



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

**Notice of Decision**

Decision Date: February 06, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000024830

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED],

On January 29, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health’s October 30, 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).

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## Decision

Decision Date: February 06, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000024830

[REDACTED]  
[REDACTED]  
[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 your eligibility for advance payments of the premium tax credit (APTC) ended effective October 31, 2017?

## Procedural History

On July 27, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible to receive up to \$231.00 per month in APTC, and eligible for cost-sharing reductions if you enrolled in a silver level qualified health plan (QHP), for a limited time, effective September 1, 2017. The notice further directed you to provide documentation confirming your household income before October 24, 2017.

Also on July 27, 2017, NYSOH issued a notice confirming your enrollment in a Fidelis gold level QHP with a monthly premium of \$262.92, after the application of your APTC, beginning September 1, 2017.

On October 30, 2017, NYSOH issued an eligibility determination notice stating that you were newly eligible to purchase a QHP at full cost. The notice stated that you were not eligible to receive APTC or cost-sharing reductions because NYSOH did not receive the income documentation needed to verify the income listed in your application. This eligibility was effective November 1, 2017.

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Also on October 30, 2017, NYSOH issued an enrollment confirmation notice stating that you were enrolled in in your Fidelis gold level QHP with a monthly premium of \$493.92, and \$0.00 of APTC applied to your premium.

On November 20, 2017, you updated your application for financial assistance, and uploaded documentation to your NYSOH account.

On November 21, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible to receive up to \$327.00 per month in APTC, and cost-sharing reductions if you enrolled in a silver level QHP, for a limited time, effective January 1, 2018. The notice further directed you to provide documentation of your household income by February 18, 2018.

Also on November 21, 2017, NYSOH issued an enrollment confirmation notice stating that you were enrolled in a Fidelis gold level QHP with a monthly premium of \$533.10, and \$0.00 of APTC applied to your premium, beginning January 1, 2018.

On November 22, 2017, NYSOH issued a notice stating that the income documentation you provided did not confirm the information in your application. The notice directed you to provide documentation of your household income by February 18, 2018.

On November 27, 2017, you uploaded further documentation to your NYSOH account.

Also on November 27, 2017, you spoke to NYSOH's Account Review Unit and appealed the termination of your APTC for the months of November and December 2017.

On November 28, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible to receive up to \$327.00 per month in APTC, and eligible for cost-sharing reductions if you enrolled in a silver level QHP, beginning January 1, 2018.

Also on November 28, 2017, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in a Fidelis gold level QHP, with a monthly premium of \$206.10, after the application of your APTC, beginning January 1, 2018.

On December 8, 2017, you uploaded additional documentation to your NYSOH account.

On December 11, 2017, you updated your NYSOH account.

On December 12, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible to enroll in the Essential Plan with a \$20.00 monthly

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premium for a limited time, effective January 1, 2018. That same day, you selected an Essential Plan for enrollment, with an enrollment start date of January 1, 2018.

On January 10, 2018, NYSOH redetermined your eligibility.

On January 11, 2018, NYSOH issued a notice of eligibility determination stating that you were eligible for the Essential Plan with a \$20.00 monthly premium, beginning February 1, 2018.

On January 29, 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) You testified, and your NYSOH account confirms, that you receive electronic mail (email) alerts regarding notices issued in your NYSOH account.
- 2) You testified that you did not recall whether you received any emails notifying you of any notice in your NYSOH account stating that your eligibility was only conditional, and that you needed to provide documentation of your income.
- 3) You testified that, when you receive an email from NYSOH, you usually call NYSOH, even if you sign into your account and review the notice, because you do not usually understand what the notices mean.
- 4) You testified that you first submitted income documentation to NYSOH in June 2017, and your NYSOH account confirms that you uploaded documentation to show that you had applied for Unemployment Insurance Benefits (UIB) on June 19, 2017 (Documents [REDACTED]).
- 5) The documentation you uploaded on June 19, 2017 shows that you earned \$15,406.68 between January 1, 2017 and March 31, 2017 from [REDACTED], and that you filed for UIB on June 12, 2017 (Document [REDACTED]).
- 6) None of your NYSOH applications include any information regarding the income you earned from [REDACTED] in 2017.

