



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

Notice of Decision

Decision Date: February 12, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000023346

[REDACTED]

[REDACTED]

On December 13, 2017, you and your authorized representative appeared by telephone at a hearing on your appeal of NY State of Health's May 31, 2017 eligibility determination and enrollment confirmation notices.

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.

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Decision

Decision Date: February 12, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000023346



Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Was your appeal of NY State of Health's (NYSOH) May 31, 2017 eligibility determination and enrollment confirmation notices timely?

Did NYSOH properly determined that you and your child were eligible to receive up to \$283.00 in advance payments of the premium tax credit, applied to your premium as of June 1, 2017?

Procedural History

On May 16, 2017, you submitted an application for financial assistance.

On May 17, 2017, NYSOH issued a notice of eligibility determination stating that for a limited time, you and your child were eligible to receive up to \$586.00 in APTC and eligible to receive cost-sharing reductions if you enrolled in a silver level qualified health plan, effective July 1, 2017. You were directed to submit income documentation by August 14, 2017.

Also on May 17, 2017, NYSOH issued an enrollment confirmation notice, stating that you and your child were enrolled in a qualified health plan, effective March 1, 2017, with a monthly premium of \$185.06 per month after your APTC of \$586.00 was applied as of June 1, 2017.

On May 29, 2017, you submitted income documentation.

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On May 30, 2017, an application for financial assistance was run on your behalf.

On May 31, 2017, NYSOH issued an eligibility determination notice, stating that you and your child were eligible to receive up to \$283.00 in APTC, effective July 1, 2017.

Also on May 31, 2017, NYSOH issued an enrollment confirmation notice, stating that you and your child were enrolled in a qualified health plan, effective March 1, 2017, with a monthly premium of \$488.06 per month after your APTC of \$283.00 was applied as of June 1, 2017.

On June 1, 2017, you submitted an updated application for financial assistance with health insurance.

On June 2, 2017, NYSOH issued an eligibility determination notice, stating that for a limited time you and your child were eligible to receive up to \$586.00 in APTC and eligible to receive cost-sharing reductions if you enrolled in a silver level qualified health plan, effective July 1, 2017. You were directed to submit income documentation by August 30, 2017.

On October 12, 2017, NYSOH issued a disenrollment notice, stating that your coverage would end on July 31, 2017, because you did not pay your insurance bill by the payment deadline.

On October 13, 2017, you spoke to NYSOH's Account Review Unit and appealed the APTC application for June 2017.

On December 13, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. You authorized [REDACTED] as your representative for the hearing. 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) Your application states that you expect to file your 2017 taxes with a tax filing status of head of household. You will claim one dependent on that tax return.
- 2) The applications that were submitted on May 16, 2017 and June 1, 2017 listed annual household income of \$33,600.07.
- 3) The application that was submitted on May 30, 2017 listed an annual household income of \$61,115.99.

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- 4) Your application states that you will not be taking any deductions on your 2017 tax return.
- 5) You testified that you contacted NYSOH as soon as you received the May 31, 2017 notice because you believed the income listed was incorrect, and that the NYSOH representative advised you that the information had been corrected.
- 6) You testified that you were not aware that there was still an issue with your account until you received the October 12, 2017 disenrollment notice.
- 7) You submitted six paystubs on May 29, 2017:
 - a. dated March 3, 2017 for a gross pay of \$1,999.31, which includes a commission of \$707.00.
 - b. dated March 17, 2017 for a gross pay of \$1,292.31.
 - c. dated March 31, 2017 for a gross pay of \$2,136.80, which includes a commission of \$844.49.
 - d. dated April 14, 2017 for a gross pay of \$1,292.31.
 - e. dated April 28, 2017 for a gross pay of \$3,408.92, which includes a commission of \$2,116.61.
 - f. dated May 12, 2017 for a gross pay of \$1,292.31.
- 8) Your application states that you live in Queens County.

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

Applicable Law and Regulations

Valid Appeal Requests

An applicant has the right to appeal to NYSOH's Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) an eligibility determination for an exemption; (4) a failure by the Exchange to provide timely notice of an eligibility determination 45 CFR § 155.505; and (5) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH (45 CFR §155.520(b)(2); 18 NYCRR 358-3.5(b)(1)).

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However, where an appeal request is untimely, the appeal request may be considered valid if the applicant or enrollee sufficiently demonstrates within a reasonable timeframe as determined by NYSOH that failure to timely submit the appeal was due to exceptional circumstances and should not preclude the appeal (45 CFR §155.520(d)(2)(i)(D)).

