

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

## Notice of Decision

Decision Date: January 30, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000013188

[REDACTED]

[REDACTED],

On January 10, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 18, 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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: January 30, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000013188



## Issue

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's eligibility for advance payments of the premium tax credit ended effective October 1, 2016?

## Procedural History

On January 9, 2016, NYSOH issued a notice of eligibility determination stating that you and your spouse were conditionally eligible to receive up to \$288.00 in advance payments of the premium tax credit (APTC), effective February 1, 2016. The notice further directed you to provide documentation confirming your and your spouse's income before April 7, 2016.

On January 30, 2016, NYSOH issued a notice confirming your and your spouse's enrollment in qualified health plan with APTC, effective March 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.

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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 November 10, 2016 you spoke to NYSOH's Account Review Unit and appealed the termination of your and your spouse's APTC for the months of October 2016, November 2016, and December 2016.

On November 22, 2016, NYSOH issued a disenrollment notice stating that you and your spouse had been disenrolled from your qualified health plan, effective September 30, 2016, for failure to pay premiums by the payment deadline.

On January 10, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Your spouse, [REDACTED], also participated in the hearing and provided testimony. 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 previously received all of your notices from NYSOH by electronic mail.
- 2) You testified that in October 2016 or November 2016 you changed the preference of how you receive notices from NYSOH from electronic mail to regular mail.
- 3) You testified that you did not receive any electronic alerts notifying you of any notice in your NYSOH account stating that your eligibility was only conditional and that you needed to provide documentation of your income.
- 4) You testified that you did not know that you needed to submit documentation of your income until October 2016 when you went to pay your bill and discovered that your premium had increased.
- 5) Your NYSOH account indicates that on September 17, 2016, your application was run and you were found no longer eligible for APTC as of October 1, 2016.
- 6) You submitted income documentation to NYSOH on October 20, 2016, October 21, 2016, and October 22, 2016.

- 7) You testified that you were unable to afford to pay your premiums without the APTC, therefore your coverage was cancelled for October 2016, November 2016, and December 2016.
- 8) The record reflects that on November 10, 2016 you contacted NYSOH and complaint [REDACTED] was created. You indicated at that time that your plan was seeking to recover a retroactive increase in premiums to March 1, 2016.
- 9) You testified that you are seeking reinstatement of your APTC and reenrollment in your qualified health plan as of October 1, 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 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

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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 issue under review is whether NYSOH properly determined that your and your spouse's eligibility for advance payments of the premium tax credit 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 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.

In the eligibility determination issued on January 9, 2016, you and your spouse were advised that your eligibility for APTC was only conditional, and that you and your spouse needed to confirm your household's income before April 7, 2016.

The record reflects that NYSOH did not receive the requested income documentation before the deadline.

However, you testified that you had previously elected to receive alerts regarding notices from NYSOH electronically. You credibly testified that you did not receive any electronic alert regarding the eligibility determination notice, which directed you that your and your spouse's eligibility was only conditional and that you and

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your spouse needed to submit documentation to confirm your household's income.

There is also no evidence in your account documenting that any email alert was sent to you regarding the need to submit documentation, or that the notice was later sent to you by regular mail.

Therefore, it is concluded that NYSOH did not give you the proper notice that you and your spouse needed to submit documentation of your and your spouse's income in order to confirm your and your spouse's eligibility for APTC.

Since you were not made aware of and did not receive proper notice that there was an inconsistency in your NYSOH account, the September 18, 2016 eligibility determination stating that you and your spouse are no longer eligible for APTC because you and your spouse failed to submit documentation is RESCINDED.

Your case is RETURNED to NYSOH to reinstate your and your spouse's APTC as of October 1, 2016 and to assist you and your spouse in reenrolling in your qualified health plan as of October 1, 2016, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate your and your spouse's coverage.

You testified that your and your spouse's APTC was retroactively terminated back to March 1, 2016 and that your qualified health plan is now seeking that you pay the full premiums for coverage dating back to March 1, 2016. Any changes in APTC are to be made effective the date following the eligibility determination notice. Accordingly, your APTC should have been effected as of October 1, 2016, the month following the September 18, 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 plan is incorrectly billing you for months when you should have been receiving APTC.

## **Decision**

The September 18, 2016 notice of eligibility determination is RESCINDED.

Your case is RETURNED to NYSOH to reinstate your and your spouse's APTC as of October 1, 2016 and to assist you and your spouse in reenrolling in your qualified health plan as of October 1, 2016, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate your and your spouse's coverage.

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:** January 30, 2017

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

NYSOH erred in terminating your and your spouse's APTC effective October 1, 2016, without the proper notice.

Your case is being sent back to NYSOH to reinstate your and your spouse's APTC as of October 1, 2016 and to assist you and your spouse in reenrolling in your qualified health plan as of October 1, 2016, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate your and your spouse's coverage.

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

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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 notice of eligibility determination is **RESCINDED**.

NYSOH erred in terminating your and your spouse's APTC effective October 1, 2016, without the proper notice.

Your case is **RETURNED** to NYSOH to reinstate your and your spouse's APTC as of October 1, 2016 and to assist you and your spouse in reenrolling in your qualified health plan as of October 1, 2016, if you so choose. You will be responsible for any unpaid premiums if you choose to backdate your and your spouse's coverage.

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:**

