you were not eligible to receive APTC or cost-sharing reductions because APTC was paid to your health insurance company to reduce your premium costs in a prior year, and NYSOH could not ascertain if a federal tax return was filed for that year.

On October 21, 28, and 29, 2016, and November 9 and 19, 2016, NYSOH issued further eligibility determinations identical to the determination above.

On November 7, 2016, you spoke to NYSOH's Account Review Unit and appealed the termination of your APTC as of October 1, 2016.

On December 7, 2016 you updated your NYSOH account.

On December 8, 2016, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to receive up to \$659.00 per month in APTC, and eligible for cost-sharing reductions, effective January 1, 2017.

On February 17, 2017, you and your spouse 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 that you updated your account in December 2015 with the assistance of a broker, and that you had provided income documentation to your broker in November 2015 (Document [REDACTED]).
- 2) It appears from your NYSOH account that this documentation was verified on November 24, 2015 by someone at NYSOH, and that it was found to be valid proof of your spouse's income.
- 3) Your NYSOH account reflects that your application was updated again on December 2, 2015, and this application indicated that your annual

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expected income was lower than what was indicated in the documentation you provided.

- 4) You testified that you do not recall your broker asking you for any additional income documentation after that.
- 5) Your spouse testified that he did not recall receiving the December 6, 2015 eligibility determination notice stating that your eligibility was conditional on submission of additional income documentation.
- 6) Your account reflects that you receive notices from NYSOH by regular mail.
- 7) No mail sent to the address on your account has been returned to NYSOH as undeliverable.
- 8) Your spouse testified that you did not receive the September 18, 2016 eligibility determination notice.
- 9) Your spouse testified that you received a bill from your health plan in October 2016 asking for more money than what you had paid for your portion of the monthly premium.
- 10) Your spouse testified that he called the health plan to find out why you received a bill, and was told to contact NYSOH. He testified that he contacted NYSOH right away and, was told different reasons regarding the reason why you had lost your APTC.
- 11) Your spouse testified that someone at NYSOH stated that there was an issue because you had not filed your 2015 income taxes.
- 12) Your spouse testified that, in mid-2016, you had filed through your accountant for an extension of the deadline for filing your income taxes, which was granted. Your spouse testified that you had been given until October 15, 2016 to file your taxes.
- 13) Your spouse testified that your income tax return was filed on September 28 or 29, 2016.
- 14) Your spouse testified that he contacted the IRS several times to make sure that there was no problem with your tax return, but was informed that everything had been filed correctly, and that there was no reason why you and your spouse should have lost your APTC.
- 15) Your spouse testified that he informed NYSOH that you had been granted an extension for filing your tax return, but that NYSOH seemed

to either not believe him or not be equipped to handle the problem, and that it took a month for him to be told that there was an appeals process.

- 16) Your spouse testified that he uploaded your household's tax returns to your NYSOH account, but the system still would not process your household's eligibility for financial assistance.
- 17) Your spouse testified that it was not until December 2016 that NYSOH finally determined your household's eligibility for financial assistance, which began on January 1, 2017.
- 18) Your spouse testified that he paid your household's portion of the premium for November and December 2016, but did not pay the portion of the premium amount that was previously covered by the APTC, so the health plan has not received the remainder of the premium payments for November and December 2016.
- 19) Your spouse testified that you are proceeding with this appeal because the health plan is still owed money from November and December 2016.
- 20) Your account confirms that by October 18, 2016, federal and state data sources had confirmed that you had filed your 2015 tax return.
- 21) Your NYSOH account reflects that, on October 19, 2016, a letter on [REDACTED] letterhead was uploaded to your NYSOH account. This letter was addressed to you and your husband, and stated that your 2015 federal income tax return was acknowledged as accepted by the IRS on September 29, 2016. The letter was signed by [REDACTED] (Document [REDACTED]).
- 22) Your NYSOH account further reflects that your 2015 signed and dated federal income tax return was uploaded to your NYSOH account on November 7, 2016 (Document [REDACTED]).

