



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

## Notice of Decision

Decision Date: August 21, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000016634

[REDACTED]

Dear [REDACTED],

On June 26, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's March 9, 2017 eligibility determination.

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: August 21, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000016634

[REDACTED]

### Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NYSOH properly determine that you and your spouse were eligible to enroll only in a full cost qualified health plan, effective no earlier than April 1, 2017?

### Procedural History

On October 18, 2016, NYSOH issued a notice stating that it was time to renew health coverage for you and your spouse. The notice indicated that you and your spouse were being automatically re-enrolled into your current health plan for another year. The notice stated that you and your spouse qualified to receive up to \$614.61 per month in advance payments of the premium tax credit (APTC), effective January 1, 2017. The notice indicated that your eligibility was based on state and federal data sources. The notice further stated that the full cost of your health plan was \$1,031.98 and that you could confirm or change the amount of APTC applied to your monthly premium by logging into your online account and updating your tax credit after November 15, 2016.

On November 18, 2016, NYSOH issued an enrollment notice confirming you and your spouse were enrolled in a silver level couple’s qualified health plan (QHP), effective January 1, 2017. The notice indicated that \$0.00 of the \$614.61 in APTC you qualified for was being applied to your monthly premium. The notice confirmed the monthly premium for the plan was \$1,031.98, effective January 1, 2017.

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On February 10, 2017, NYSOH issued a disenrollment notice stating the enrollment of you and your spouse in your couple's QHP was terminated, effective January 1, 2017, because you had not paid your insurance bill by the payment deadline.

On March 6, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you and your spouse were not able to be enrolled in a QHP with APTC applied.

On March 8, 2017, your application was updated.

On March 9, 2017, NYSOH issued an eligibility determination notice stating you and your spouse were newly eligible to purchase a full cost QHP, effective April 1, 2017.

On June 26, 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 and your spouse were automatically reenrolled in your QHP for 2017.
- 2) The October 16, 2016 notice advised you to log onto to your online account to confirm or change the amount of APTC applied to your monthly premium.
- 3) The November 18, 2016 enrollment confirmation notice issued by NYSOH confirmed your monthly premium amount was \$1,031.98 and that none of the \$614.61 of APTC you and your spouse were qualified for was being applied to the monthly premium.
- 4) You testified that you first learned there was no APTC being applied to your monthly premium when you received an invoice from the health plan in late December 2016.
- 5) You testified you contacted NYSOH in January 2017 to apply your tax credits, but you were unable to do so because of a defect in your account.
- 6) You testified you called numerous times in January and February 2017 to resolve the issue regarding application of your tax credits, but you were repeatedly advised that the issue was under review and nothing could be done in the meantime.

- 7) Your account confirms that on February 9, 2017, your health plan initiated termination of the enrollment of you and your spouse for non-payment of the premium. The enrollment was retroactively terminated back to January 1, 2017.
- 8) Notes in your account from incident [REDACTED] confirm that you called NYSOH multiple times, requesting that you be retroactively reinstated in your QHP. The notes also show that your telephone call recordings were reviewed, and they confirm you called on January 4, 2017 to request your tax credits be applied to your premium, but that NYSOH identified Defect [REDACTED] in your account prevented the processing of this request. Your account confirms the defect was not resolved until February 14, 2017. Notes from this incident confirm you called again on February 15, 2017 and a request for a special enrollment period was submitted, which was subsequently denied on March 6, 2017. The notice indicates you were verbally advised of NYSOH's denial of your request for a special enrollment period.
- 9) A formal appeal was filed on your behalf the same day regarding NYSOH's denial of your request for a special enrollment period.
- 10) On March 8, 2017, an updated application for health insurance was submitted on behalf of you and your spouse. That application listed your annual household income for 2017 as \$83,000.00 consisting of \$52,000.00 you earn annually from your employment and \$31,000.00 your spouse earns annually from her employment. You testified that information is accurate.
- 11) You testified, and your application indicates, you will file your 2017 tax return with a tax filing status of married filing jointly and you will claim no dependents on that tax return.
- 12) You testified, and your application indicates, you and your spouse will not take any deductions on your 2017 tax return.
- 13) You testified, and your application indicates you and your spouse reside in Nassau County.
- 14) Based on the March 8, 2017 application, you and your spouse were determined eligible to purchase a full cost QHP, effective April 1, 2017. You and your spouse did not enroll in a full cost QHP.
- 15) You testified you are seeing a special enrollment period to enroll in a QHP going forward with APTC applied.