- 7) You testified that you did not know that you needed to submit any other income documentation after you submitted the UIB information in June 2017.
- 8) You testified that you updated your application on July 26, 2017 by phone with NYSOH because you wanted to see whether your spouse was eligible to be added to your insurance.
- 9) You testified that you do not recall whether you were asked for any income documentation in that phone call.
- 10) Your NYSOH account indicates that on October 29, 2017, your application was run and you were found no longer eligible for APTC as of November 1, 2017.
- 11) You testified that you first found out that your APTC had been discontinued when you received an invoice from Fidelis for a balance of over \$900.00.
- 12) You testified that you called NYSOH and were informed that your tax credit was removed because you did not submit income paperwork.
- 13) You testified that you had not thought to submit documentation of the rental income because your spouse handles everything regarding the rental property, and that you did not submit anything regarding his SSD payments because you believed that NYSOH already had access to that information.
- 14) You updated your application and submitted income documentation on November 20, 2017, consisting of a UIB payment history showing that you had received a total of \$9,495.00 in UIB as of November 19, 2017, and that you had 16 effective days, or four weeks of benefits, remaining, for a maximum payable benefit amount of \$11,235.00 (Document ██████████).
- 15) On November 27, 2017, you uploaded documentation of your spouse's Social Security Disability (SSD) monthly benefit amount, as well as documentation of rental income that you and your spouse receive (Documents ██████████ and ██████████).
- 16) You testified that you are seeking reinstatement of your APTC as of November 1, 2017, as you paid your full QHP premiums for November and December 2017.
- 17) NYSOH uploaded an evidence packet to your NYSOH account. Contained within that evidence packet under the heading of "electronic

notice requirement” is a three-page memorandum dated August 21, 2017. The memorandum sets forth the federal requirements regarding use of electronic communications and asserts that NYSOH complies with federal regulation and guidance on the use of electronic notices. The memorandum asserts that “the electronic notification rules do not require that exchanges track and monitor consumers actual receipt of electronic notices.”

- 18) NYSOH has submitted no evidence that an electronic alert was sent to you regarding the July 27, 2017 eligibility determination notice.

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 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)).

If income data is unavailable, or if an applicant’s attestation is not reasonably compatible with the income data NYSOH obtains, NYSOH must request additional information from the applicant to resolve the inconsistency (45 CFR § 155.320 (c)(3)(iii), (iv)).

NYSOH must provide the applicant with notice of the inconsistency in their account and 90 days to provide satisfactory documentary evidence to resolve the inconsistency (45 CFR § 155.315 (f)(2)). If NYSOH remains unable to verify the attestation of the applicant, NYSOH must redetermine the applicant’s eligibility based on the information available from the data sources unless the applicant

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demonstrates that they are unable to provide the required documentation (45 CFR § 155.315(f)(2), (g)).

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)).

### Electronic Notices

Applicants may choose to receive notices and information from NYSOH by either electronic or regular mail. If the individual elects to receive electronic communications, NYSOH must send an email or other electronic communication alerting the individual when a notice has been posted to his or her account and send a notice by regular mail within three business days if the electronic communication cannot be delivered (45 CFR § 155.230(d); 42 CFR § 435.918(b)(4), (5)).

### 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 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).

## **Legal Analysis**

The issue under review is whether NYSOH properly determined that your eligibility for APTC ended effective November 1, 2017.

An individual requesting financial assistance to help pay for the cost of coverage provided through NYSOH is required to attest to his or her household's projected annual income. For individuals seeking APTC, NYSOH must request income data from federal data sources to verify an individual's income attestation.

If NYSOH cannot verify an individual's attestation, it must provide the individual with notice of the inconsistency and provide a period of 90 days from the date notice is received to resolve the inconsistency.



