



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

Notice of Decision

Decision Date: July 5, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016827

[REDACTED]

Dear [REDACTED],

On June 28, 2017, you and your Authorized Representative appeared by telephone at a hearing on your appeal of NY State of Health's September 18, 2016 eligibility determination notice.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the 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: July 5, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000016827



Issue

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

Did NY State of Health (NYSOH) properly determine that your eligibility for advance payments of the premium tax credit (APTC) ended, effective November 1, 2016?

Procedural History

On January 5, 2016, NYSOH issued a notice of eligibility determination stating that you were conditionally eligible to receive up to \$213.00 per month in APTC, and conditionally eligible to receive cost-sharing reductions if you enrolled in a silver level qualified health plan (QHP), effective February 1, 2016. The notice further directed you to provide documentation confirming your income before April 3, 2016.

Also on January 5, 2016, NYSOH issued a notice confirming your enrollment in a Fidelis QHP with APTC and cost-sharing reductions, beginning February 1, 2016. The notice stated that your monthly premium, after the application of your APTC, was \$246.23.

On September 18, 2016, NYSOH issued an eligibility determination notice stating that you were newly eligible to purchase a QHP at full cost. The notice stated that you were not eligible to receive APTC or cost-sharing reductions because NYSOH did not receive the income documentation needed to verify the income listed in your application. This eligibility was purportedly effective November 1, 2016.

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Also on September 18, 2016, NYSOH issued an enrollment confirmation notice stating that you were enrolled in your Fidelis QHP with \$0.00 of APTC applied to your premium.

On March 13, 2017, you spoke to NYSOH's Account Review Unit and appealed the termination of your APTC for the months of November and December 2016.

On June 28, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, [REDACTED], appeared as your Authorized Representative. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

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

- 1) You testified that you believe you receive notices from NYSOH by regular mail. However, your NYSOH account indicates that you are enrolled to receive email alerts regarding notices that are issued in your NYSOH account.
- 2) You testified that you completed your NYSOH application in January 2016 with a representative at a local hospital.
- 3) You testified that the representative told you to submit your 2015 tax return, after you filed it, by the end of April 2016.
- 4) You testified that you do not recall receiving the NYSOH notice dated January 5, 2016 which stated that your eligibility was only conditional, and that you needed to supply income documents by April 3, 2016.
- 5) You testified that you mailed a copy of your 2015 tax return to NYSOH at [REDACTED] on April 18, 2016. You testified that you sent it by regular mail without proof of mailing or return receipt.
- 6) You testified that you did not contact NYSOH after you mailed the document to see whether it had been received.
- 7) You testified that, on November 23, 2016, you received an email from Fidelis stating that your premium had not been paid and your insurance had been terminated.
- 8) You testified that on November 27, 2016, you received a notice from Fidelis denying coverage for a medical procedure you had on [REDACTED].

- 9) You testified that you contacted Fidelis and found out that your coverage had been terminated as of October 31, 2016.
- 10) You testified that you sent a premium payment to cover your October and November 2016 premium responsibility (after the application of the APTC you believed you were receiving) on October 24, 2016. You testified that this payment totaled \$492.46.
- 11) You testified that you sent another premium payment on December 9, 2016 for \$246.23.
- 12) You testified that you sent a final premium payment to Fidelis on January 11, 2017 for another \$246.23.
- 13) You testified that you kept sending payments because you were receiving bills from Fidelis, and you were trying to make sure that you would have coverage.
- 14) You testified that Fidelis sent you a refund in the amount of \$525.69 at the end of April, or beginning of May, 2017.
- 15) You testified that you had no insurance coverage for the months of November and December 2016.
- 16) There is no record of any disenrollment notice issued by NYSOH for your Fidelis QHP until November 25, 2016, when a notice was issued stating that your enrollment in your QHP was ending as of December 31, 2016, because you were no longer eligible for that coverage. This was because you were enrolled into an Essential Plan as of January 1, 2017.
- 17) You testified that you have already filed your 2016 federal tax return.
- 18) You testified that you reconciled the APTC that you received for 2016 on that tax return.
- 19) You testified that you did not speak with anyone from NYSOH about this problem with your coverage until your Authorized Representative filed an appeal in March 2017.
- 20) You testified that you kept calling the number on the invoices you were receiving, which was the number for Fidelis, to try to resolve the problem.
- 21) You testified that no one from Fidelis ever told you that your tax credit had been taken away.

