

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

#### Notice of Decision

Decision Date: October 25, 2017

NY State of Health Account ID:
Appeal Identification Number: AP00000021315



On October 19, 2017, appeared by telephone as the designated authorized representative at a hearing on your appeal of NY State of Health's August 10, 2017 plan enrollment 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.



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

Decision

Decision Date: October 25, 2017

NY State of Health Account ID:

Appeal Identification Number: AP000000021315



#### 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 family's advance payments of the premium tax credit (APTC) resumed September 1, 2017, and not August 1, 2017?

# Procedural History

According to your NYSOH account, as of March 1, 2017, you, your spouse and your two children were enrolled in a bronze-level qualified health plan (QHP) with APTC of \$629.00 per month being applied as of March 1, 2017

On grant and a your updated your application for financial assistance to remove your eldest child from your QHP because he had turned 26 years of age.

On June 22, 2017, NYSOH systematically issued a disenrollment notice stating that our eldest child was no longer enrolled in the family's bronze-level QHP because that plan is only available to dependents who are 26 years of age or younger.

Also on June 22, 2017 and again on July 25, 2017, NYSOH issued plan enrollment notices confirming that you, your spouse, and your younger child were enrolled in the same bronze-level QHP, effective March 1, 2017, with APTC of \$471.75 being applied as of August 1, 2017. There were no corresponding eligibility determination notices for either date.

On July 25, 2017, NYSOH issued an eligibility determination notice stating that you, your spouse, and younger child were eligible to purchase a QHP at full cost, effective September 1, 2017.

Also on July 25, 2017, NYSOH issued a plan enrollment notice confirming that you, your spouse, and your younger child were enrolled in the same bronze-level QHP as of March 1, 2017, at the full cost of premium of \$1,046.05.

On August 5, 2017, NYSOH issued an eligibility determination stating that you, your spouse, and your younger child did not qualify for a special enrollment period, but had your family qualified, you would have been eligible for up to \$680.00 per month in APTC, effective September 1, 2017.

Also on August 5, 2017, NYSOH issued a plan enrollment notice confirming that you, your spouse, and your younger child were enrolled in the same bronze-level QHP as of March 1, 2017, with no APTC and at the full cost of premium of \$1.046.05.

On August 9, 2017, NYSOH prepared a preliminary eligibility determination finding you, your spouse, and your younger child eligible for up to \$510.00 per month in APTC with that amount to be applied as of September 1, 2017.

Also on August 9. 2017, you spoke to NYSOH's Account Review Unit and appealed the termination of your APTC for the month of August 2017.

On August 10, 2017, NYSOH issued a plan enrollment notice confirming that you, your spouse, and your younger child were enrolled in the same bronze-level QHP, effective March 1, 2017, with APTC of \$510.00 to be applied as of September 1, 2017. No corresponding eligibility determination notice was issued.

On October 19, 2017, your spouse, acting as your designated authorized representative, 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) According to your NYSOH account, you expect to file your 2017 taxes with a tax filing status of married filing jointly. You will claim two dependents on that tax return.

- 2) According to your NYSOH and your spouse's testimony, on , you updated your NYSOH account because your eldest child turned 26 years of age and could not stay enrolled in your family health plan.
- 3) Your spouse said you had to pay the full cost of premium for coverage in the month of August 2017, which put a financial strain on your family.
- 4) You are seeking to have APTC applied to the month of August 2017, and to be reimbursed in that amount.
- 5) Your spouse further testified that she had to keep paying different amounts of monthly premium because the amount of APTC to which your family was entitled to share kept changing.
- 6) Your spouse testified that your 26-year-old child shares in the monthly APTC as of
- 7) In all applications submitted in 2017, your annual household income was listed as \$85,000.00, consisting of income solely from your earnings. No other household members have any income.
- 8) Your application states that you and your spouse will not be taking any deductions on your 2017 tax return.
- 9) Your application states that your family lives in York.

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:

 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 2017 applications, that was the 2016 FPL, which is \$24,300.00 for a four-person household (81 Federal Register 4036).

For annual household income in the range of at least 300% but less than 400% of the 2017 FPL, the expected contribution is 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).

#### **Household Composition**

For purposes of advance premium tax credit (APTC) and cost-sharing reductions (CSR), the household size equals the number of individuals for whom the taxpayer is allowed a deduction under 26 USC § 151 for the taxable year, which typically includes: (1) the taxpayer, (2) his or her spouse, and (3) any claimed dependents (26 USC § 36B(d)(1)).

#### APTC Redetermination During a Benefit Year

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)).

When a redetermination is issued as a result 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)).

When an eligibility redetermination results in a change in the amount of advance payments of the premium tax credit (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, such 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)).

