



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

Notice of Decision

Decision Date: August 1, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000017464

[REDACTED]

Dear [REDACTED]

On July 6, 2017, [REDACTED] appeared by telephone at a hearing on your appeal of NY State of Health's March 21, 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Decision

Decision Date: August 1, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000017464

[REDACTED]

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 you and your spouse did not qualify to select a qualified health plan outside of the open enrollment period, effective May 1, 2017?

Procedural History

On December 10, 2016, NYSOH issued an eligibility determination notice, based on your December 9, 2016 updated application, stating in part that you and your spouse were eligible to share an advance premium tax credit (APTC) of up to \$357.00 per month, effective January 1, 2017.

Also on December 10, 2016, NYSOH issued a plan enrollment notice confirming your and your spouse's enrollment in a bronze-level qualified health plan with a premium of \$377.07 per month, after \$357.00 of monthly APTC was applied, effective January 1, 2017.

On January 31, 2017, you submitted to NYSOH two letters from your respective employers regarding your income (see Documents [REDACTED] and [REDACTED]). These documents were verified on February 10, 2017 and your application was updated with new income amounts.

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On February 11, 2017, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible to share an APTC of up to \$231.00 per month, effective March 1, 2017.

On February 17, 2017, NYSOH issued a plan enrollment notice confirming your and your spouse's enrollment in a bronze-level qualified health plan with a premium of \$503.07 per month, after application of the \$231.00 APTC, with plan enrollment start date of January 1, 2017 and the APTC applied to your monthly premium starting March 1, 2017.

On March 21, 2017, NYSOH issued an eligibility determination notice, based on your March 20, 2017 updated application, stating that you and your spouse were eligible to share in up to \$231.00 in APTC, effective May 1, 2017. It further stated that you and your spouse do not qualify to select a health plan outside of the open enrollment period for 2017.

On March 29, 2017, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you and your spouse were unable to change to a catastrophic plan outside of the open enrollment period due to an increase in income resulting in the decrease in APTC, which made the bronze-level plan more expensive.

On July 6, 2017, your spouse 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) On December 9, 2016, you submitted an application for health insurance for your family.
- 2) On December 9, 2016, you enrolled yourself and your spouse in a bronze-level qualified health plan. You enrolled your children in a Child Health Plus plan.
- 3) According to your NYSOH account and your testimony, you expect to file your 2017 income tax return as married filing jointly and will claim three dependents on that tax return.
- 4) You testified that, on December 9, 2016, the NYSOH customer service representative gave you the price of both a bronze-level QHP and a catastrophic plan. You testified that since the cost of the bronze-level plan was only \$10.00 to \$20.00 more a month than the catastrophic plan after

- your APTC was applied, you selected the bronze-level plan for you and your spouse.
- 5) According to your NYSOH account and your spouse's testimony, on January 31, 2017, you submitted letters from your and your spouse's respective employer's that showed your income.
 - 6) According to your NYSOH account, based on the letters from the employers, NYSOH updated your income on February 10, 2017. NYSOH updated income for your spouse from the attested amount of \$71,500.00 yearly to the calculated amount of \$76,024.00 and updated income for you from the attested amount of \$5,500 yearly to the calculated amount of \$9,750.00 for a total household income of \$85,774.00.
 - 7) According to your NYSOH account, because your and your spouse's income increased, your shared eligibility for APTC decreased from \$357.00 per month to \$231.00 effective May 1, 2017.
 - 8) Your spouse testified that, on March 20, 2017 you and/or she contacted NYSOH to change your and your spouse from the bronze-level qualified health plan to a catastrophic level plan because of the decrease in APTC made the bronze-level plan too expensive.
 - 9) Your spouse testified that she is now pregnant with a due date of [REDACTED]
 - 10) Your spouse testified that since filing your December 9, 2016 application, there have been no other major changes to your household.
 - 11) Your spouse testified that you and/or she relied on the statements made by the NYSOH representative that the bronze-level plan would only be \$10.00 to \$20.00 more expensive than the catastrophic plan when you made your plan selection on December 9, 2017.
 - 12) You testified that you want to be granted a special enrollment period so you and your spouse can switch to a catastrophic plan and be refunded the premiums you have paid for the bronze-level plan.
 - 13) According to your NYSOH account and your testimony, your family lives in [REDACTED] New York.

