



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

Notice of Decision

Decision Date: June 29, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000015778

[REDACTED]

Dear [REDACTED]

On May 24, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's November 24, 2015 eligibility determination notice, November 18, 2016 eligibility determination notice, and February 14, 2017 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

Decision Date: June 29, 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:

Is your appeal of the November 24, 2015 and November 18, 2016 eligibility determination notices timely?

Did NY State of Health properly determine you were eligible to receive up to \$192.00 per month in advance payments of the premium tax credit, effective, March 1, 2017?

Did NY State of Health properly determine you were not eligible for cost-sharing reductions?

Procedural History

On November 24, 2015, NY State of Health (NYSOH) issued a notice of eligibility determination stating you were eligible to receive up to \$196.00 in advance payments of the premium tax credit (APTC), effective January 1, 2016. You subsequently enrolled in qualified health plan (QHP), effective January 1, 2016, with the maximum amount of your APTC applied to the monthly premium.

On November 18, 2016, NYSOH issued a notice of eligibility determination, based on your November 17, 2016 updated application, stating you were eligible to receive up to \$213.00 in APTC, effective January 1, 2017. You subsequently enrolled in QHP, effective January 1, 2017, with the maximum amount of your APTC applied to the monthly premium.

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On February 5, 2017, NYSOH issued a notice of eligibility determination, based on your February 4, 2017 updated application, stating you were eligible to receive up to \$193.00 in APTC, effective March 1, 2017.

On February 13, 2017, NYSOH received your updated application for health insurance. That day a preliminary determination was prepared finding you eligible to receive up to \$192.00 in APTC, effective March 1, 2017.

Also on February 13, 2017, you spoke to NYSOH's Account Review Unit and appealed the amount of APTC to which you were determined eligible since 2016.

On February 14, 2017, NYSOH issued an eligibility determination notice, based on the February 13, 2017 updated application, stating you were eligible to receive up to \$192.00 in APTC, effective March 1, 2017.

On February 19, 2017, NYSOH issued an enrollment notice confirming your enrollment in a QHP with \$192.00 in APTC applied to your monthly premium beginning March 1, 2017.

On April 19, 2017, NYSOH issued an enrollment notice, based on your grant of Aid to Continue, confirming you were enrolled in a QHP with \$213.00 of APTC applied, effective March 1, 2017.

On May 24, 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 the APTC you receive in 2016 was reconciled on your 2016 tax return and that you have been assessed a penalty by the IRS for overpayment of the tax credit.
- 2) You testified NYSOH used inaccurate income information to determine your eligibility for 2016.
- 3) You testified you are seeking a review of the November 24, 2015 eligibility determination that determined the amount of tax credits you were eligible for in 2016.
- 4) You testified you are also seeking review of the November 18, 2016 eligibility determination notice that determined the amount of tax credits

you were eligible for in 2016, so you can ensure the correct income information was used.

- 5) The issue under review was amended to include a review of the November 24, 2015 and November 18, 2016 eligibility determinations issued by NYSOH stating the amount of APTC you were eligible for in 2016 and 2017.
- 6) The updated application submitted on your behalf on February 4, 2017 increased your attested annual income to \$32,933.40 and you were determined eligible for a decreased APTC in the amount of \$193.00 beginning in March 2017.
- 7) You again updated your application on February 13, 2017, listing an attested income of \$ 32,981.40, consisting of \$13,932.00 you earn from your employment annually as well as \$1,450.00 in monthly Social Security benefits, and \$137.45 in monthly pension payments you receive. You testified the income information in this application was accurate.
- 8) According to your account, the first time your monthly pension payments were included in your attested income was in the February 4, 2017 updated application.
- 9) You testified you received the pension payments each month in 2016 and it was a mistake not to include that information in your previous applications.
- 10) Based on the February 13, 2017 application, you were determined eligible to receive APTC in the amount of \$192.00 beginning in March 2017.
- 11) A formal appeal was filed on your behalf on February 13, 2017.
- 12) You were granted Aid to Continue in your QHP with the previously determined higher APTC of \$213.00 applied to your monthly premium, effective March 1, 2017.
- 13) You testified, and your applications indicate, you will file your 2017 tax return with a tax filing status of single and you will claim no dependents on that tax return.
- 14) Your applications indicate you will not be taking any deductions on your 2017 tax return.
- 15) Your applications state that you live in Rensselaer County.

- 16) You submitted documentation dated May 11, 2017, including a copy of two 1099R forms from 2016 showing pension disbursements, a letter from the Office of the NYS Comptroller indicating the pension disbursements were applied to an outstanding loan balance and that the disbursements were not subject to NYS income tax, as well as a letter from you contending that the amount of the disbursements should not be included in the income used to determine your eligibility for APTC.
- 17) According to your account, NYSOH has not considered any income related to the disbursement of your pension in 2016 in any determination of your eligibility for financial assistance through NYSOH.

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) a failure by NYSOH to provide timely notice of an eligibility determination; and (4) 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)).

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 2017 is set by federal law at 2.04% to 9.69% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc.2016-24).

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 \$11,880.00 for a one-person household (81 Federal Register 4036).