- 22) You testified that you are looking to be reinstated in coverage with Fidelis for the months of November and December 2016 so that your medical bills can be covered.
- 23) You testified that you understand that you will be responsible for premium payments for those months if you are reenrolled.

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

Applicable Law and Regulations

Verification of Eligibility for Advance Payments of the Premium Tax Credit

APTC are generally available to a person who is eligible to enroll in a qualified health plan and (1) expects to have a household income between 138% and 400% of the applicable federal poverty level (FPL), (2) expects to file a tax return and claim a personal exemption deduction for a person who meets the eligibility requirements to enroll in a qualified health plan, and (3) is not otherwise eligible for minimum essential coverage except through the individual market (see 45 CFR § 155.305(f), 42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

An applicant is required to attest to their household's projected annual income for purposes of determining their eligibility for APTC (45 CFR § 155.320(c)(3)(ii)(B)). For all individuals whose household income is needed, NYSOH must request tax return data from the Secretary of the Treasury and data regarding Social Security benefits from the Commissioner of Social Security in order to confirm that the information the applicant is attesting to is accurate (45 CFR § 155.320(c)(1)(i); 45 CFR § 155.320(c)(3)(ii)(A)).

If income data is unavailable, or if an applicant's attestation is not reasonably compatible with the income data NYSOH obtains, NYSOH must request additional information from the applicant to resolve the inconsistency (45 CFR § 155.320 (c)(3)(iii), (iv)).

NYSOH must provide the applicant with notice of the inconsistency in their account and 90 days to provide satisfactory documentary evidence to resolve the inconsistency (45 CFR § 155.315 (f)(2)). If NYSOH remains unable to verify the attestation of the applicant, NYSOH must redetermine the applicant's eligibility based on the information available from the data sources unless the applicant demonstrates that they are unable to provide the required documentation (45 CFR § 155.315(f)(2), (g)).

Upon making an eligibility redetermination, NYSOH must notify the applicant and implement any changes in eligibility to APTC effective as of the first day of the month following the date of the notice, regardless of the day of the month the change occurs (45 CFR § 155.310(f), 45 CFR § 155.330(e), (f)(1)(i)).

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).

Legal Analysis

The issue under review is whether NYSOH properly determined that your eligibility for APTC ended effective November 1, 2016.

An individual requesting financial assistance to help pay for the cost of coverage provided through NYSOH is required to attest to their household's projected annual income. For individuals seeking APTC, NYSOH must request income data from federal data sources to verify an individual's income attestation.

If NYSOH cannot verify an individual's attestation, it must provide the individual with notice of the inconsistency and provide a period of 90 days from the date notice is received to resolve the inconsistency.

In the eligibility determination issued on January 5, 2016, you were advised that your eligibility for APTC was only conditional, and that you needed to confirm your household's income before April 3, 2016. You testified that you did not recall receiving this notice; however, you also were not aware that you were enrolled to receive email alerts regarding notices from NYSOH. You testified that when you filed your application in January 2016, you did so with the assistance of a representative, and that she informed you that you needed to supply a copy of your 2015 tax return by the end of April 2016. You testified that you mailed a copy of your tax return to NYSOH on April 18, 2016. However, there is no record that NYSOH received this document, and you testified that you did not have any proof that you mailed it, nor did you follow up with NYSOH to verify its receipt.

Because you were informed of the need to submit a copy of your tax return, notwithstanding the fact that you did not know to look for emails from NYSOH, it is concluded that NYSOH properly notified you of an inconsistency in your account and that documentation was needed to confirm the income you listed in the account.

If NYSOH remains unable to verify the attestation of the applicant, NYSOH must redetermine an individual's eligibility based on the information available from the data sources unless the applicant demonstrates that they are unable to provide the required documentation. Any changes in APTC are to be made effective the date following the eligibility redetermination notice.

Accordingly, your eligibility for APTC should have ended as of October 1, 2016, the month immediately following the September 18, 2016 eligibility redetermination.

Therefore, the September 18, 2016 eligibility determination notice is MODIFIED to state that you were not eligible to receive APTC effective October 1, 2016, because NYSOH did not receive the income documentation needed to verify the income listed in your application.

