

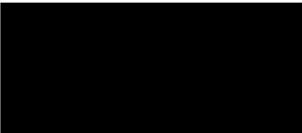


STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: May 1, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000028760



Dear [REDACTED]

On April 23, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's November 3, 2017 and January 9, 2018 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 Account ID at the top of this notice.

Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

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

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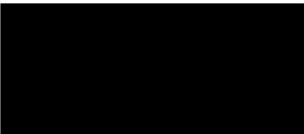


STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Decision

Decision Date: May 1, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000028760



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 enrollment in a qualified health plan (QHP) and the application of advance payments of the premium tax credit (APTC) were effective no earlier than February 1, 2018?

Procedural History

On October 28, 2017, NYSOH issued renewal notice stating, based on information available from state and federal data sources, you and your son qualified for Medicaid, effective January 1, 2018, and no longer qualified for APTC, effective December 31, 2017. The notice further stated if you wished to make changes to your NYSOH account, you needed to do so between November 16, 2017 and December 15, 2017.

On November 2, 2017, you updated your NYSOH account, and your son was marked as not needing health insurance.

On November 3, 2017, NYSOH issued a discontinuance notice, stating your son was no longer eligible to enroll in coverage through NYSOH, effective December 1, 2017, because he did not want to receive coverage.

Also on November 3, 2017, NYSOH issued a disenrollment notice, stating you and your son were disenrolled from your Fidelis gold level QHP, effective November 30, 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).

That same day, NYSOH issued an eligibility determination notice, stating you were eligible to receive up to \$258.00 per month in APTC, and eligible for cost-sharing reductions if you enrolled in a silver level QHP, effective December 1, 2017.

Also on November 3, 2017, NYSOH issued an enrollment confirmation notice stating you were enrolled in a Fidelis gold level QHP, with a monthly premium of \$584.57 and \$0.00 in APTC applied to your monthly premium, beginning December 1, 2017.

On November 16, 2017, NYSOH issued a renewal notice stating, based on information available from state and federal data sources, you were eligible to receive up to \$331.21 per month in APTC, and eligible for cost-sharing reductions if you enrolled in a silver level QHP, effective January 1, 2018.

On November 18, 2017, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in a Fidelis gold level QHP with a monthly premium of \$630.94 and \$0.00 in APTC applied to your monthly premium, beginning January 1, 2018.

On November 20, 2017, you updated your NYSOH account.

On November 21, 2017, NYSOH issued a notice of eligibility determination stating you were eligible to receive up to \$331.00 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 21, 2017, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in a Fidelis gold level QHP with a monthly premium of \$630.94 and \$0.00 in APTC applied to your monthly premium, beginning January 1, 2018.

On January 8, 2018, your enrollment was updated.

On January 9, 2018, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in your Fidelis gold level QHP with a monthly premium of \$299.94, after the application of your \$331.00 in APTC, beginning February 1, 2018.

On February 10, 2018, you spoke to NYSOH's Account Review Unit and appealed, insofar as no APTC was applied to your monthly QHP premium for the months of December 2017 and January 2018.

On April 23, 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.

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Findings of Fact

A review of the record support the following findings of fact:

- 1) Your NYSOH account reflects you and your son were enrolled in a Fidelis gold level QHP with APTC applied to your monthly premium, as of July 1, 2017.
- 2) On November 2, 2017, you updated your NYSOH account and indicated that your son did not need health insurance.
- 3) You testified you called on November 2, 2017 to try to renew your coverage because you had received a notice from Fidelis telling you to renew, but NYSOH informed you that you were too early.
- 4) You testified you updated the account on that day anyway, and were told you would need to call back again to renew.
- 5) Your NYSOH account reflects you were sent a renewal notice on November 16, 2017 stating you were eligible to receive up to \$331.21 per month in APTC, beginning January 1, 2018, and an enrollment notice dated November 18, 2017 stating you were enrolled in a Fidelis gold plan, beginning January 1, 2018, with no APTC applied to your monthly premium.
- 6) You testified you received these notices but did not open them right away, as you updated your account again on November 20, 2017, and assumed these notices were confirming your enrollment.
- 7) Your NYSOH account reflects you updated your application on November 20, 2017, and were found eligible to receive up to \$331.00 per month in APTC, beginning January 1, 2018.
- 8) NYSOH also issued an enrollment confirmation notice on November 21, 2017, after you updated your account, stating you were enrolled in a QHP with \$0.00 of your APTC applied to your monthly premium, beginning January 1, 2018.
- 9) You testified the agent you spoke with on November 20, 2017 specifically told you how much your coverage would cost after your APTC was applied.
- 10) You testified this agent also told you the previous agent you spoke with on November 2, 2017 had not applied your tax credit to your monthly premium, but that he could take care of it for you.

