



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

Notice of Decision

Decision Date: February 05, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000024079

[REDACTED]

On January 2, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's October 18, 2017 eligibility determination and enrollment confirmation notices and the November 7, 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 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.



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

Decision

Decision Date: February 05, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000024079

[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 not eligible to receive advance premium tax credits for the months of November and December 2017?

Procedural History

On June 20, 2017, NYSOH issued a notice of eligibility determination stating you were eligible to receive up to \$321.00 of monthly advance payments of the premium tax credit (APTC), for a limited time, effective August 1, 2017. The notice directed you to submit proof of your income by September 17, 2017 to confirm your eligibility or you might lose your insurance or receive less help paying for your coverage.

On July 7, 2017, NYSOH issued an enrollment notice confirming your enrollment in a qualified health plan (QHP) with APTC applied, effective August 1, 2017.

On October 10, 2017, NYSOH systematically redetermined your eligibility.

On October 18, 2017, NYSOH issued an eligibility determination notice stating you were newly eligible to purchase a QHP at full cost, effective December 1, 2017. The notice indicated that you were not eligible to receive financial assistance, because your annual income was over the allowable income limit.

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).

On October 18, 2017, NYSOH issued an enrollment notice confirming you were enrolled in a full cost QHP.

On November 6, 2017, NYSOH received your updated application for financial assistance with health insurance. That day a preliminary eligibility determination was prepared finding you eligible to purchase a full cost QHP.

Also on November 6, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you were not eligible to receive APTC.

On November 7, 2017, NYSOH issued an eligibility determination notice stating you were eligible to purchase a QHP at full cost, effective December 1, 2017. The notice indicated that you were not eligible to receive financial assistance, because your household income was over the allowable income limit.

On January 2, 2018, you 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) NYSOH received an updated application submitted on your behalf on June 19, 2017. That application listed your annual income as \$24,500.00, consisting of \$1,500.00 you earned monthly at your job with [REDACTED] and \$250 you earned biweekly at your job with [REDACTED].
- 2) According to your account, NYSOH was unable to verify the income information in your application and you were found conditionally eligible to receive \$321.00 in APTC, effective August 1, 2017, pending receipt of documentation confirming the income information in your application.
- 3) You enrolled in a QHP with \$321.00 of APTC applied to your monthly premium, effective August 1, 2017.
- 4) On October 17, 2017, NYSOH received documentation including the following:
 - i. Biweekly paystub from [REDACTED] with pay date of September 22, 2017 in the gross amount of \$2,400.00.

- ii. Biweekly paystub from [REDACTED] with pay date of October 6, 2017 in the gross amount of \$2,400.00 with year to date gross income of \$46,777.16.
- 5) According to your account, NYSOH recalculated your income from [REDACTED] based on the average gross biweekly income in the paystubs submitted and increased the income from that job to \$62,400.00 for a total annual income of \$ 68,900.00 including the \$6,500.00 amount you attested to earning in your prior application at your job with [REDACTED].
- 6) NYSOH systematically redetermined your eligibility on October 17, 2017, based on the recalculated annual income amount, and found you ineligible for financial assistance, effective December 1, 2017, because your income was over the allowable limit for all financial assistance programs.
- 7) The enrollment notice issued by NYSOH on October 18, 2017 confirmed you were enrolled in a full cost QHP, but it did not provide the date in which your APTC was revoked.
- 8) NYSOH received an updated application submitted on your behalf on November 6, 2017 listing your annual income as \$55,000.00, consisting of \$48,000.00 you would earn at your job with [REDACTED] and \$7,000.00 you earned at your job with [REDACTED] from March 15, 2017 to November 2, 2017.
- 9) NYSOH redetermined your eligibility based on the updated income information in your November 6, 2017 application and found you were still ineligible to receive financial assistance, effective December 1, 2017.
- 10) You appealed that determination.
- 11) According to your account, you updated your application again on November 28, 2017, reducing your attested annual income to \$41,600.01 consisting only of \$1,600.00 in biweekly income you would receive from your job at [REDACTED].
- 12) NYSOH redetermined your eligibility based on the updated information on your November 28, 2017 application and found you eligible to receive up to \$178.00 in APTC, effective January 1, 2018.
- 13) Your account confirms, you enrolled in a QHP with \$178.00 of APTC, effective January 1, 2018.

