



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

## Notice of Decision

Decision Date: March 29, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000026104

[REDACTED]

Dear [REDACTED],

On February 23, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's December 19, 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 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.

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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DEPARTMENT OF HEALTH  
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Albany, NY 12211

## Decision

Decision Date: March 29, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000026104



## Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NY State of Health (NYSOH) properly determine you and your oldest child were eligible to purchase a full cost qualified health plan and ineligible for the Essential Plan, effective January 1, 2018?

## Procedural History

On December 18, 2017, NYSOH received multiple updated applications for financial assistance with health insurance on behalf of you and your children.

On December 19, 2017, NYSOH issued an eligibility determination, based on the final application submitted on December 18, 2017, stating you and your oldest child were eligible to purchase a full cost qualified health plan (QHP), effective January 1, 2018. The notice further stated you and your child were not eligible for the Essential Plan or Medicaid, because they did not meet the income limits or other eligibility standards for those programs. The notice indicated you and your child were not eligible to receive APTC or cost-sharing reductions, because NYSOH was missing information about your taxes. Specifically, the notice stated that you either indicated you would not file a federal tax return, or you were married and would be filing taxes separately from your spouse, or APTC was paid to your health insurance company to reduce your premium costs in a prior year and NYSOH could not determine whether a tax return was filed.

On December 20, 2017, you spoke to NYSOH's Account Review Unit and appealed that determination insofar as you and your oldest child were not eligible for the Essential Plan.

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On February 23, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open to allow you to submit supporting documentation. On March 6, 2018 documentation was uploaded to your NYSOH account and incorporated into the record as Appellant's Exhibit "1." The record closed thereafter.

## **Findings of Fact**

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

- 1) You testified that you were seeking eligibility for the Essential Plan for you and your oldest child for 2018. You testified that you are not seeking review of the eligibility of your two youngest children.
- 2) On December 18, 2017, two updated applications were submitted on behalf of you and your oldest child.
- 3) The first application indicated that you would file your 2018 tax return with a tax filing status of Head of Household and you would claim your youngest two children as dependents. That application listed your expected household income for 2018 as \$47,343.66, consisting solely of income you would earn through your employment.
- 4) That application indicated you would not claim your oldest child as a dependent on your 2018 tax return. That application indicated your oldest child would file her own tax return for 2018 with a tax filing status of single and that her expected annual income for 2018 was \$6,428.16.
- 5) Subsequently, on December 18, 2017, you filed another updated application on behalf of you and your oldest child. That application indicated you would file your 2018 tax return with a tax filing status of Head of Household and you would claim your three children as dependents, including your oldest child.
- 6) The second application submitted on December 18, 2017 listed your annual expected household income for 2018 as \$53,771.82 including \$47,343.66 you would earn annually through your employment and \$6,428.16 your oldest dependent child would earn annually through her employment in 2018.
- 7) You testified that the income information listed in the December 18, 2018 applications for you was accurate. You testified that you were unsure of your oldest child's 2018 income, because she had just started her current job in October or November 2017.

- 8) Both applications submitted on December 18, 2017 listed your marital status as “separated.”
- 9) You testified that you are currently married. You testified that you are separated from your spouse, but you have not obtained a decree of separate maintenance.
- 10) You testified that you expect to be divorced by the end of 2018, but you have not yet filed a divorce petition.
- 11) Based on the final application submitted on December 18, 2017, NYSOH determined you and your oldest child ineligible for the Essential Plan, because the income listed in your application exceeded the limit for that program.
- 12) According to your account, NYSOH determined you and your oldest child ineligible for APTC based on discrepancies between your marital and tax filing status.
- 13) You appealed insofar as you and your oldest child were not eligible for the Essential Plan in 2018.
- 14) On February 6, 2018, multiple updated applications were submitted on behalf of you and your oldest children. The income, marital status, and tax filing status information in those applications were identical to your previous applications, except the final application submitted on February 6, 2018 indicated you would not claim your oldest child as a dependent on your 2018 tax return. That application indicated you would claim your youngest two children as dependents on that tax return.
- 15) Following the final application submitted on February 6, 2018, NYSOH found you were still eligible to purchase a full cost QHP and ineligible for the Essential Plan based on discrepancies between your marital and tax filing status.
- 16) Your oldest child was deemed to be in her own tax household and she was placed in a pending Medicaid status with proof of her income requested prior to NYSOH determining her eligibility for health coverage.
- 17) You testified that in 2017 you filed your tax return with a tax filing status of head of household and you claimed your two youngest children as dependents on that tax return.
- 18) You testified that in 2018 you will not claim any dependents on that return, because your oldest child will file her own tax return and your youngest two children will be claimed as dependents by their father, because you