- 11) You testified you had no idea your tax credit was not applied to your premium until you called Fidelis to pay your premium in December 2017, and were told you were being charged the full premium, and no tax credit was applied.
- 12) You testified you called NYSOH and were told they could fix the issue going forward, but that you would need to file an appeal to receive a tax credit for any retroactive time period.
- 13) You testified Fidelis told you your coverage would be canceled if you did not pay your premiums, so you paid your full December 2017 and January 2018 premium, and are looking to be reimbursed or credited for the amount of APTC you were entitled to in those months.
- 14) You testified you have not yet filed your 2017 federal income tax return, and plan to do so in June or July 2018.
- 15) After the hearing, the Hearing Officer requested recordings of any phone calls you had with NYSOH during the months of November and December 2017. Two recordings were returned: one corresponding to your November 2, 2017 application update, and one corresponding to your November 20, 2017 application update. The Hearing Officer listened to both recordings, and the following findings of fact are taken from them:
 - a. November 2, 2017 Call with NYSOH Representative:
 - i. You informed the NYSOH representative you had received a renewal notice from your health plan (Fidelis);
 - ii. You also informed the NYSOH representative you wanted to remove your son from your application;
 - iii. The NYSOH representative told you it was too early for you to renew but, at your request, attempted to renew your application anyway;
 - iv. The NYSOH representative told you your eligibility had not changed, and your eligibility for APTC would end as of December 31, 2017, so you would still need to call back to renew;
 - v. The NYSOH representative did not inform you that the amount of APTC you were entitled to changed after he removed your son from the application;
 - vi. The NYSOH representative did not ask you whether you wanted your new APTC amount applied to your December 2017 QHP premium.
 - b. November 20, 2017 Call with NYSOH Representative:
 - i. You informed the NYSOH representative you were calling to renew for 2018;

- ii. You informed the NYSOH representative you needed to remove your son from your application;
- iii. The NYSOH representative eventually confirmed you still had coverage for December 2017, and informed you that no APTC was being applied to your premium;
- iv. The NYSOH representative told you the representative you spoke with on November 2, 2017 did not apply the full tax credit to your premium, and that he would do so;
- v. The NYSOH representative updated your application and told you that you were eligible for \$331.00 in APTC, and that your monthly premium would be roughly \$299.00 after the application of this APTC;
- vi. You explored other plan options with the representative, but informed him you could not afford any more than \$299.00 per month, so you would remain enrolled in your Fidelis gold plan.

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

Applicable Law and Regulations

Effective Date of Advanced 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 § 155.420(b)(4), 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.*).

Redetermination During a Benefit Year

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)).

Enrollment in a Qualified Health Plan

The effective date of coverage by a qualified health plan is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment, NYSOH must generally ensure that coverage is effective the first day of the following month for selections received by NYSOH from the first to the fifteenth of any month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(i)). For selections received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(ii)).

Legal Analysis

The issue under review is whether NYSOH properly determined that your enrollment in a QHP with the application of APTC was effective no earlier than February 1, 2018. As this appeal addresses two different tax years (2017 and 2018), with two different APTC amounts, the two months in question will be addressed separately.

December 2017

The record shows that on November 2, 2017, you updated the information in your NYSOH account. You testified you called on this day because you received a notice from Fidelis telling you that it was time to renew. You testified, and the record of your call with NYSOH reflects, you were told it was too early to renew your application. However, the NYSOH representative agreed to try to renew the account anyway, and to indicate that your son was no longer applying for health insurance coverage.

This update resulted in a determination that you were newly eligible for up to \$258.00 per month in APTC, and eligible for cost-sharing reductions if you enrolled in a silver level QHP, both effective December 1, 2017. It also resulted in the issuance of a new enrollment confirmation, which confirmed that you alone were enrolled in your Fidelis gold level QHP for the month of December 2017 (as your son's disenrollment went into effect November 30, 2017), and that you were responsible for your full monthly premium of \$584.57.

When an individual changes information in their application on or before the 15th of any month, NYSOH must make the redetermination that results from the change effective the first day of the following month. Additionally, the date on which a qualified health plan can take effect depends on the day a person selects the plan for enrollment. A plan that is selected from the first day to and including fifteenth day of a month goes into effect on the first day of the following month.

You updated your application on November 2, 2017, therefore, your new eligibility properly went into effect on December 1, 2017, as did your new enrollment in an individual Fidelis gold QHP. However, the NYSOH representative you spoke with on November 2, 2017 neglected to tell you of your new eligibility, and failed to confirm with you whether you wanted your new APTC amount applied to your December 2017 premium.

The Appeals Unit finds that the NYSOH representative improperly failed to tell you that your \$258.00 in APTC could be applied to your December 2017 premium, and it will be presumed that had you been given this information, you would have opted to receive APTC in December 2017.

Therefore, the November 3, 2017 enrollment confirmation notice is MODIFIED to state your enrollment in your gold level QHP, with the application of your \$258.00 APTC to your monthly premium, began on December 1, 2017.

