



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

### Notice of Decision

Decision Date: February 3, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000015345

[REDACTED]

Dear [REDACTED],

On February 3, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's January 31, 2017 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 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: February 3, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000015345



## Issues

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

Did NY State of Health properly determine that your spouse was eligible for an APTC of up to \$264.00 per month?

Did NY State of Health properly determine that your spouse was properly found eligible for cost-sharing reductions?

Did NY State of Health properly determine that your spouse was ineligible for the Essential Plan, as of January 31, 2017?

Did NY State of Health properly determine that your spouse's enrollment in a qualified health plan and her eligibility for advance premium tax credits were effective March 1, 2017?

## Procedural History

On January 15, 2016, NY State of Health (NYSOH) issued a notice of eligibility determination stating that your spouse was eligible for the Essential Plan effective February 1, 2016.

Also on January 15, 2016, NYSOH issued an enrollment confirmation notice stating that your spouse was enrolled in an Essential Plan, effective February 1, 2016.

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On December 3, 2016, NYSOH issued a notice that it was time to renew your spouse's health insurance for the upcoming coverage year. That notice stated your spouse now qualified for up to \$214.72 per month in tax credits as well as for help in paying for out of pocket costs, and that she needed to select a different health plan between December 16, 2016 and January 15, 2017 or she might lose her coverage. This was because federal and state data sources show your income was between \$22,108.00 and \$64,080.00.

On December 17, 2016, NYSOH issued a notice stating that your spouse's coverage with the Essential Plan will end on January 31, 2017. This is because she was no longer eligible to enroll in the Essential Plan.

No updates were made to your spouse's account by January 15, 2017.

On January 30, 2017, NYSOH received your spouse's completed application for health insurance. That day, a preliminary eligibility determination was prepared with regard to that application, stating that your spouse was eligible to receive up to \$264.00 per month in advance payment of the premium tax credits (APTC) and, if she selected a Silver-Level Qualified Health Plan (QHP), for cost-sharing reductions (CSR). This eligibility was effective March 1, 2017.

Also on January 30, 2017, you contacted NYSOH's Account Review Unit and requested an appeal of that preliminary eligibility determination insofar as your spouse was ineligible for the Essential Plan, and it began your spouse's financial assistance eligibility and enrollment in a QHP on March 1, 2017, and not February 1, 2017.

On January 31, 2017, NYSOH issued a notice of eligibility redetermination, based on the January 30, 2017 application, stating that your spouse was newly eligible to receive up to \$264.00 per month in APTC and, if she selected a Silver-Level QHP, for CSR. This eligibility was effective March 1, 2017.

Also on January 31, 2017, NYSOH issued a letter confirming your spouse's enrollment in a Silver-Level QHP with a monthly premium responsibility of \$189.55, after her APTC of \$264.00 was applied, effective March 1, 2017.

Also on January 31, 2017, you uploaded a letter from your spouse's physician indicating a need for an expedited appeal.

On February 1, 2017, your request for an expedited appeal was approved.

On February 3, 2017, you had an expedited 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) Your spouse was determined eligible for the Essential Plan on January 14, 2016, with an effective date of February 1, 2016.
- 2) On December 2, 2016, NYSOH automatically renewed your spouse's coverage using federal and state income data sources.
- 3) On December 3, 2016, NYSOH issued a renewal notice indicating that your spouse was no longer eligible for the Essential Plan, effective January 31, 2017 and that she needed to choose a QHP in order to continue her health insurance. This was because federal and state data sources show your income was between \$22,108.00 and \$64,080.00.
- 4) On January 30, 2017, NYSOH received your spouse's updated application for health insurance. That day she also selected a QHP for enrollment.
- 5) According to your NYSOH account and your testimony, you and your spouse expect to file your 2017 taxes with a tax filing status of married filing jointly. You and your spouse will claim no dependents on that tax return.
- 6) The application that was submitted on January 30, 2017 listed annual household income of \$33,600.00, consisting of \$18,000.00 of your Social Security benefits and \$15,600.00 your spouse receives as earned income from her employment. You testified that this amount was correct.
- 7) According to your NYSOH account and your testimony, you and your spouse will not be taking any deductions on your 2017 tax return.
- 8) According to your NYSOH account and your testimony, you and your spouse live in Nassau County.
- 9) According to your NYSOH account and your testimony, you and your spouse receive all of your notices from NYSOH by electronic mail.
- 10) You testified that you did not receive any electronic alerts regarding any renewal notice in your NYSOH account telling you that you needed to update your spouse's application in order to renew her eligibility.