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

Applicable Law and Regulations

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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 \$28,440.00 for a five-person household (81 Federal Register 4036).

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).

Enrollment in a Qualified Health Plan

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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.

(45 CFR § 155.420(d)).

In New York, pregnancy triggers a special enrollment period for individuals without insurance allowing them to enroll in a qualified health plan through NYSOH's Exchange (NYS Insurance Law § 4328(b)(4)(A)). However, this law does not allow individuals who have already enrolled in qualified health plans and later become pregnant to change to a different qualified health plan.

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 do not qualify to change health plans outside of the open enrollment period, effective May 1, 2017.

NYSOH provided an open enrollment period from November 1, 2016 until January 31, 2017. On March 20, 2017, you updated your application and requested to change health plans. On March 21, 2017, NYSOH issued a notice stating that you and your spouse do not qualify to select a health plan outside of the open enrollment period for 2017.

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).

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

Generally, when an 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, that is considered a triggering life event.

Your March 20, 2017, application states, and you testified, that you expect to file your 2017 income taxes as married filing jointly and will claim three dependents on that tax return. Therefore, for purposes of these analyses, you and your spouse are in five-person household.

The application that you submitted on December 9, 2017 lists an annual household income of \$77,000.00, which is 270.75% of the applicable FPL. Based on this information you provided, NYSOH found you and your spouse eligible for an APTC of \$357.00 effective January 1, 2017.

On January 31, 2017, you submitted letters from your and your spouse's respective employer's that set forth your income. These documents were verified on February 10, 2017 and NYSOH updated the income amounts on your application. Your spouse's income was changed from the attested amount of \$71,500.00 yearly to the calculated amount of \$76,024.00 and your income was changed from \$5,500 yearly to the calculated amount of \$9,750.00 for a total household income of \$85,774.00, which is 301.6% of the applicable FPL. Based on this increase in household income, NYSOH found you and your spouse eligible for an APTC of \$231.00 effective March 1, 2017. You and your spouse remained eligible for APTC and since there is no change in your eligibility a special enrollment period cannot be granted on that basis.

You testified that since submitting the December 9, 2016 application you have learned that you are pregnant. Although pregnancy is a triggering life event that may qualify an individual for a special enrollment period to enroll in health coverage, the law applies to pregnant individuals **who are not currently enrolled** in health insurance (emphasis added). Therefore, the law does not allow an individual who is already enrolled in a qualified health plan and later becomes pregnant to change to a different qualified health plan, as in the present case.

A special enrollment period can be granted if a qualified individual'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

You testified that the NYSOH representative told you that the bronze-level plan would only cost \$10.00 to \$20.00 more in premium per month than a catastrophic plan and you relied upon that information. You testified that now with the decrease in your APTC, the bronze-level plan is much more expensive and is not affordable. However, the change in cost in the bronze-level plan is due to the decrease in your APTC and was not a misrepresentation by the NYSOH representative. Since the record does not indicate that NYSOH, by action or inaction, made an error or misrepresented information, a special enrollment period cannot be granted on that 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 and your spouse for a special enrollment period so you can change your health plans.

Therefore, NYSOH's March 21, 2017, eligibility determination that you and your spouse do not qualify for a special enrollment period to select a health plan outside of the open enrollment period for 2017 is AFFIRMED.

As to the amount of APTC to which you are entitled, 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, which may also result in a tax credit or reduction in tax liability if the full amount of APTC to which a 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. Therefore, the amount of APTC to which your spouse was entitled can be reconciled at the time you file your 2017 federal income tax return.

Decision

The March 21, 2017 eligibility determination is AFFIRMED.

Effective Date of this Decision: August 1, 2017

How this Decision Affects Your Eligibility

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

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).

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

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Albany, NY 12211

- By fax: 1-855-900-5557

Summary

The March 21, 2017 eligibility determination notice is AFFIRMED.

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

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 مجانًا.

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 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 איר געבן א דאלמענטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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