- 14) You testified that your health plan billed you for the full premium amount for the months of November and December 2017.
- 15) You stated you are seeking reinstatement of your APTC for the months of November and December 2017, because you cannot afford to pay the full premium amount.
- 16) You testified that you would not have enrolled in such an expensive health plan if you had known NYSOH would revoke your tax credits.
- 17) You testified that your job with ██████████ ended in November 2017 and that you earned \$7,000.00 in 2017 from that job.
- 18) You testified that you are still employed with ██████████ but you were unsure of the annual amount of income you would earn at that job because it is ██████████ position and your income was not always the same. You testified that that your work at that job is “more consistent now.”
- 19) You testified that the income amount listed in your November 28, 2017 application for ██████████ was the net income earned from that job after deductions.
- 20) You testified, and your applications indicate, you will file your 2017 tax return with a tax filing status of single and you will claim no dependents.
- 21) You testified, and your applications indicate, you will not take any deductions on your 2017 tax return.
- 22) Your applications indicate, you reside in New York County.

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

Applicable Law and Regulations

Verification of Eligibility for Advance Payments of the Premium Tax Credit

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

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).

CFR § 155.305(f), 42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

An applicant is required to attest to their household's projected annual income for purposes of determining their eligibility for APTC (45 CFR § 155.320(c)(3)(ii)(B)). For all individual's whose household income is needed, NYSOH must request tax return data from the Secretary of the Treasury and data regarding Social Security benefits from the Commissioner of Social Security to confirm that the information the applicant is attesting to is accurate (45 CFR § 155.320(c)(1)(i); 45 CFR § 155.320(c)(3)(ii)(A)).

In an analysis of APTC eligibility, the determination is based on the applicable 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).

APTC Reconciliation

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 federal income tax return). Those who take less tax credit in advance than they can 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).

Effective Dates of Eligibility Redeterminations for Advance Payments of the Premium Tax Credit

Upon making an eligibility redetermination, NYSOH must notify the applicant, and it must implement any decreases in eligibility to receive APTC effective as of the first day of the month following the date of the notice if the change occurs on or before the 15th of the month; otherwise, the change becomes effective the first day of the second following month (45 CFR § 155.310(f), 45 CFR § 155.330(f)(1)(i) and (f)(3)). Increases become effective the first day of the following month, regardless of when during the month the change occurs (*id.*).

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 (*id.*).

Legal Analysis

The issue under review is whether NYSOH properly determined you were not eligible to receive advance premium tax credits for the months of November and December 2017.

You were determined conditionally eligible to receive up to \$321.00 in APTC, effective August 1, 2017, following a June 19, 2017 application in which you attested to earning income of \$24,500.00 for all of 2017. You enrolled into a QHP and applied the maximum amount of APTC to your monthly premium, effective August 1, 2017. According to your account, NYSOH was unable to verify the income information in your application and you were required to submit proof of your income to confirm your eligibility for financial assistance.

On October 17, 2017, NYSOH received two biweekly paystubs from your employer [REDACTED] both showing gross biweekly income of \$2,400.00. Based on the average gross biweekly income in the paystubs submitted, NYSOH calculated your income from that job to \$62,400.00. NYSOH added that amount to the \$6,500.00 amount you attested to earning in your prior application at your job with [REDACTED] for a total annual income of \$68,900.00. Based on the documentation submitted, it is concluded that NYSOH's calculation of your annual income was accurate.

The evidence establishes that you are in a one-person household because you will file your tax return with a tax filing status of single and you will claim no dependents.