January 2018

The record reflects you contacted NYSOH on November 20, 2017 to renew your coverage for 2018. As a result, you were found eligible for up to \$331.00 per month in APTC, and eligible for cost-sharing reductions if you enrolled in a silver level QHP, both effective January 1, 2018. An enrollment confirmation notice was issued on November 21, 2017 confirming your enrollment in a Fidelis gold level QHP, but with \$0.00 in APTC applied to your monthly premium of \$630.94.

You testified you were unaware that the representative you spoke with did not apply any APTC to your NYSOH account. You testified the representative pointed out to you that the NYSOH representative you spoke with on November 2, 2017 had not applied your tax credit, and that he could fix this for you. The recording of your November 20, 2017 phone call with NYSOH confirms this. Additionally, the recording reveals you discussed the cost of your Fidelis gold level QHP at length with the NYSOH representative on November 20, 2017, and he repeatedly recited a premium amount of roughly \$299.00, which is what your monthly premium would be after the application of your \$331.00 in APTC. Nevertheless, despite these discussions, the NYSOH representative failed to apply any APTC to your monthly premium for January 1, 2018.

You testified that, when you discovered this, you contacted NYSOH and asked for your APTC to be applied to your monthly premium. The record reflects you contacted NYSOH on January 8, 2018, and on January 9, 2018, NYSOH issued a new enrollment confirmation notice stating your enrollment in your QHP with the application of your \$331.00 in APTC began on February 1, 2018.

Ordinarily, this would be correct, as you updated the information in your application on January 8, 2018, and that change would generally go into effect on February 1, 2018, pursuant to the rules discussed above. However, because it is

clear from the record it was NYSOH's error that APTC was not applied to your January 2018 premium, the January 9, 2018 enrollment confirmation notice must be MODIFIED to state you were enrolled in your Fidelis gold level QHP, with the application of your \$331.00 in APTC to your monthly premium, beginning January 1, 2018.

Your case is RETURNED to NYSOH to effectuate these changes, and to ensure you are credited or reimbursed for the APTC you should have received in the months of December 2017 and January 2018.

Decision

The November 3, 2017 enrollment confirmation notice is MODIFIED to state you were enrolled in your individual Fidelis gold level QHP with the application of your \$258.00 APTC to your monthly premium, beginning December 1, 2017.

The January 9, 2018 enrollment confirmation notice is MODIFIED to state your enrollment in your Fidelis gold level QHP, with the application of your \$331.00 APTC to your monthly premium, began on January 1, 2018.

Your case is RETURNED to NYSOH effectuate these changes, and to ensure you are credited or reimbursed for the APTC you should have received in the months of December 2017 and January 2018.

NYSOH is directed to notify you when this has been done.

Effective Date of this Decision: May 1, 2018

How this Decision Affects Your Eligibility

Your \$258.00 in APTC should have been applied to your December 2017 QHP premium.

Your \$331.00 in APTC should have been applied to your January 2018 QHP premium.

Your case is being sent back to NYSOH to reimburse or credit you for the APTC you should have received in the months of December 2017 and January 2018.

NYSOH will notify you when this has been done.

Please be aware that any APTC you receive in a calendar year must be reconciled on the federal income tax return you file for that year. This means 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).

APTC reimbursement you receive for December 2017 must be reconciled when you file your 2017 federal income tax return. If you file your return before a new 1095A is issued (reflecting the additional APTC you are receiving for 2017, pursuant to this decision), there could be tax consequences.

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 November 3, 2017 enrollment confirmation notice is MODIFIED to state you were enrolled in your individual Fidelis gold level QHP with the application of your \$258.00 APTC to your monthly premium, beginning December 1, 2017.

The January 9, 2018 enrollment confirmation notice is MODIFIED to state your enrollment in your Fidelis gold level QHP, with the application of your \$331.00 APTC to your monthly premium, began on January 1, 2018.

Your case is RETURNED to NYSOH effectuate these changes, and to ensure you are credited or reimbursed for the APTC you should have received in the months of December 2017 and January 2018.

NYSOH is directed to notify you when this has been done.

Your \$258.00 in APTC should have been applied to your December 2017 QHP premium.

Your \$331.00 in APTC should have been applied to your January 2018 QHP premium.

Your case is being sent back to NYSOH to reimburse or credit you for the APTC you should have received in the months of December 2017 and January 2018.

NYSOH will notify you when this has been done.

Please be aware that any APTC you receive in a calendar year must be reconciled on the federal income tax return you file for that year. This means the APTC reimbursement you receive for December 2017 must be reconciled when you file your 2017 federal income tax return. If you file your return before a new

1095A is issued (reflecting the additional APTC you are receiving for 2017, pursuant to this decision), there could be tax consequences.

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 मदद 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. y&b&tumi 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.

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).