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)).

### 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:

- (1) The qualified individual or his or her dependent either:
  - (i) Loses minimum essential coverage.
  - (ii) Is enrolled in any non-calendar year group health plan or individual health insurance coverage, even if the qualified individual or his or her dependent has the option to renew such coverage.
  - (iii) Loses pregnancy-related coverage.

(iv) Loses medically needy coverage as described under section 1902(a)(10)(C) of the Social Security Act only once per calendar year.

(2)(i) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care, or through a child support order or other court order.

(ii) the enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation as defined by State law in the State in which the divorce or legal separation occurs, or if the enrollee, or his or her dependent, dies.

(3) The qualified individual, or his or her dependent, becomes newly eligible for enrollment in a qualified health plan because he or she gains citizenship, status as a national, or lawful present or is no longer incarcerated.

(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.

(5) The enrollee or, his or her dependent adequately demonstrates to NYSOH that the qualified health plan in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;

(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.

(7) The qualified individual or enrollee, or his or her dependent, gains access to new qualified health plan as a result of a permanent move and either—

(i) Had minimum essential coverage for one or more days during the 60 days preceding the date of the permanent move, or

(ii) Was living outside of the United States or in a United States territory at the time of the permanent move;

(8) The qualified individual or dependent who gains or maintains status as an Indian may enroll in a qualified health plan or change from one plan to another, once per month.

(9) The qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide;

(10) A qualified individual or enrollee—

(i) Is a victim of domestic abuse or spousal abandonment, including a dependent or unmarried victim within a household, is enrolled in minimum essential coverage and seeks to enroll in coverage separate from the perpetrator of the abuse or abandonment; or

(ii) Is a dependent of a victim of domestic abuse or spousal abandonment, on the same application as the victim, may enroll in coverage at the same time as the victim;

(11) A qualified individual or dependent—

(i) Applies for coverage through NYSOH during the annual open enrollment period or due to a qualifying event, is assessed as potentially eligible for Medicaid or Child Health Plus and is determined ineligible for Medicaid or Child Health Plus either after open enrollment has ended or more than 60 days after the qualifying event; or

(ii) Applies for coverage at their Local Department of Social Services or Human Resources Administration during the annual open enrollment period, and is determined ineligible for Medicaid or Child Health Plus after open enrollment has ended;

(12) The qualified individual or enrollee, or his or her dependent, adequately demonstrates to NYSOH that a material error related to plan benefits, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a qualified health plan; or

(13) At the option of NYSOH, the qualified individual provides satisfactory documentary evidence to verify his or her eligibility for an insurance affordability program or enrollment following termination of enrollment due to a failure to verify such status within 90 days. NYSOH has not elected to adopt this subsection at this time.

(45 CFR § 155.420(d)).



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)).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined that you and your spouse were eligible to purchase only a full cost QHP, effective no earlier than April 1, 2017.

According to your account, you and your spouse were previously determined eligible for up to \$614.61 of monthly APTC, effective January 1, 2017, and you were automatically reenrolled in your current QHP for another year. However, the notices issued by NYSOH on October 16, 2016 and November 18, 2016 confirmed that no APTC would be applied to your monthly premium until you confirmed the amount of the credit you wanted applied.

The earliest record of you contacting NYSOH to request your APTC be applied to your monthly premium is January 4, 2017. Notes in your account indicate that a defect in your account was identified on that date which prevented your request to apply APTC from being processed. Your account confirms this defect was not resolved until February 14, 2017, after the enrollment of you and your spouse had been terminated by your health plan for non-payment of the premium.

Notes related to incident [REDACTED] indicate that you called again on February 15, 2017 and a request for a special enrollment period was submitted, which was subsequently denied on March 6, 2017.

Notwithstanding the above, on March 8, 2017, an updated application for health insurance was submitted on behalf of you and your spouse. That application listed an annual household income for 2017 of \$83,000.00 consisting of \$52,000.00 you earn annually from your employment and \$31,000.00 your spouse earns annually from her employment. You testified that information is accurate.