It is noted that, even if your APTC had been terminated improperly, NYSOH would be without authority to reinstate your tax credit for the months of November and December 2016 at this time. This is because you testified you have already filed your 2016 federal income tax return. As such, the IRS has already reconciled the amount of tax credit you received for 2016, and your tax liability or refund was calculated utilizing that information.

However, you also testified during the hearing that you are looking to be reinstated in coverage for the months of November and December 2016. Your NYSOH account is void of any notices that terminate your Fidelis QHP coverage prior to December 31, 2016. Therefore, you should not have been disenrolled from your QHP coverage for the months of November and December 2016. Instead, you should have remained enrolled, albeit at full cost, despite any change in your receipt of APTC.

You testified during the hearing that you sent in several payments to Fidelis between October 24, 2016 and January 11, 2017. The total of these payments was \$985.05. You further testified that Fidelis refunded \$525.69 to you sometime around the end of April or early May 2017. The difference between these two figures is \$459.36, which is the amount of a month's full premium for the Fidelis QHP in which you were enrolled. It appears, then, that Fidelis retained a full premium payment for the month of October 2016, and refunded you the additional funds you remitted, as Fidelis terminated your coverage at the end of October 2016.

Since your coverage should not have terminated, your case is RETURNED to NYSOH to facilitate your re-enrollment in your Fidelis QHP for the months of November and December 2016 at full cost, should you determine that it is still your wish to re-enroll in coverage.

If you re-enroll in your Fidelis QHP and pay the full premiums for November and December 2016, you may wish to consult an attorney or tax professional regarding how to account for the additional premium payments you will have made for 2016 in an amended return, or in your 2017 federal income tax return.

Decision

The September 18, 2016 eligibility determination is MODIFIED to state that you were eligible to enroll in a QHP at full cost, and no longer eligible to receive APTC because NYSOH did not receive the required income documentation, effective October 1, 2016.

Your case is RETURNED to NYSOH to facilitate your re-enrollment in your Fidelis QHP, at full cost, for the months of November and December 2016, should you choose to re-enroll.

Effective Date of this Decision: July 5, 2017

How this Decision Affects Your Eligibility

NYSOH properly found you not eligible to receive APTC effective October 1, 2016 because NYSOH did not receive documentation of your household's income.

Your case is being sent back to NYSOH to assist you with re-enrolling in your Fidelis QHP for the months of November and December 2016, at full cost.

This enrollment will be at full cost because NYSOH cannot reinstate your APTC for those months, as your 2016 federal income tax return has already been filed, and your APTC reconciled in that return.

If you re-enroll in coverage at full cost for November and December 2016, you may be eligible to file an amended return or to request credit for premiums paid when you filed your 2017 return. This issue is outside of the Appeals Unit's jurisdiction, and you would need to contact a tax professional or attorney for more information.

Please note that NYSOH has no ability to overrule any determination made by the IRS at the time you file your tax return.

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
- By mail at:

NY State of Health Appeals
P.O. Box 11729

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).

Albany, NY 12211

- By fax: 1-855-900-5557

Summary

The September 18, 2016 eligibility determination is MODIFIED to state that you were eligible to enroll in a QHP at full cost, and no longer eligible to receive APTC because NYSOH did not receive the required income documentation, effective October 1, 2016.

Your case is RETURNED to NYSOH to facilitate your re-enrollment in your Fidelis QHP, at full cost, for the months of November and December 2016, should you choose to re-enroll.

NYSOH properly found you not eligible to receive APTC effective October 1, 2016 because NYSOH did not receive documentation of your household's income.

Your case is being sent back to NYSOH to assist you with re-enrolling in your Fidelis QHP for the months of November and December 2016, at full cost.

This enrollment will be at full cost because NYSOH cannot reinstate your APTC for those months, as your 2016 federal income tax return has already been filed, and your APTC reconciled in that return.

If you re-enroll in coverage at full cost for November and December 2016, you may be eligible to file an amended return or to request credit for premiums paid when you filed your 2017 return. This issue is outside of the Appeals Unit's jurisdiction, and you would need to contact a tax professional or attorney for more information.

Please note that NYSOH has no ability to overrule any determination made by the IRS at the time you file your tax return.

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)

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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.

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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