



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

Notice of Decision

Decision Date: September 11, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000019355

[REDACTED]

Dear [REDACTED],

On August 22, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's May 6, 2017 enrollment confirmation 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Decision

Decision Date: September 11, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000019355



Issue

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

Did NY State of Health properly determine that you and your spouse were eligible to receive up to \$523.00 per month in advance payments of the premium tax credit (APTC), effective June 1, 2017?

Procedural History

On November 16, 2016, you updated your application for financial assistance.

On November 17, 2016, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to receive up to \$667.00 per month in APTC, and eligible for cost-sharing reductions if you enrolled in a silver level qualified health plan (QHP), effective January 1, 2017. This eligibility determination was based on an expected annual household income of \$43,680.00.

On December 30, 2016, NYSOH issued a notice of enrollment confirmation confirming you and your spouse's enrollment in a Fidelis silver level QHP, as well as a couple's dental plan, beginning January ,1 2017. Your monthly premium, after the application of your APTC, was \$267.91.

On May 5, 2017, your NYSOH application was updated. Your expected annual household income was changed to \$54,520.00.

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On May 6, 2017, NYSOH issued an enrollment confirmation notice, confirming you and your spouse's enrollment in your Fidelis silver level QHP. However, your APTC amount was changed to \$523.00 per month, and your monthly premium, after the application of your APTC, was \$389.91 per month, beginning June 1, 2017.

On May 19, 2017, you updated your NYSOH application. Your expected annual household income was changed to \$46,384.00.

On May 20, 2017, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to receive up to \$633.00 per month in APTC, and eligible for cost-sharing reductions if you enrolled in a silver level QHP. This eligibility was effective July 1, 2017.

Also on May 20, 2017, NYSOH issued an enrollment confirmation notice, confirming your, and your spouse's, enrollment in your Fidelis silver level QHP. Your monthly premium was \$279.91 after the application of your APTC, beginning July 1, 2017.

On May 30, 2017, you spoke to NYSOH's Account Review Unit and appealed the decrease in your APTC as of June 1, 2017.

On August 22, 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 through September 6, 2017 to allow you to submit supporting documents.

On August 29, 2017, you sent two faxes to NYSOH, totaling 21 pages. The record is now closed.

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 married filing jointly. You will one dependent on that tax return.
- 2) You are seeking insurance for yourself and your spouse.
- 3) You testified that you are appealing because your premium payment went up in June 2017, and you do not understand why, as you had called to report a decrease in your overall income on May 5, 2017.
- 4) The application that was submitted on May 5, 2017 listed annual household income of \$54,520.00, consisting of \$21,840.00 you earn from

your employment, \$7,200.00 you received in disability payments, and \$25,480.00 your spouse earns from her employment.

- 5) You testified that you believe those income amounts are correct, based on the information on your paystubs.
- 6) You testified that you work for twenty to thirty hours per week, and earn \$15.00 an hour.
- 7) You testified that you were receiving long term disability payments through [REDACTED] for two years, but that those payments ended as of March 31, 2017.
- 8) You testified that you paid the premiums for this disability insurance coverage out of your paycheck at your previous employment, and that it was something you elected to participate in.
- 9) You testified that taxes were not taken out of your disability payments, but you were not sure whether they were taxable income.
- 10) You testified that you continued to work part-time while you were receiving disability payments in 2017.
- 11) You testified that your spouse is paid every two weeks, but that you were not sure of her income, and could provide her paystubs.
- 12) You testified that you called on May 5, 2017 to report that you were no longer receiving disability payments.
- 13) You testified that you have been paying your premium payments all year, and are paying whatever amount you are billed for.
- 14) You testified that you reside in [REDACTED].
- 15) Your application states that you will not be taking any deductions on your 2017 tax return.
- 16) After the hearing, you sent two faxes to NYSOH's Appeals Unit consisting of the following documentation:
 - a. Fax Number One:
 - i. A one-page fax cover sheet;
 - ii. A seven-page letter from [REDACTED], dated November 23, 2016, explaining that your long-term disability payments would be ending as of March 31, 2017;