Pursuant to the regulations, APTC are only available to applicants with annual income under 400% of the applicable FPL. Since an annual income of \$68,900.00 is 579.97% of the applicable FPL, NYSOH correctly found you ineligible to receive tax credits based on the documentation you submitted.

Therefore, the October 18, 2017 eligibility determination notice stating you were eligible to purchase a full cost qualified health plan, effective December 1, 2017, was correct and is AFFIRMED.

However, you testified that your APTC was revoked for the month of November 2017 and the health plan is billing you for the full amount of the premium for that month. Pursuant to the above cited regulations, upon a redetermination of eligibility for APTC, any decrease in APTC is to be made effective the first day of the month following the eligibility redetermination notice only if the change in eligibility occurs on or before the 15th of the month. Otherwise, the decrease is to be applied on the first day of the second following month.

Since the October 18, 2017 eligibility redetermination notice indicating you were no longer eligible to receive APTC was issued after the fifteenth day of the month, the decrease in your APTC should not have gone into effect until the first day of the second following month; that is, on December 1, 2017.

Therefore, the October 18, 2017 enrollment confirmation notice is MODIFIED to reflect that your APTC was revoked and your enrollment in a full cost QHP was effective no earlier than December 1, 2017.

Regarding your eligibility for APTC for the month of December 2017, an updated application was submitted on your behalf on November 6, 2017, in which you attested to earning \$55,000.00 in 2017 between your two jobs and the eligibility determination under review relied upon that information.

As discussed above, to receive APTC and applicant's annual income must be under 400% of the applicable FPL. Since an annual income of \$55,000.00 is 462.96% of the applicable FPL, NYSOH correctly determined you were not eligible to receive tax credits based on the information provided on your November 6, 2017 application.

Therefore, the November 7, 2017 eligibility determination notice stating you were eligible to purchase a full cost qualified health plan, effective December 1, 2017, is correct and is AFFIRMED.

It is noted that you were subsequently found eligible to receive tax credits, effective January 1, 2018, based on a November 28, 2017 updated application listing your annual income as \$41,600.01 consisting only of \$1,600.00 in biweekly income received from your job with [REDACTED]. However, you testified, and the previous paystubs submitted establish, that the amount listed in that application is your net income rather than your gross income.

Pursuant to the above cited regulations, eligibility for financial assistance through NYSOH is based on your modified adjusted *gross* income, you may be receiving tax credits to which you are not entitled. Be advised that enrollees who take more

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).

tax credit in advance than they eventually claim on their tax return for that year will owe the difference as additional income taxes. Thus, you are encouraged to update your application with accurate income information.

Decision

The October 18, 2017 and November 7, 2017 eligibility determination notices are **AFFIRMED**.

The October 18, 2017 enrollment confirmation notice is **MODIFIED** to reflect that your APTC was revoked and your enrollment in a full cost QHP was effective no earlier than December 1, 2017.

Your case is **RETURNED** to NYSOH to reinstate your APTC for the month of November 2017.

Effective Date of this Decision: February 05, 2018

How this Decision Affects Your Eligibility

Your APTC should not have been revoked for the month of November 2017.

Your case will be returned to NYSOH to ensure that you receive APTC for November 2017.

You were not eligible to receive APTC in December 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

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).

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 October 18, 2017 and November 7, 2017 eligibility determination notices are **AFFIRMED**.

The October 18, 2017 enrollment confirmation notice is **MODIFIED** to reflect that your APTC was revoked and your enrollment in a full cost QHP was effective no earlier than December 1, 2017.

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

Your case is RETURNED to NYSOH to reinstate your APTC for the month of November 2017.

Your APTC should not have been revoked for the month of November 2017.

You were not eligible to receive APTC in December 2017.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:



Getting Help in a Language Other than English

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

Español (Spanish)

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

中文 (Traditional Chinese)

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

Kreyòl Ayisyen (Haitian Creole)

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

中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您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।

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 महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मददत चाहन्छि भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोलने 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&btumi 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.

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).