- 11) You testified that your spouse did not know that she needed to update her account, and select a new health plan, until she called the health plan inquiring about why she did not receive a premium bill for February 2017.
- 12) As a result of failing to enroll your spouse in new coverage prior to January 30, 2017, your spouse has a gap in coverage for the month of February 2017. You are seeking to have your spouse's enrollment in her QHP begin as of February 1, 2017 because she has a medical procedure scheduled in that month.

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

## **Applicable Law and Regulations**

### Advance Payments of Premium Tax Credit

Advance payments of the premium tax credit (APTC) are generally available to a person who is eligible to enroll in a qualified health plan (QHP) 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 QHP, 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)).

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), 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 2016 FPL, which is \$16,020.00 for a two-person household (80 Federal Register 3236, 3237).

For annual household income in the range of at least 200 % but less than 250 % of the 2016 FPL, the expected contribution is between 6.43 % and 8.21 % of the household income (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 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)).

### Essential Plan: Renewal

New York State has elected to adopt the Medicaid policy regarding continuous enrollment throughout the year (42 CFR § 600.320(d); New York's Basic Health Plan Blueprint, pp. 8 and 16, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

This means that an individual may apply and enroll for coverage at any point in time throughout the year, including outside the open enrollment period and without needing a special enrollment period (NY Social Services Law § 369-gg(4)(d)).

New York State has elected to redetermine Essential Plan enrollees every 12 months from the effective date of eligibility as long as enrollees are under age 65, are not enrolled in minimum essential coverage, and remain state residents. An individual enrolled in the Essential Plan shall have his or her coverage continued until the end of the 12-month period, provided he or she does not lose eligibility by reason of citizenship status, lack of state residence, failure to provide a valid

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social security number, providing inaccurate information that would affect eligibility when requesting or renewing health coverage, failure to make the applicable premium payment, or changes in circumstances (42 CFR § 600.340(f); NY Social Services Law § 369-gg(3) and (4)(d)). Enrollees are required to report changes in circumstances within 30 days, which NYSOH will assess and act upon accordingly (New York's Basic Health Plan Blueprint, p. 17, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

### Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

### Electronic Notices

If the individual elects electronic communications, NYSOH must send an email or other electronic communication alerting the individual that 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 is whether NYSOH properly determined that your spouse was eligible for an APTC of up to \$264.00 per month.

The application that was submitted on January 30, 2017 listed an annual household income of \$33,600.00 and the eligibility determination relied upon that information. You testified that the amount of income that was listed on this application was correct.

Your spouse is in a two-person household. Your spouse expects to file her 2017 income taxes with a tax filing status of married filing jointly and will claim no dependents on that tax return.

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Your spouse resides in Nassau County, where the second lowest cost silver plan available for an individual through NYSOH costs \$453.36 per month.

An annual income of \$33,600.00 is 209.74% of the 2016 FPL for a two-person household. At 209.74% of the FPL, the expected contribution to the cost of the health insurance premium is 6.77% of income, or \$189.56 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 an individual in her county (\$453.36 per month) minus her expected contribution (\$189.56 per month), which equals \$263.80 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined your spouse to be eligible for up to \$264.00 per month in APTC as of January 30, 2017.

The second issue is whether your spouse was properly found eligible 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 \$33,600.00 is 209.74% of the applicable FPL, NYSOH correctly found your spouse to be eligible for cost sharing reductions as of January 30, 2017.

The third issue under review is whether NYSOH properly determined that your spouse was ineligible for the Essential Plan, as of January 31, 2017.

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is between 138% and 200% of the FPL for the applicable family size. Since a household income between \$33,600.00 is 209.74 % of the applicable FPL for a two-person household, NYSOH properly found your spouse to be ineligible for the Essential Plan, using the information provided in your application.