- iii. A copy of the address page and claim payment stub from Disability Management Services showing a benefit amount of \$1,709.84 for the period of April 1, 2017 through April 28, 2017, with the description "LTD Claim Benefits;"
- b. Fax Number Two:
 - i. A one-page fax cover sheet;
 - ii. A two-page copy of your 2016 IRS Form 1040;
 - iii. A one-page "Smart Worksheet" for your 2016 Federal Tax Return;
 - iv. A one-page Explanation Statement for your 1040 regarding a Net Operating Loss Carryforward;
 - v. A one-page 1099-MISC from 2016 in your spouse's name;
 - vi. Four paystubs from [REDACTED] for the following dates and gross pay amounts:
 - 1. 7/28/17 - \$450.00;
 - 2. 8/4/17 - \$405.00;
 - 3. 8/11/17 - \$450.00 (year-to-date of \$15,518.00);
 - 4. 8/25/17 - \$450.00 (year-to-date of \$16,418.00);
 - vii. Two paystubs made out to your spouse for the following dates and amounts:
 - 1. 8/11/2017 - \$1,261.16;
 - 2. 8/25/2017 0 \$1,188.09'

Taken together, these documents are collectively marked and entered into the record as "Appellant's Exhibit One."

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

APTC are generally available to a person who is eligible to enroll in a 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 \$20,160.00 for a three-person household (81 Federal Register 4036).

For annual household income in the range of at least 200% but less than 250% of the 2016 FPL, the expected contribution is between 6.43% and 8.21% of the household income. For 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% (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).

Redetermination During a Benefit Year

When a redetermination is issued because of a change in an applicant's information, NYSOH must generally make that redetermination effective on the first day of the month following the date NYSOH is notified of the change (45 CFR § 155.330 (f)(1)(ii)). However, NYSOH may determine that its policy will be that any change made after the 15th of any month will not be effective until the first of the second following month (45 CFR § 155.330(f)(2)).

When an eligibility redetermination results in a change in the amount of APTC for the benefit year, NYSOH must recalculate the amount of APTC in such a manner as to account for any advance payments already made on behalf of the tax filer, so that the recalculated advance payment amount is projected to result in total advance payments for the benefit year that correspond to the tax filer's total projected premium tax credit for that benefit year (45 CFR § 155.330(g)).

Legal Analysis

The issue under review is whether NYSOH properly determined that you and your spouse were eligible for an APTC of up to \$523.00 per month in the month of June 2017.

The application that was submitted on May 5, 2017 listed an annual household income of \$54,520.00, and the eligibility determination relied upon that information.

You are in a three-person household. You expect to file your 2017 income taxes as married filing jointly and will claim one dependent on that tax return.

You reside in [REDACTED], where the second lowest cost silver plan available for a couple through NYSOH costs \$922.98 per month.

An annual income of \$54,520.00 is 270.44% of the 2016 FPL for a three-person household. At 270.44% of the FPL, the expected contribution to the cost of the health insurance premium is 8.81% of income, or \$400.27 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 (\$922.98 per month) minus your expected contribution (\$400.27 per month), which equals \$522.71 per month. Therefore, rounding to the nearest dollar, NYSOH determined you and your spouse to be eligible for up to \$523.00 per month in APTC, based on the information in the application.

You testified that you do not understand why your APTC decreased when you called in May 2017 and reported a decrease in income. However, your APTC eligibility prior to this update was based on an expected annual household income of \$43,680.00 – the amount of expected annual income for 2017 listed in your November 16, 2016 application. That application listed just \$18,200.00 in expected annual income on your behalf, versus the \$29,040.00 listed in the May 5, 2017 application. While you may have reported the loss of your long-term disability income, that income was not included in your November 16, 2016 application, so the loss of this income did not impact your eligibility in May 2017.

Additionally, according to your testimony, you paid the premiums for this disability insurance yourself, and the benefits are not taxed. The documentation you submitted after the hearing supports this testimony, in that the benefits do not appear on your 2016 IRS Form 1040.

Therefore, since your disability benefits are not taxable income, they are should not be included in your expected annual income, as your eligibility is based on taxable income. For this reason, they also should not have been included in the May 6, 2017 eligibility determination.

People who use 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.

While the May 6, 2017 enrollment confirmation notice, decreasing your APTC to \$523.00 per month, may have been partially based on disability income that should not have been counted, the Appeals Unit can no longer determine accurately what your APTC amount should have been for June 2017, as your earned income amount subsequently changed. Your overall eligibility for APTC will be reconciled at the end of the year when you file your 2017 federal income tax return. For this reason, there is no basis for making any changes to the APTC you received in June 2017; the Appeals Unit can only determine what you should receive from this point forward.

