



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

### Notice of Decision

Decision Date: June 13, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000015910

[REDACTED]

Dear [REDACTED]

On May 25, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's denial of a special enrollment period.

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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STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
P.O. Box 11729  
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## Decision

Decision Date: June 13, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000015910



## Issues

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

Did NY State of Health properly determine that you were eligible to receive up to \$296.00 per month in advance payments of the premium tax credit, effective January 1, 2017?

Did NY State of Health properly determine that you were eligible for cost-sharing reductions?

Did NY State of Health properly determine that you were not eligible for the Essential Plan?

Did NY State of Health properly deny your request to change health plans outside the open enrollment period?

## Procedural History

On December 6, 2016, NY State of Health (NYSOH) issued an eligibility determination notice, based on your December 5, 2016 application, stating that you were eligible to receive up to \$296.00 in APTC and eligible to receive cost-sharing reductions if you enrolled in a silver level qualified health plan, effective January 1, 2017. That notice also stated that you were not eligible for the Essential Plan because your income was over the allowable income limit for that program.

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On December 7, 2016, NYSOH issued a plan enrollment notice confirming your enrolment in a bronze-level qualified health plan with a premium of \$99.98 per month, effective January 1, 2017.

On February 16, 2017, you attempted to change health plans but were unable to select a plan for enrollment.

Also on February 16, 2017, you spoke to NYSOH's Account Review Unit and appealed being unable to change health plans outside of the open enrollment period.

On February 17, 2017, NYSOH issued a notice confirming your appeal request from the previous day. That notice identified you as the appellant and stated that the reason for your appeal was "Eligibility Determination [and] Denial of Special Enrollment Period (SEP)."

On February 23, 2017, NYSOH issued an eligibility determination notice stating that you were eligible to enroll in the Essential Plan with a \$20.00 per month premium, for a limited time, effective March 1, 2017, on an aid to continue basis during the appeal process.

On May 25, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open to June 8, 2017, to allow you to submit supporting documents.

On May 25, 2017, you submitted proof of your 2016 income tax return. This documentation was made part of the record as "Appellant's Exhibit A." No further documentation was received as of June 8, 2017 and the record is now closed.

## **Findings of Fact**

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

- 1) On February 16, 2017, you applied for health insurance through NYSOH. You attempted to enroll in a different health plan that day.
- 2) According to your NYSOH account, you were enrolled in a bronze-level qualified health plan through NYSOH as of January 1, 2017.
- 3) You testified that you wanted to change qualified health plans because you are not satisfied with your current coverage and need to see a certain physician.
- 4) You testified that your income of \$26,520.00 as attested to on your December 5, 2016 application is probably too high. Specifically, you

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testified that you think you earn approximately \$510.00 per week but that it does vary a little each week.

- 5) According to your NYSOH account and your testimony, you expect to file your 2017 income tax return as single and will claim no dependents on that tax return.
- 6) On May 25, 2017, you submitted a copy of your 2016 income tax return. This document shows that in 2016 you received \$27,737.00 in earned income and claimed one dependent (see Appellant's Exhibit A, pp. 1- 2).
- 7) Your application states that you will not be taking any deductions on your 2017 tax return.
- 8) You testified that since filing your application on February 6, 2017, there have been no other major changes to your household.
- 9) You testified that you did not rely on any statements made by NYSOH that prevented you from enrolling in a qualified health plan sooner.
- 10) According to your NYSOH account and your testimony, you live in Kings County, NY.

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 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)). For coverage in 2017, 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 200% but less than 250% of the 2016 FPL, the expected contribution in 2017 is between 6.43% and 8.21% 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)).

### 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

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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).

In an analysis of Essential Plan eligibility, the determination is based on the FPL in effect on the first day of the benefit year for which coverage is requested (45 CFR § 155.300(a)). In your case, that was the 2016 FPL, which is \$ 11,880.00 for a one-person household (81 Fed. Reg. 4036).

A person who has a household income that is at or below 150% of the FPL has a \$0.00 premium contribution (New York's Basic Health Plan Blueprint, p. 21, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

A person who has a household income greater than 150% of the FPL or below 200% of the FPL has a \$20.00 per month premium contribution (New York's Basic Health Plan Blueprint, as approved January 2016).

The Essential Plan is considered minimum essential coverage; therefore, a person who is eligible for the Essential Plan is not eligible for any premium tax credit because they are eligible for minimum essential coverage through the individual market (see 26 CFR § 1.36B-2(c)(1), 26 USC § 5000A(f)(1)(C)).

### De Novo Review

NYSOH Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “De novo review means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

### Enrollment in a Qualified Health Plan

NYSOH must provide annual open enrollment periods during which time qualified individuals may enroll in a qualified health plan and enrollees may change qualified health plans (45 CFR § 155.410(a)(1)).

For the benefit year beginning on January 1, 2017, the annual open enrollment period began on November 1, 2016, and extended through January 31, 2017 (45 CFR § 155.410(e)(2)).

## Special Enrollment Periods

After each open enrollment period ends, NYSOH provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a qualified health plan, and an enrollee may change their enrollment to another plan. This is generally permitted when one of the following triggering events occur:

(4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of NYSOH, its instrumentalities, or a non-NYSOH entity providing enrollment assistance or conducting enrollment activities.

(6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions.

(45 CFR § 155.420(d)(4) and (6)).

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a qualified health plan (45 CFR § 155.420(c)(1)).

