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

Notice of Decision

Decision Date: August 23, 2017

NY State of Health Account ID: [redacted]
Appeal Identification Number: AP000000017551

[redacted]

Dear [redacted],

On July 17, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's March 21, 2017 eligibility determination notice.

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

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

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:

  NY State of Health Appeals
  P.O. Box 11729
  Albany, NY 12211

- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the NY State of Health Account ID at the top of this notice.

Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY – Spanish: 1-877-662-4886).

This page intentionally left blank.

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).

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

Decision

Decision Date: August 23, 2017

NY State of Health Account ID: [redacted]
Appeal Identification Number: AP000000017551

[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 were eligible to receive up to $192.00 per month in advance payments of the premium tax credit, effective May 1, 2017?

Procedural History

On December 15, 2016, NYSOH received an updated application for financial assistance, in which you attested to an annual household income of $26,000.00.

On December 16, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to receive an advance premium tax credit (APTC) of up to $303.00 per month for a limited time, effective January 1, 2017. You were requested to provide income documentation by March 14, 2017 to confirm your eligibility.

Also on December 16, 2016, NYSOH issued an enrollment notice confirming your selection of a bronze-level qualified health plan (QHP) with a monthly premium of $121.52, after applying the $303.00 APTC amount, with coverage beginning January 1, 2017.

On February 9, 2017, NYSOH received a letter issued by your employer, [redacted], dated December 15, 2016, stating that you began your employment on August 10, 2012 as a [redacted], your hourly wage is $9.00 plus gratuities, and that you are paid on a weekly basis.

On February 22, 2017, NYSOH issued a notice stating that the income documentation provided by you did not confirm the information in your application. You were requested to provide additional proof of your income by March 14, 2017.

On March 10, 2017, NYSOH received (1) a copy of the February 22, 2017 notice requested additional income documentation, along with the letter issued by your employer on December 15, 2016, (2) four earnings statements issued to you by your employer between February 3, 2017 and February 24, 2017, and (3) a screenshot reflecting that you could not upload a document through your NYSOH account.

On March 20, 2017, NYSOH redetermined your eligibility for financial assistance on an annual household income of $34,138.13.

On March 21, 2017, NYSOH issued an eligibility redetermination notice stating that you were found eligible for an APTC of up to $192.00 per month, effective May 1, 2017.

On March 22, 2017, NYSOH issued an enrollment notice confirming your enrollment in a bronze-level QHP as of March 21, 2017. The notice stated that your new monthly premium would be $232.52, after applying the $192.00 APTC amount, beginning April 1, 2017.

On March 31, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you were seeking to have your $303.00 monthly APTC reinstated, effective April 1, 2017.

On July 14, 2017, NYSOH received a 26 page document via [redacted] (Tracking Number # [redacted]), which included:

(1) a copy of the June 8, 2017 Notice of Telephone Hearing and Confirmation of Aid Status,

(2) a letter from you regarding the circumstances and reasoning of your appeal,

(3) an earnings statements issued to you by your employer on June 12, 2017,

(4) a screenshot of the preliminary eligibility determination prepared for you on March 20, 2017,

(5) a duplicate copy of the letter issued by your employer on December 15, 2016,

(6) a completed form regarding health coverage issued by your employer,

(7) a letter issued by [redacted], dated May 30, 2017, regarding a proposed increase in your monthly premium,

(8) a letter issued by [redacted], dated September 30, 2016, stating that your provider will not be participating in your Oscar plan, effective January 1, 2017,

(9) a letter issued by [redacted], dated June 14, 2017, regarding a grievance filed by you regarding the federal tax credits/subsidies,

(10) letters issued by [redacted] dated February 23, 2017 and February 24, 2017, stating the results of the grievance filed by you against [redacted]

(11) an undated letter issued by [redacted] stating that effective January 1, 2017 they will no longer be an [redacted] in-network provider,

(12) confirmation that you completed a survey regarding your experience with your health plan.

On July 17, 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 for 15 days to allow for the confirmation that the documents you provided to NYSOH's Appeals Unit by Priority Mail had been received and added to your account. On July 17, 2017, NYSOH confirmed receipt of the documents provided by you via Priority Mail.

Accordingly, the record was closed on July 17, 2017.

Findings of Fact

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

1) You testified that you expect to file your 2017 taxes with a tax filing status of single. You will claim no dependents on that tax return.

2) You are seeking insurance for only yourself.

3) Based on an application you submitted on December 15, 2016, you were found eligible for an APTC of up to $303.00 per month for a limited time, effective January 1, 2017. You were requested to provide income documentation to confirm your eligibility.