#### Young Adults Coverage Up to Age 29 on Parents' Plan

Once a dependent child reaches age 26 and "ages out" of his or her parents' coverage, they may have several options, including enrolling in an individual plan by themselves through NYSOH or under a family plan with an age 29 rider. Every insurer issuing a policy of hospital, medical, or surgical expense insurance that provides coverage for dependent children must make available, and if requested by the policyholder extend coverage under the policy to an unmarried child through age 29 (NY Ins. Law §3216(a)(4)(C)).

# Legal Analysis

The first issue is whether NYSOH properly determined that you, your spouse, and your younger child were eligible for APTC of up to \$471.75 per month as of August 1, 2017, and then were not eligible for APTC altogether that month.

The applications for 2017 in your NYSOH all list a household income of \$85,000.00 and the eligibility determinations should have relied upon that information.

Your household consists of four people. This is because you expect to file your 2017 income taxes as married filing jointly and will claim your two children as dependents on that tax return.

As of June 22, 2017, your eldest child was scheduled to be removed from your family health plan as of the second plan as of the seco

could not remain in that health plan. This change should not have had any impact on your household composition.

You reside in available for a family through NYSOH costs \$1,365.93 per month.

An annual income of \$85,000.00 is 349.79% of the 2016 FPL for a four-person household. At 349.797% of the FPL, the expected contribution to the cost of the health insurance premium in 2017 is 9.69% of income, or \$679.56 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 a family in your county (\$1,365.93 per month) minus your expected contribution (\$686.38 per month), which equals \$679.56 per month. Rounding to the nearest dollar, your household was correctly redetermined eligible for up to \$680.00 per month in APTC as of August 1, 2017.

Adult children who are under the age of 30, may enroll in a qualified health plan. Every insurer issuing a policy of hospital, medical, or surgical expense insurance that provides coverage for dependent children must make available, coverage to an unmarried child through age 29. In your case, your eldest child turned 26 and "aged out" of the family plan and was put in an individual plan. Since he was still a member of the household, he was entitled to share in the monthly APTC of \$680.00; which at one quarter is \$170.00. Therefore, NYSOH properly determined that you, your spouse and your youngest child should share in \$510.00 per month in APTC.

When a redetermination is issued as a result 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 Since the change in plans was to take effect August 1, 2017, APTC should have been applied proportionately to the premiums for you, your spouse and your younger child in the amount of \$510.00 and \$170.00 to your eldest child's premium that month.

Therefore, to bring the eligibility determination and plan enrollment notices that were issued after your was taken off your family plan in line with this Decision, the following changes must take place:

- 1) The June 22, 2017 and July 25, 2017 eligibility determination notices stating that you, your spouse, and your younger child were eligible for APTC of up to \$471.75 as of August 1, 2017, were incorrect and are RESCINDED.
- 2) The July 25, 2017 eligibility determination notice stating that you, your spouse and your child were eligible to purchase a qualified health plan at

- full cost was incorrect as there is no legal basis for this determination. Therefore, it is RESCINDED.
- 3) The July 25, 2017 plan enrollment notice confirming that you, your spouse, and your younger child were enrolled in the same bronze-level QHP as of March 1, 2017, at the full cost of premium of \$1,046.05, was incorrect and is RESCINDED.
- 4) The August 5, 2017 eligibility determination notice stating that you, your spouse, and your younger child did not qualify for a special enrollment period, but had your family qualified, you would have been eligible for up to \$680.00 per month in APTC, effective September 1, 2017, was incorrect and is MODIFIED to state that you, your spouse, and your younger child were eligible for up to \$510.00 per month in APTC, effective August 1, 2017.
- 5) The August 5, 2017 plan enrollment notice confirming that you, your spouse, and your younger child were enrolled in the same bronze-level QHP as of March 1, 2017, with no APTC and at the full cost of premium of \$1,046.05, was incorrect and is RESCINDED.
- 6) The August 10, 2017 plan enrollment notice confirming that you, your spouse, and your younger child were enrolled in the same bronze-level QHP, effective March 1, 2017, with APTC of \$510.00 to be applied as of September 1, 2017, is MODIFIED to state that you, your spouse, and your younger child were all enrolled in the same bronze-level qualified health plan, effective March 1, 2017, with APTC of \$510.00 to be applied as of August 1, 2017.
- 7) Your case is RETURNED to NYSOH to effectuate these changes, to apply \$510.00 of the total \$680.00 in monthly APTC to your August 2017 premium and \$170.00 APTC to your eldest child's August 2017 premium, and to facilitate either a refund or credit of the overpayments you made of monthly premiums to your qualified health plan for the month of August 2017 and any months affected thereafter.

#### **Decision**

The June 22, 2017 and July 25, 2017 eligibility determination notices stating that you, your spouse, and your younger child were eligible for APTC of up to \$471.75 as of August 1, 2017, were incorrect and are RESCINDED.

The July 25, 2017 eligibility determination notice stating that you, your spouse and your child were eligible to purchase a qualified health plan at full cost was incorrect and is RESCINDED.