In the eligibility determination issued on July 27, 2017, you were advised that your eligibility for APTC was only conditional, and that you needed to confirm your household's income before October 24, 2017.

The record reflects that NYSOH did not receive the requested income documentation before the deadline.

However, you testified and the record reflects that you elected to receive alerts regarding notices from NYSOH electronically. Although NYSOH contends that it complied with federal mandates regarding electronic notices, there is no evidence in the file that NYSOH sent you an electronic alert notifying you of a new notice available in your account on July 27, 2017. You credibly testified that you were not sure whether you received an electronic alert regarding the eligibility determination notice, which directed you that your eligibility was limited and that you needed to submit documentation to confirm the household income in your application. You stated that when you receive an email from NYSOH, you usually call NYSOH, even if you sign into your account and review the notice, because you do not usually understand what the notices mean. There is also no evidence in your account documenting that any email alert was sent to you regarding the need to submit documentation.

NYSOH is required to send applicants proper notice for applicants to take appropriate action. Since there is no evidence that NYSOH sent you an email alert, and you testified that you did not receive one, there is insufficient evidence in the record that NYSOH provided you by electronic means with proper notice that you needed to submit documentation of your household income.

Since you were not made aware of and did not receive proper notice that there was an inconsistency in your NYSOH account, the October 30, 2017 eligibility determination stating that you are no longer eligible for APTC because you failed to submit documentation would ordinarily be rescinded.

However, a review of your NYSOH account reveals that your 2017 financial assistance eligibility was based on an incomplete application. You submitted documentation to NYSOH of your UIB, your spouse's SSD, and your household's rental income. However, you also had employment income from [REDACTED] [REDACTED] in the first part of 2017, as evidenced in the UIB documentation you uploaded to your account on June 19, 2017. None of your 2017 applications for financial assistance contain income information from [REDACTED], and no documentation was ever provided to indicate what your gross 2017 earnings from this employment were. As such, your 2017 financial assistance was based on incomplete information, and there is not a sufficient basis for returning your case to NYSOH to reinstate your APTC for November and December 2017.

Therefore, on the basis that your applications for financial assistance in 2017 contained incomplete income information, the October 30, 2017 eligibility determination notice is AFFIRMED.

However, 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.

Since you paid health insurance premiums for the month of November and December 2017, your eligibility for any additional tax credits, beyond what you already received in 2017, will be determined by the IRS when you file your 2017 federal income tax return.

## **Decision**

The October 30, 2017 eligibility determination notice is AFFIRMED.

**Effective Date of this Decision:** February 06, 2018

## **How this Decision Affects Your Eligibility**

This decision does not affect your 2018 eligibility.

NYSOH erred in terminating your APTC effective October 30, 2017, without the proper notice.

However, since your eligibility for APTC in 2017 was based on incomplete income information, NYSOH's action in terminating your APTC for November and December 2017 is being affirmed.

Your eligibility for any additional tax credit for 2017, based on your payment of health insurance premiums, will be determined by the IRS when you file your 2017 federal income tax return.

## **If You Disagree with this Decision (Appeal Rights)**

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 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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- By fax: 1-855-900-5557

## **Summary**

The October 30, 2017 eligibility determination notice is AFFIRMED.  
This decision does not affect your 2018 eligibility.

NYSOH erred in terminating your APTC effective October 30, 2017, without the proper notice.

However, since your eligibility for APTC in 2017 was based on incomplete income information, NYSOH's action in terminating your APTC for November and December 2017 is being affirmed.

Your eligibility for any additional tax credit for 2017, based on your payment of health insurance premiums, will be determined by the IRS when you file your 2017 federal income tax return.

## **Legal Authority**

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

**A Copy of this Decision Has Been Provided To:**

[REDACTED]  
[REDACTED]  
[REDACTED]

## 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)

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### 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&btumi ama wo obi a okyerε 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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