4) On March 10, 2017, you provided to NYSOH four earnings statements issued to you by your employer, reflecting that you received (1) $1,006.23

on February 3, 2017, (2) $868.14 on February 10, 2017, (3) $390.37 on February 17, 2017, and (4) $361.27 on February 24, 2017. These documents were verified as acceptable proof of income on March 20, 2017.

5) On March 20, 2017, your eligibility was redetermined by NYSOH using an annual household income of $34,138.13.

6) You testified that this amount was amount was not reflective of your income.

7) Your application states that you will not be taking any deductions on your 2017 tax return.

8) You live in [redacted], New York.

9) You testified that you have living expenses such as food, rent, cable, and utilities that you think should be deducted from your household income to make your health insurance more affordable.

10) On July 14, 2017, you provided several documents for NYSOH Appeal Unit's consideration, including an earnings statement issue to you by your employer, reflecting that you received $1,235.05 on June 23, 2017 and that your year-to-date gross income was $17,981.18 as of June 23, 2017.

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)). On the date of your application, that was the 2016 FPL, which is $11,880.00 for a one-person household (81 Federal Register 4036).

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

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on NYSOH application) with their actual income (stated on their federal income tax return). Those who take less tax credit in advance than they claim on the tax return may get the rest of it as an income tax refund or have their tax bill reduced. Those who take more tax credit in advance than they can claim on their tax return will owe the difference as additional income taxes (26 CFR § 1.36B-4).

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 (45 § 155.310(f), 45 CFR § 155.330(e), (f)(1)(i)).

<u>Modified Adjusted Gross Income</u>

NYSOH bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). The term "modified adjusted gross income" means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3)

Social Security benefits that were excluded from gross income under 26 USC § 86 (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

“Adjusted gross income” means, in the case of an individual taxpayer, gross federal taxable income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of finds from time savings accounts, deductions attributable to royalties, and certain retirement savings (26 USC § 62(a)). Living expenses, such as rent and utilities are not an allowable deduction in computing adjusted gross income.

Legal Analysis

The issue under review is whether NYSOH properly determined that you were eligible for an APTC of up to $192.00 per month, effective May 1, 2017.

Your eligibility was redetermined on March 20, 2017 using an updated annual household income of $34,138.13, which was based on the earnings statements you provided to NYSOH on March 10, 2017. These earnings statements reflected an average weekly gross income of $656.50, which computed over 52 weeks would provide you an annual household income of $34,138.13. You asked that your current expenses, which include rent, electricity and other living expenses, be considered when calculating your annual household income. Because the Internal Revenue Service rules do not allow living expenses such as rent, utilities, cable, and phone to be deducted from the calculation of your adjusted gross income, they cannot be deducted when the NYSOH computes your modified adjusted gross income for APTC purposes. Therefore, NYSOH correctly determined your household income to be $34,138.13.

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

You reside in [redacted], where the second lowest cost silver plan available for an individual through NYSOH costs $456.46 per month.

An annual income of $34,138.13 is 287.58% of the 2016 FPL for a one-person household. At 287.58% of the FPL, the expected contribution to the cost of the health insurance premium is 9.31% of income, or $264.85 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 ($264.85 per month), which equals $191.61 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined you to be eligible for up to 192.00 per month in APTC.

As stated above, any changes in APTC are to be made effective the date following the eligibility redetermination notice.

Since your eligibility was redetermined on March 20, 2017, any changes in APTC should have been made effective as of April 1, 2017.

Accordingly, the March 21, 2017 eligibility determination notice is MODIFIED to state that you were eligible for an APTC of up to $192.00 per month, effective April 1, 2017, but otherwise affirmed.

Decision

The March 21, 2017 eligibility determination notice is MODIFIED to state that you were eligible for an APTC of up to $192.00 per month, effective April 1, 2017, but otherwise affirmed.

Effective Date of this Decision: August 23, 2017

How this Decision Affects Your Eligibility

You remain eligible for an APTC of up to $192.00 per month, effective April 1, 2017.

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
  Albany, NY 12211

- By fax: 1-855-900-5557

Summary

The March 21, 2017 eligibility determination notice is MODIFIED to state that you were eligible for an APTC of up to $192.00 per month, effective April 1, 2017, but otherwise affirmed.

You remain eligible for an APTC of up to $192.00 per month, effective April 1, 2017.

Legal Authority

We are sending you this notice in accordance with 45 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).

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).

A Copy of this Decision Has Been Provided To:

[redacted]

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).

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)

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।

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).

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 महत्त्वपूर्ण 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 yɛ tow krataa a ho hia. Sɛ wo hia ɛho nkyerɛkyerɛmu a, yɛ srɛ wo, frɛ 1-855-355-5777. yƐbƐtumi ama wo obi a ɔkyerƐ kasa a woka no ase ama wo kwa a wontua hwee.

اردو (Urdu)

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم1-855-355-5777 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).