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and your spouse alternate years in which you claim the youngest two children as tax dependents. You testified that since you claimed the children as dependents for 2017, your spouse will claim them as dependents for 2018.

- 19) At the hearing, you were directed to submit a copy of your 2017 tax return as well as current paystubs for your oldest child.
- 20) On March 6, 2018, NYSOH receiving the following documentation:
  - a. A copy of an unsigned and undated form 1040 from your 2017 tax return listing your two youngest children as dependents and your tax filing status as Head of Household.
  - b. A copy of five biweekly paystubs for your oldest child.
- 21) According to your account, on March 6, 2017, NYSOH verified your oldest child's paystubs, recalculated her annual income as \$28,500.03 based on her average gross biweekly income listed in her paystubs and determined her eligible to receive up to \$29.00 per month in APTC, effective April 1, 2018.
- 22) According to the eligibility determination notice issued on March 7, 2018, you remained eligible to purchase a full cost QHP and ineligible for the Essential Plan.
- 23) According to your account, neither you nor your oldest child have enrolled in a health plan in 2018.
- 24) According to your account, your oldest child turned [REDACTED] on [REDACTED].
- 25) According to your applications, you and your oldest child reside in Bronx County.

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

## **Applicable Law and Regulations**

### Advance Payments of Premium Tax Credit

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 from 138% up to 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

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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), 26 CFR § 1.36B-2, 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 2018 is set by federal law at 2.01% to 9.56% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3, IRS Rev. Proc. 2017-36).

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 2017 FPL, which is \$12,060.00 for a one-person household (82 Federal Register 8831).

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).

Additionally, a tax filer who is married must generally file a joint return with his or her spouse to qualify for APTC (45 CFR § 155.305(f), 45 CFR § 155.310(d); 26 CFR § 1.36B-2).

#### Determination of Marital Status

The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death. An individual

legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

Certain married individuals shall not be considered as married, if—

- (1) the married individual files a separate return and maintains as his home a household which constitutes more than one-half of the taxable year the principal place of abode of a child (within the meaning of section 152(f)(1)) with respect to whom such individual is entitled to a deduction for the taxable year under section 151 (or would be so entitled but for section 152(e)),
- (2) such individual furnishes over one-half of the cost of maintaining such household during the taxable year, and
- (3) during the last 6 months of the taxable year, such individual's spouse is not a member of such household.

(26 USC § 7703).

### Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable FPL or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

In an analysis of Essential Plan eligibility, the determination is based on the FPL in effect on the first day of the benefit year for which coverage is requested (45 CFR § 155.300(a)). On the date of your application that was the 2017 FPL, which is \$12,060.00 for a one-person household (82 Fed. Reg. 8831).

### **Legal Analysis**

The issue is whether NYSOH properly determined you and your oldest child were eligible to purchase a full cost QHP and ineligible for the Essential Plan, effective January 1, 2018.

The final updated application submitted on behalf of you and your oldest child on December 18, 2017, upon which the subject eligibility determination was based,

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indicated your marital status was “separated,” you would file your 2018 tax return with a tax filing status of Head of Household, and you would claim your three children as dependents on that return, including your oldest child. That application listed your annual expected income for 2018 as \$53,771.82 including \$47,343.66 you would earn annually through your employment and \$6,428.16 your oldest dependent child would earn annually through her employment in 2018. You testified that the income information listed in the application for you was accurate, but you were unsure of your oldest child’s income since she had just started her job in October or November 2017.