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

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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)).

People who use 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).

NYSOH may not determine a tax filer eligible for APTC if APTC was paid on the tax filer's behalf in a previous year, and a tax return was not filed for that previous year (45 CFR § 155.305(f)(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 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 under review is whether NYSOH properly determined that you and your spouse's eligibility for APTC ended effective September 30, 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 December 6, 2015, 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 March 1, 2016.

Your spouse testified that you did not receive the December 6, 2015 notice from NYSOH telling you that you needed to provide income documentation to confirm your eligibility. Your NYSOH account indicates, that 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.

You also testified that you updated your account in November and December 2015 with the assistance of a broker, and that you had provided income documentation to him in November 2015. Your NYSOH account reflects that income documentation was uploaded to your NYSOH account on November 19, 2015 (Document [REDACTED]). However, your account was updated again on December 2, 2015, and the amount of income attested to was less than what was shown in the documentation provided. As a result, on December 6, 2015, NYSOH issued an eligibility determination that increased the amount of APTC you and your spouse were found eligible for, but which also asked for further documentation of your income. No additional documentation was provided in response to the December 6, 2015 notice.

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 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 date following the eligibility redetermination notice.

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NYSOH issued a notice on September 18, 2016 stating that you and your spouse were newly eligible to purchase a full cost QHP. However, that notice contained no reason for why NYSOH had determined that you were no longer eligible for APTC. Notwithstanding the lack of reasoning in the notice, since you and your spouse failed to submit updated income documentation to confirm the income listed in your December 5, 2015 application for health insurance, your eligibility for APTC would have properly terminated as of September 30, 2016 for failure to provide income documentation and you would not have been eligible for APTC as of October 1, 2016.

Accordingly, the September 18, 2016 eligibility determination notice is **AFFIRMED**.

The second issue under review is whether NYSOH properly determined that you and your spouse were not eligible for APTC as of November 1, 2016 because you and your spouse had not filed your 2015 federal income tax return.

On October 18, 2016, NYSOH received an update to your and your spouse's application for health insurance. As a result of this application, you and your spouse were not eligible to receive financial assistance through NYSOH. According to the October 19, 2016 eligibility determination notice, this was because NYSOH had received information that APTC had been paid on your behalf for a year which you did not file a tax return.

Your spouse testified that your 2015 income tax return was filed on September 28 or 29, 2016. On October 19, 2016, you provided a letter from your accountant stating that your 2015 federal income tax return was acknowledged as accepted by the IRS on September 29, 2016. You also provided a copy of your 2015 signed and dated federal income tax return.

At the time of your October 18, 2016 application, NYSOH had not received information from IRS that your household's taxes had been properly filed. If NYSOH is unable to obtain information that a prior year's tax return had been filed, NYSOH may not determine a tax filer eligible for APTC if APTC was paid on the tax filer's behalf in a previous year, and a tax return was not filed for that previous year.

Although you testified, and provided a copy of your 2015 tax return, it is now 2017. People who use 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). Therefore, if you and your spouse should have been eligible for tax credits in October, November, and December 2016 you can reconcile the amount you should have been given when you file your 2016 income tax return.

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Accordingly, the October 19, 2016 eligibility determination notice is AFFIRMED.

Decision

The September 18, 2016 eligibility determination notice is AFFIRMED.

The October 19, 2016 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: March 17, 2017

How this Decision Affects Your Eligibility

This decision has no effect on your household's current eligibility.

Any tax credits you may be owed for 2016 can be reconciled when you file your 2016 income tax return.

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.

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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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Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The September 18, 2016 eligibility determination notice is AFFIRMED.

The October 19, 2016 eligibility determination notice is AFFIRMED.

This decision has no effect on your household's current eligibility.

Any tax credits you may be owed for 2016 can be reconciled when you file your 2016 income tax return.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