The July 25, 2017 plan enrollment notice confirming that you, your spouse, and your younger child were enrolled in the same bronze-level QHP as of March 1, 2017, at the full cost of premium of \$1,046.05, was incorrect and is RESCINDED.

The August 5, 2017 eligibility determination notice stating that you, your spouse, and your younger child did not qualify for a special enrollment period, but had your family qualified, you would have been eligible for up to \$680.00 per month in APTC, effective September 1, 2017, was incorrect and is MODIFIED to state that you, your spouse, and your younger child were eligible for up to \$510.00 per month in APTC and your eldest child's portion of APTC was \$170.00, effective August 1, 2017.

The August 5, 2017 plan enrollment notice confirming that you, your spouse, and your younger child were enrolled in the same bronze-level QHP as of March 1, 2017, with no APTC and at the full cost of premium of \$1,046.05, was incorrect and is RESCINDED.

The August 10, 2017 plan enrollment notice confirming that you, your spouse, and your younger child were enrolled in the same bronze-level QHP, effective March 1, 2017, with APTC of \$510.00 to be applied as of September 1, 2017, is MODIFIED to state that you, your spouse, and your younger child were all enrolled in the same bronze-level qualified health plan, effective March 1, 2017, with APTC of \$510.00 to be applied as of August 1, 2017.

Your case is RETURNED to NYSOH to effectuate these changes, to apply \$510.00 of the total \$680.00 in monthly APTC to your August 2017 premium and \$170.00 APTC to your eldest child's August 2017 premium, and to facilitate either a refund or credit of the overpayments you made of monthly premiums to your qualified health plan(s) for the month of August 2017 and any months affected thereafter.

Effective Date of this Decision: October 25, 2017

# How this Decision Affects Your Eligibility

You, your spouse, and your younger child were eligible to share in up to \$510.00 in APTC and your eldest child was eligible for \$170.00 in APTC, effective August 1, 2017.

NYSOH will effectuate the necessary changes for this to occur and will assist you in getting either a refund or a credit of the overpayments you made of monthly premiums to your qualified health plan for the months of August 2017 and all months affected thereafter.

# 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 June 22, 2017 and July 25, 2017 eligibility determination notices stating that you, your spouse, and your younger child were eligible for APTC of up to \$471.50 as of August 1, 2017, were incorrect and are RESCINDED.

The July 25, 2017 eligibility determination notice stating that you, your spouse and your child were eligible to purchase a qualified health plan at full cost was incorrect as there is no legal basis for this determination. Therefore, it is RESCINDED.

The July 25, 2017 plan enrollment notice confirming that you, your spouse, and your younger child were enrolled in the same bronze-level QHP as of March 1, 2017, at the full cost of premium of \$1,046.05, was incorrect and is RESCINDED.

The August 5, 2017 eligibility determination notice stating that you, your spouse, and your younger child did not qualify for a special enrollment period, but had your family qualified, you would have been eligible for up to \$680.00 per month in APTC, effective September 1, 2017, was incorrect and is MODIFIED to state that you, your spouse, and your younger child were eligible for up to \$510.00 per month in APTC and your eldest child's portion of APTC was \$170.00, effective August 1, 2017.

The August 5, 2017 plan enrollment notice confirming that you, your spouse, and your younger child were enrolled in the same bronze-level QHP as of March 1, 2017, with no APTC and at the full cost of premium of \$1,046.05, was incorrect and is RESCINDED.

The August 10, 2017 plan enrollment notice confirming that you, your spouse, and your younger child were enrolled in the same bronze-level QHP, effective March 1, 2017, with APTC of \$510.00 to be applied as of September 1, 2017, is MODIFIED to state that you, your spouse, and your younger child were all enrolled in the same bronze-level qualified health plan, effective March 1, 2017, with APTC of \$510.00 to be applied as of August 1, 2017.

Your case is RETURNED to NYSOH to effectuate these changes, to apply \$510.00 of the total \$680.00 in monthly APTC to your August 2017 premium and \$170.00 APTC to your eldest child's August 2017 premium, and to facilitate either a refund or credit of the overpayments you made of monthly premiums to your qualified health plan(s) for the month of August 2017 and any months affected thereafter.

You, your spouse, and your younger child were eligible to share in up to \$510.00 in APTC and your eldest child was eligible for \$170.00 in APTC, effective August 1, 2017.

NYSOH will effectuate the necessary changes for this to occur and will assist you in getting either a refund or a credit of the overpayments you made of monthly premiums to your qualified health plan for the months of August 2017 and all months affected thereafter.

# **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.

#### (Arabic)العربية

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 5777-355-855-1. 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।

#### 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 बुझ तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई नि:शुल्क दोभाषे उपलब्ध गराउन सक्छों।

#### 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 yε tow krataa a ho hia. Sε wo hia εho nkyerεkyerεmu a, yε srε wo, frε 1-855-355-5777. yεbεtumi ama wo obi a okyerε 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 کرم5777-355-855-1 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.