Based on the information in your application, NYSOH determined you and your oldest child ineligible for the Essential Plan, because the income listed in your application exceeded the limit for that program. NYSOH further determined you and your oldest child ineligible for APTC, based on discrepancies between your marital and tax filing status. You appealed insofar as you and your oldest child were not eligible for the Essential Plan in 2018.

It is noted that the subject eligibility determination was based on the final application submitted on December 18, 2017. Since that application indicated that you would claim three dependents on your 2018 tax return, including your oldest child, NYSOH properly included your oldest child’s income, as reported in that application, as part of the household’s income calculation and determined both you and your oldest child ineligible for the Essential Plan on the grounds the household income exceeded the income limit for that program. However, you testified that you will not claim your oldest child as a dependent on your 2018 tax return, despite the information attested to in your application. You submitted a copy of a form 1040 from your 2017 tax return showing that you did not claim your oldest child as a dependent in 2017 either. Based on the evidence, it is concluded that your oldest child is in her own tax household and her income should not be included in your household income calculation.

Furthermore, you testified that you will not claim any dependents on your 2018 tax return, despite information in the numerous applications submitted on your behalf indicating that you would. You testified that you and your spouse alternate claiming your two youngest children as dependents on your tax returns and that since you claimed the children in 2017, your spouse would claim them in 2018. Additionally, you confirmed that you are still married and you have not obtained a decree of separate maintenance or filed a divorce petition yet.

Based on your own testimony, that the information in your December 18, 2017 applications regarding household income amount, tax filing status, and the number of dependents you will claim on your 2018 tax return was inaccurate, it is concluded that your eligibility must be redetermined.

Therefore, your case is RETURNED to NYSOH to redetermine your eligibility for 2018, based on the now developed record, establishing that for 2018 you are

married but you will file your 2018 tax return separately from your spouse, and you are in a one-person household, because you will claim no dependents, with an expected annual income of \$47,343.66.

Additionally, your case is RETURNED to NYSOH to redetermine your oldest child's eligibility for 2018 based on the updated paystubs submitted on March 6, 2017 and the now developed record establishing she is in a separate one-person tax household.

## **Decision**

Your case is RETURNED to NYSOH to redetermine your eligibility for 2018, based on the now developed record, establishing that for 2018 you are married but you will file your 2018 tax return separately from your spouse and you are in a one-person household, because you will claim no dependents, with an expected annual income of \$47,343.66.

Your case is RETURNED to NYSOH to redetermine your oldest child's eligibility for 2018 based on the updated paystubs submitted on March 6, 2017 and the now developed record establishing she is in a separate one-person tax household.

**Effective Date of this Decision:** March 29, 2018

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

This decision does not change the eligibility of you or your oldest child.

Your case is being sent back to NYSOH to redetermine the eligibility of you and your oldest child in accordance with this decision.

You will receive an updated written determination of the eligibility of you and your oldest child.

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

If applicable, if you think a portion of your appeal should not be dismissed, you can ask us to vacate, or cancel, this dismissal. You must ask us in writing within 30 days after the date on this notice, showing good cause as to why the dismissal should be vacated. NYSOH's Appeals Unit will review your request. If your request is approved, another hearing will be scheduled for you. If your request is denied, NYSOH will tell you in writing. If you do not respond to the

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dismissed portion of your appeal within 30 days, your appeal will remain dismissed, and NYSOH will take no further action on your appeal.

Insofar as your case was decided, the 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

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Albany, NY 12211

- By fax: 1-855-900-5557

## **Summary**

Your case is RETURNED to NYSOH to redetermine your eligibility for 2018, based on the now developed record, establishing that for 2018 you are married but you will file your 2018 tax return separately from your spouse and you are in a one-person household, because you will claim no dependents, with an expected annual income of \$47,343.66.

Your case is RETURNED to NYSOH to redetermine your oldest child's eligibility for 2018 based on the updated paystubs submitted on March 6, 2017 and the now developed record establishing she is in a separate one-person tax household.

This decision does not change the eligibility of you or your oldest child.

You will receive an updated written determination of the eligibility of you and your oldest child.

## **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 مجانًا.

### **বাংলা (Bengali)**

এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

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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 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 איך געבן א דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.