After the hearing, you submitted documentation showing that you had earned \$16,418.00 as of August 25, 2017. The paystubs you submitted also indicate that your average weekly gross earnings are \$441.00. Between August 25, 2017 and December 31, 2017, there are approximately eighteen weeks. Eighteen weeks times \$441.00 is \$7,938.00. Therefore, your expected gross annual income, based on the documentation you submitted, is \$24,356.00 (\$16,418.00 plus \$7,938.00).

Your spouse's expected annual income was listed as \$25,480.00. After the hearing, you submitted two biweekly paystubs on behalf of your spouse. However, the paystubs did not indicate whether the earnings were before or after taxes, and they did not indicate year-to-date earnings. Therefore, the \$25,480.00 figure attested to in the May 5, 2017 application will be utilized.

When an eligibility redetermination results in a change in the amount of APTC for the benefit year, NYSOH must recalculate the amount of APTC in such a manner as to account for any advance payments already made on behalf of the tax filer, so that the recalculated advance payment amount is projected to result in total

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advance payments for the benefit year that correspond to the tax filer's total projected premium tax credit for that benefit year.

Therefore, although your APTC amount in June 2017 was incorrect because it was based on an income amount that included untaxed disability income, you also may have received more APTC than you should have for the period of January through May 2017, because your expected annual earned income was listed as only \$18,200.00.

As such, to ensure that when you reconcile your APTC on your 2017 tax return, the amount you have received most closely matches what the IRS determines you to be eligible for, your case is RETURNED to NYSOH to recalculate you and your spouse's eligibility for APTC, based on an expected annual income of \$49,836.00. NYSOH is further directed to recalculate the amount of APTC that you and your spouse receive for the remainder of 2017 in a manner that accounts for the APTC that you have already received. This way, the recalculated amount that you receive between now and the end of 2017 will be projected to result in total APTC that corresponds to your household's total projected tax credit for the 2017 year.

Decision

Your case is RETURNED to NYSOH to recalculate your, and your spouse's, eligibility for APTC, based on a household of three with an expected annual income of \$49,836.00, residing in [REDACTED]. NYSOH will notify you of your new eligibility.

NYSOH is directed to prorate your APTC for the remainder of the year, taking into account the APTC you have already received, so that your total APTC received in 2017 corresponds with your projected tax credit for 2017.

Effective Date of this Decision: September 11, 2017

How this Decision Affects Your Eligibility

Your, and your spouses, eligibility for APTC has changed over the course of 2017, based on reported income changes.

Your case is being sent back to NYSOH to redetermine your, and your spouse's eligibility for APTC for the remainder of 2017 in such a way that your total APTC received for 2017 will correspond to your total projected tax credit for 2017.

NYSOH will notify you in writing of your eligibility.

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

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P.O. Box 11729
Albany, NY 12211

- By fax: 1-855-900-5557

Summary

Your case is RETURNED to NYSOH to recalculate your, and your spouse's, eligibility for APTC, based on a household of three with an expected annual income of \$49,836.00, residing in [REDACTED]. NYSOH will notify you of your new eligibility.

NYSOH is directed to prorate your APTC for the remainder of the year, taking into account the APTC you have already received, so that your total APTC received in 2017 corresponds with your projected tax credit for 2017.

Your, and your spouses, eligibility for APTC has changed over the course of 2017, based on reported income changes.

Your case is being sent back to NYSOH to redetermine your, and your spouse's eligibility for APTC for the remainder of 2017 in such a way that your total APTC received for 2017 will correspond to your total projected tax credit for 2017.

NYSOH will notify you in writing of your eligibility.

Legal Authority

We are sending you this notice in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:



Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

中文 (Traditional Chinese)

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您提供相应语种的口译服务。

Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

العربية (Arabic)

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 1-855-355-5777. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجاناً.

বাংলা (Bengali)

এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

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Français (French)

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

हिंदी (Hindi)

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

日本語 (Japanese)

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

नेपाली (Nepali)

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

Polski (Polish)

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

Twi (Twi)

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye&etumi ama wo obi a okyerE kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم 1-855-355-5777 پر کال کریں۔ ہم آپ کو آپ کی مادری زبان میں ایک مفت مترجم فراہم کر سکتے ہیں۔

Tiếng Việt (Vietnamese)

Đây là tài liệu quan trọng. Nếu quý vị cần trợ giúp để hiểu tài liệu này, vui lòng gọi 1-855-355-5777. Chúng tôi có thể cung cấp thông dịch viên miễn phí nói ngôn ngữ của quý vị.

אידיש (Yiddish)

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.

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