You testified, and your application indicates, you will file your 2017 tax return with a tax filing status of married filing jointly and you will claim no dependents on that tax return. Accordingly, you and your spouse are in a two-person household.

Based on the information in the March 8, 2017 application, NYSOH determined you and your spouse eligible to purchase a full cost qualified health plan, effective April 1, 2017. You and your spouse were eligible for a special enrollment period to enroll in a new health plan outside the open enrollment period for 2017. However, your account confirms that you and your spouse did not enroll in a full cost QHP. You testified you and your spouse are seeking

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eligibility for APTC and special enrollment period to enroll in a QHP with APTC going forward.

Pursuant to the regulations, APTC are generally available to applicants who are eligible to enroll in a QHP and (1) expect to have a household income between 138% and 400% of the applicable FPL, (2) expect 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.

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. On the date of your application, that was the 2016 FPL, which is \$16,020.00 for a two-person household. The income amount included in your March 7, 2017 application, \$83,000.00, is 518.1% of the applicable FPL for a two-person household. As APTC is only available to individuals who expect to have a household income less than 400% of the FPL, you and your spouse were no longer eligible to receive APTC to help pay for the cost of health coverage, based on the income information in the March 7, 2017 application.

Accordingly, the March 7, 2017 eligibility determination notice finding you and your spouse eligible to purchase only a full cost QHP, effective April 1, 2017, is correct and is AFFIRMED.

It is noted that, given your testimony that the household income amount of \$83,000.00, from the March 7, 2017 application, was your accurate income for 2017, it appears the previous eligibility for you and your spouse to receive \$614.61 in monthly APTC, based on income information from data sources, was not correct. Accordingly, the evidence establishes you were not properly eligible to receive APTC in 2017. Notwithstanding, it is concluded that the defect in your account in January and February 2017, the failure of NYSOH to timely resolve that issue, as well as the ensuing confusion regarding eligibility for you and your spouse for APTC and a special enrollment period, constitutes error and/ or mistake on the part of NYSOH qualifying you and your spouse for a special enrollment period.

Had you been properly granted a special enrollment period on the date the request for the same was submitted, February 15, 2017, you and your spouse could have enrolled in a QHP with coverage effective as early as March 1, 2017.

Accordingly, your case is RETURNED to NYSOH to assist you and your spouse in enrolling into a new full cost QHP, based on the affirmed March 7, 2017 eligibility determination. You and your spouse may choose to enroll into a new QHP, effective March 1, 2017, the date your coverage could have become effective had you been granted a special enrollment period pursuant to your

request. In the alternative, you and your spouse may elect to enroll into coverage from this point forward.

## **Decision**

The March 7, 2017 eligibility determination notice is AFFIRMED.

You have 60 days from the date of this decision to select a plan.

Your case is RETURNED to NYSOH to assist you and your spouse in enrolling into a new full cost QHP, based on the affirmed March 7, 2017 eligibility determination. You and your spouse may choose to enroll into a new QHP, effective March 1, 2017, the date your coverage could have become effective had you been granted a special enrollment period pursuant to your request. In the alternative, you and your spouse may elect to enroll into coverage from this point forward.

**Effective Date of this Decision:** August 21, 2017

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

You and your spouse remain eligible to purchase a full cost QHP.

You and your spouse are not eligible for APTC.

You have 60 days from the date of this decision to select and enroll in a plan.

You will be responsible for any premium payments for any months you are enrolled into coverage.

## **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.

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

### **Summary**

The March 7, 2017 eligibility determination notice is **AFFIRMED**.

You have 60 days from the date of this decision to select a plan.

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).

Your case is RETURNED to NYSOH to assist you and your spouse in enrolling into a new full cost QHP, based on the affirmed March 7, 2017 eligibility determination. You and your spouse may choose to enroll into a new QHP, effective March 1, 2017, the date your coverage could have become effective had you been granted a special enrollment period pursuant to your request. In the alternative, you and your spouse may elect to enroll into coverage from this point forward.

You and your spouse remain eligible to purchase a full cost QHP.

You and your spouse are not eligible for APTC.

You have 60 days from the date of this decision to select and enroll in a plan.

You will be responsible for any premium payments for any months you are enrolled into coverage.

## **Legal Authority**

We are issuing this determination 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 bɛtumi ama wo obi a okyerɛ 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 דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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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