For annual household income in the range of at least 250% but less than 300% of the 2016 FPL, the expected contribution is between 8.21% and 9.69% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2016-24).

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)).

Legal Analysis

The first issue under review is whether your appeal of the November 24, 2015 and November 18, 2016 eligibility determination notices was timely.

On November 24, 2015, NYSOH issued an eligibility determination notice, based on your November 23, 2015 application, stating you were eligible to receive up to \$196.00 in APTC, effective January 1, 2016. According to your account, you opted to apply the maximum amount of APTC to which you were determined eligible to your monthly premium. You testified the APTC you receive in 2016 was reconciled on your 2016 tax return and that you have been assessed a penalty by the IRS for overpayment of the tax credit. Therefore, you testified you are seeking a review of the November 24, 2015 eligibility determination notice, because you believe NYSOH incorrectly determined you eligible for an APTC to which you were not properly eligible.

Pursuant to the above cited regulations, individual applicants and enrollees must request a hearing within 60 days of the date of their notice of eligibility determination by NYSOH.

For an appeal to have been valid on the issue of the amount of APTC to which you were determined eligible for 2016 as stated in the November 24, 2015 eligibility determination notice, pursuant to the regulations, an appeal should have been filed by January 23, 2016. According to your account, a formal appeal was not filed in this matter until February 13, 2017, long after the 60-day period in which to appeal. Additionally, there is no evidence in your account that you contacted NYOH within the aforementioned 60-day period to contest the amount of APTC to which you were determined eligible in 2016. Accordingly, there has been no timely appeal of the November 24, 2015 eligibility determination notice.

You also requested a review of the November 18, 2016 eligibility determination notice stating you were eligible to receive up to \$213.00 in APTC, effective January 1, 2017. However, as discussed above, for an appeal to be valid it must be requested within 60 days of the eligibility determination at issue. For an appeal to have been valid on the issue of the amount of APTC to which you were determined eligible for 2017, as stated in the November 18, 2016 eligibility determination notice, pursuant to the regulations, an appeal should have been filed by January 17, 2017. Since the appeal in this matter was not filed until February 13, 2017, after the 60-day period in which to appeal, your appeal of the November 18, 2016 eligibility determination notice is untimely.

Therefore, given the facts of the case, your request for a review of the November 24, 2015 and November 18, 2016 eligibility determination notices is untimely and, thus, must be **DISMISSED**.

It is noted that pursuant to your testimony it appears as if the November 24, 2015 and November 18, 2016 eligibility determinations providing the amount of APTC to which you were eligible in 2016 and 2017 were based on underreported income information, because you admitted you failed to include the amount of monthly pension payments you receive in the attested income amount you provided. Therefore, you may not have been eligible for the amount of APTC you opted to apply to your monthly premium payments. It is also noted that the Appeals Unit of NYSOH has no authority to override a ruling by the IRS as to what your actual tax credit for a given year; any discrepancy in what you received during the 2016 tax year should have been resolved when you filed your return for that year.

The second issue is whether NYSOH properly determined you were eligible for an APTC of up to \$192.00 per month, effective March 1, 2017.

The application that was submitted on February 13, 2017 listed an annual household income of \$ 32,981.40. You testified this income amount was accurate and the eligibility determination relied upon that information.

The evidence establishes you are in a one-person household. You expect to file your 2017 income taxes as single and you will claim no dependents on that tax return.

You reside in Rensselaer County, where the second lowest cost silver plan available for an individual through NYSOH costs \$440.32 per month.

An annual income of \$32,981.40 is 277.62% of the 2016 FPL for a one-person household. At 277.62% of the FPL, the expected contribution to the cost of the health insurance premium is 9.03% of income, or \$248.19 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 your county (\$440.32 per month) minus your expected contribution (\$248.19 per month), which equals \$192.13 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined you to be eligible for up to \$192.00 per month in APTC.

The third issue is whether you were properly found ineligible 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 \$32,981.40 is 277.62% of the applicable FPL, NYSOH correctly found you to be ineligible for cost sharing reductions.

Since the February 14, 2017 eligibility determination properly stated that, based on the information you provided, you were eligible for up to \$192.00 per month in

APTC and ineligible for cost-sharing reductions, that determination is correct and must be AFFIRMED.

Decision

Your appeal of the November 24, 2015 and November 18, 2016 eligibility determination notices was untimely and is DISMISSED.

The February 14, 2017 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: June 29, 2017

How this Decision Affects Your Eligibility

You remain eligible for up to \$192.00 per month in APTC. You are not required to claim this entire amount in advance, and you may elect to accept a smaller amount monthly.

You are ineligible for cost-sharing reductions.

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)).

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

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).

- 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 November 24, 2015 and November 18, 2016 eligibility determination notices was untimely and is DISMISSED.

The February 14, 2017 eligibility determination notice is AFFIRMED.

You remain eligible for up to \$192.00 in APTC. You are not required to claim this entire amount in advance, and you may elect to accept a smaller amount monthly.

You are ineligible for cost-sharing reductions.

Legal Authority

We are sending you this notice in accordance with 45 CFR § 155.545.

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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。我们可以为您免费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)

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).

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।

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&btumi 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 דאלמענטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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