## End of Tax Year Reconciliation

At the end of a tax year, a person who elects to take the APTC to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to NYSOH and their actual gross income for that year. A person who received less tax credit than her maximum entitlement, based on gross income, may receive an income tax refund, or owe less in taxes. A person who received more tax credit than his maximum entitlement, based on gross income, will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

## **Legal Analysis**

The first issue under review is whether NYSOH properly determined that you were eligible for an APTC of up to \$296.00 per month.

The application that was submitted on December 5, 2016 listed an annual household income of \$26,520.00 and the eligibility determination relied upon that information.

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Your application states, and you testified, that you expect to file your 2017 income taxes as single and will no dependents on that tax return. Therefore, for purposes of these analyses you are in one-person household.

You reside in Kings County, where the second lowest cost silver plan available for an individual through NYSOH costs \$456.46 per month.

An annual income of \$26,520.00 is 223.23% of the 2016 FPL for a one-person household. At 223.23% of the FPL, the expected contribution to the cost of the health insurance premium is 7.26% of income, or \$160.45 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 (\$456.46 per month) minus your expected contribution (\$160.45 per month), which equals \$296.01 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined you to be eligible for up to \$296.00 per month in APTC.

The second issue under review is whether you were 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 \$26,520.00 is 223.23% of the applicable FPL, NYSOH correctly found you to be eligible for cost sharing reductions.

The third issue under review is whether NYSOH properly determined that you were ineligible for the Essential Plan, effective January 1, 2017.

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income that is between 138% and 200% of the FPL for the applicable family size. Here, the relevant FPL was \$11,880.00 for a one-person household. Since an annual household income of \$26,520.00 is 223.23% of the 2016 FPL, NYSOH properly found you to be ineligible for the Essential Plan.

However, your 2016 income tax return shows that you claimed one dependent on that tax return, which is contrary to the information on your application and your testimony at hearing. If your circumstances have in fact changed, such as your household size, you can contact NYSOH to update your account.

Therefore, the December 6, 2016 eligibility determination notice finding you eligible for up to \$269.00 per month in APTC, eligible for cost-sharing reductions, and ineligible for the Essential Plan is AFFIRMED.

The final issue under review is whether NYSOH properly denied your request to change health plans outside the open enrollment period. However, the record

does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period.

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal NYSOH failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. Your credible testimony, along with the February 17, 2017 appeal confirmation notice stating that you are the appellant and the reason for your appeal was “Denial of Special Enrollment Period (SEP),” permits an inference that NYSOH did deny your special enrollment request.

Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to the eligibility determination notice had it been issued.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On February 16, 2017, you requested to change health plans. Also on February 16, 2017, a NYSOH representative verbally denied your request for a special enrollment period to enroll in a health plan outside of the open enrollment period.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period to enroll in or change to another health plan offered in NYSOH. To qualify for a special enrollment period, a person must experience a triggering event.

Generally, when an enrollee is newly eligible or ineligible for advance payments of the premium tax credit or there is a change in eligibility for cost sharing reductions, these events are considered a triggering life event.

According to your NYSOH account and your testimony, you expect to file your 2017 income tax return as single and will claim no dependents on that tax return.

The application that you submitted on February 6, 2017 lists an annual household income of \$26,520.0, which is 223.23% of the applicable FPL. Based on this information you provide, NYSOH found you eligible for an advance payment of the premium tax credit and ineligible for cost sharing reductions, which are available to persons whose income is less than 250% of the applicable FPL.

However, you testified your income of \$26,520.00 as attested to on your December 5, 2016 application is probably too high. Specifically, you testified that you think you earn approximately \$510.00 per week but that it does vary a little each week.

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The documentation you submitted shows that in 2016 you had an annual household income of \$27,737.00, which is 233.48% of the applicable FPL. This amount, if expected to be comparable in 2017, suggests a higher expected annual household income, not a decrease. Although, these amounts are higher than what you attested to in your December 5, 2016 application, you remain eligible for an advance payment of the premium tax credit and cost sharing reductions at either income level. Since, there is no change in your eligibility, a special enrollment period cannot be granted on this basis.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2017, no other triggering events have occurred that would qualify you for a special enrollment period.

Therefore, NYSOH properly denied your request for a special enrollment period to enroll in a health plan and the February 16, 2017 denial of a special enrollment period is AFFIRMED.

Lastly, at the end of a tax year, a person who elects to take APTC to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to NYSOH and their actual gross income for that year, which may result in a tax credit or reduction in tax liability if the full amount of APTC to which that person is entitled is not taken throughout the year. Conversely, if a person received more APTC than their maximum entitlement, based on gross income, they might owe the excess as an additional income tax liability.

## **Decision**

The December 6, 2016 eligibility determination notice is AFFIRMED.

NYSOH's denial of your request for a special enrollment period to select a health plan outside of the open enrollment period for 2017 is AFFIRMED.

**Effective Date of this Decision:** June 13, 2017

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

You remain eligible for up to \$296.00 per month in APTC.

You are eligible for cost-sharing reductions.

You are ineligible for the Essential Plan.

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You do not qualify for a special enrollment period at this time.

## **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
- 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

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- By mail at:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The December 6, 2016 eligibility determination notice is AFFIRMED.

You remain eligible for up to \$296.00 per month in APTC.

You are eligible for cost-sharing reductions.

You are ineligible for the Essential Plan.

NYSOH's denial of your request for a special enrollment period to select a health plan outside of the open enrollment period for 2017 is AFFIRMED.

You do not qualify for a special enrollment period at this time.

## **Legal Authority**

We are sending you this notice 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)**

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