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 \$16,020.00 for a two-person household (81 Fed. Reg. 4036.).

For annual household income in the range of at least 300% but less than 400% of the 2016 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).

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)).

Modified Adjusted Gross Income

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 funds 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 first issue under review is whether your appeal of NYSOH’s May 31, 2017 eligibility determination and enrollment confirmation notices was timely.

The record reflects that you filed an appeal with NYSOH regarding your eligibility and coverage on October 13, 2017.

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of the notice of eligibility determination by NYSOH.

For an appeal to have been valid on the issue of eligibility as stated in the May 31, 2017 notice, an appeal should have been filed by July 30, 2017.

Although your appeal was untimely on its face with regard to the May 31, 2017 notices, the record reflects that you contacted NYSOH on June 1, 2017 to update your application because you disagreed with the information contained in the May 30, 2017 application. You were advised by a NYSOH representative that your issue was resolved. You testified that you were not aware that there was still a problem in your account until you received the October 12, 2017 disenrollment notice.

As you contacted NYSOH within sixty days of the May 31, 2017 notices to address the income listed in your application, and requested an appeal one day after the disenrollment notice was issued, your failure to timely submit the appeal was due to exceptional circumstances and should not preclude the appeal.

The second issue is whether NYSOH properly determined that you and your child were eligible to receive up to \$283.00 in advance payments of the premium tax credit, applied to your premium as of June 1, 2017.

On May 30, 2017, NYSOH validated your paystubs as satisfactory proof of your income and an application for financial assistance was run on your behalf by an NYSOH representative. The NYSOH representative entered into your application an earned income of \$61,115.99 based on the paystubs dated May 12, 2017 and April 28, 2017.

Although you testified that the information contained in the May 30, 2017 application is not correct, the income amount entered by the NYSOH representative is supported by the documentation that you provided. Calculations based on the April 28, 2017 and May 12, 2017 paystubs yield average weekly earnings of \$1,175.31. Multiplied by 52 weeks in a year results in annual gross earnings of \$61,116.12. Therefore, NYSOH reasonably calculated that your annual gross income was \$61,116.12, and properly relied on that information.

You are in a two-person household. You expect to file your 2017 income taxes as head of household and will claim one dependent on that tax return.

You reside in Queens County, where the second lowest cost silver plan available for a primary subscriber and one dependent through NYSOH costs \$775.97 per month.

An annual income of \$61,116.12 is 381.5% of the 2016 FPL for a two-person household. At 381.5% of the FPL, the expected contribution to the cost of the health insurance premium is 9.69% of income, or \$493.51 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 primary subscriber and one dependent in your county (\$775.97 per month) minus your expected contribution (\$493.51 per month), which equals \$282.46 per month. Therefore,

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rounding up to the nearest dollar, NYSOH correctly determined you and your child to be eligible for up to \$283.00 per month in APTC.

Any changes in APTC are to be made effective the first day of the month following the date of the eligibility redetermination notice. Since you were notified on May 31, 2017, the application of \$283.00 of APTC was properly effective the first day of the month following the date of the eligibility redetermination notice, or June 1, 2017.

Since the May 31, 2017 eligibility determination and enrollment confirmation notices are supported by the record and the documentation you provided, they are AFFIRMED.

It is noted that the April 28, 2017 paycheck includes a commission of \$2,116.61, and it is clear from the additional paychecks that your commission earnings are not consistent. Therefore, the calculations made by the NYSOH representative based on only two paystubs may not accurately reflect your annual gross earnings by the end of the calendar year.

However, because it is past the end of the 2017 policy year, no further action by NYSOH is required as of this Decision. Instead, 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. The amount of APTC to which you and your child were entitled can be reconciled at the time you file your 2017 federal tax return.

Decision

The May 31, 2017 eligibility determination notice is AFFIRMED.

The May 31, 2017 enrollment confirmation notice is AFFIRMED.

Effective Date of this Decision: February 12, 2018

How this Decision Affects Your Eligibility

This decision does not change your eligibility for APTC.

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The amount of APTC to which you and your child were entitled to receive in June 2017, can be reconciled when you file your federal income tax return for 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

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- By mail at:
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- By fax: 1-855-900-5557

Summary

The May 31, 2017 eligibility determination notice is AFFIRMED.

The May 31, 2017 enrollment confirmation notice is AFFIRMED.

This decision does not change your eligibility for APTC.

The amount of APTC to which you and your child were entitled to receive in June 2017, can be reconciled when you file your federal income tax return for 2017.

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 okyer& 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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