Therefore, the January 31, 2017 eligibility determination is correct insofar as it properly stated that, based on the information you provided, your spouse was eligible for up to \$264.00 per month in APTC, eligible for cost-sharing reductions, and ineligible for the Essential Plan.

The fourth issue under review is whether NYSOH properly determined that your spouse's enrollment in a qualified health plan and her eligibility for advance premium tax credits were effective March 1, 2017.

Your spouse was originally found eligible for and enrolled in the Essential Plan effective February 1, 2016.

Generally, NYSOH will redetermine a qualified individual's eligibility for the Essential Plan once every 12 months without requiring information from the individual if able to do so based on reliable information contained in the individual's account or other more current information available to the agency. NYSOH's December 3, 2016, renewal notice stated your spouse now qualified for up to \$214.72 per month in tax credits as well as for help in paying for out of pocket costs, and that she needed to select a different health plan between December 16, 2016 and January 15, 2017 or she might lose her coverage.

Your spouse was subsequently terminated from her Essential Plan effective January 31, 2017 since she was no longer eligible for that program.

On January 30, 2017, your spouse submitted an updated application for health insurance and enrolled into a QHP. Since the update and plan selection was made after January 15, 2017 your spouse was not covered by a health plan for the month of February 2017.

However, you testified and the record reflects that you elected to receive alerts regarding notices from NYSOH electronically. You credibly testified that you did not receive an electronic alert regarding the renewal notice, which directed you to select a new health plan for your spouse by January 15, 2017 so that her coverage could continue. There is no evidence in your account documenting that any email alert was sent to you regarding the renewal notice or the need to select a new health plan for your spouse.

Therefore, it is concluded that NYSOH did not give you the proper notice that you needed to select a new health plan and update your spouse's account.

Since you first selected a health plan for your spouse based on her new eligibility for APTC and CSR through NYSOH on January 30, 2017, we must assume that this is the plan selection that would have been made had you been timely informed of the need to select a new health plan, as stated in the renewal notice.

Therefore, the January 31, 2017 notice of eligibility redetermination is MODIFIED to state that, effective February 1, 2017, your spouse is newly eligible to receive up to \$264.00 in APTC per month as well as CSR if she enrolls in a silver level QHP, and the January 31, 2017 notice of enrollment confirmation is MODIFIED to state that your spouse's enrollment in her QHP is effective February 1, 2017.

## **Decision**

The January 31, 2017 eligibility determination notice is MODIFIED to state that your spouse is newly eligible to receive up to \$264.00 in APTC per month as well as CSR if she enrolls in a silver level QHP, effective February 1, 2017.

The January 31, 2017 notice of enrollment confirmation is MODIFIED to state that your spouse's enrollment in her QHP is effective February 1, 2017.

Your case is RETURNED to NYSOH to enroll your spouse into her QHP with APTC for the month of February 2017.

**Effective Date of this Decision:** February 3, 2017

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

Your spouse remains eligible for up to \$264.00 per month in APTC.

Your spouse is eligible for cost-sharing reductions.

Your spouse is ineligible for the Essential Plan.

Your spouse's enrollment in her QHP, and her eligibility for APTC should have begun as of February 1, 2017.

Your case is being sent back to NYSOH to effectuate this change.

### **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
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- By fax: 1-855-900-5557

## **Summary**

The January 31, 2017 eligibility determination notice is MODIFIED to state that your spouse is newly eligible to receive up to \$264.00 in APTC per month as well as CSR if she enrolls in a silver level QHP, effective February 1, 2017.

Your spouse remains eligible for up to \$264.00 per month in APTC.

Your spouse is eligible for cost-sharing reductions.

Your spouse is ineligible for the Essential Plan.

The January 31, 2017 notice of enrollment confirmation is MODIFIED to state that your spouse's enrollment in her QHP is effective February 1, 2017.

Your spouse's enrollment in her QHP, and her eligibility for APTC should have begun as of February 1, 2017.

Your case is RETURNED to NYSOH to enroll your spouse into her QHP with APTC for the month of February 2017.

## **Legal Authority**

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

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

