



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

## Notice of Decision

Decision Date: August 25, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007082

[REDACTED]

Dear [REDACTED],

On August 19, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's February 23, 2016 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 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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## Decision

Decision Date: August 25, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007082

[REDACTED]

## Issues

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

Did NY State of Health properly determine that you were eligible to enroll in the Essential Plan effective April 1, 2016?

Did NY State of Health properly determine that you were not eligible for advance premium tax credits, as of March 31, 2016?

## Procedural History

On December 19, 2015, NY State of Health (NYSOH) received your updated application for financial assistance.

On December 20, 2015, NYSOH issued an eligibility determination based on the December 19, 2015, application, stating that you were eligible to receive advance premium tax credits (APTC) up to \$44.00 per month starting January 1, 2016. This determination was based on your attested household income of \$42,400.00.

On December 31, 2015, an enrollment confirmation notice was issued confirming your enrollment in a Silver level qualified health plan starting February 1, 2016 with a premium responsibility of \$470.55 per month.

On February 16, 2016, you contacted NYSOH's Account Review Unit and requested an appeal insofar as you were not eligible to change your plan to your

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previous enrollment in Empire Blue Cross Blue Shield silver level qualified health plan.

On February 22, 2016, NYSOH received your updated application for financial assistance.

On February 23, 2016, NYSOH issued an eligibility determination based on the February 22, 2016, application, stating that you were eligible to enroll in the Essential Plan, effective April 1, 2016. It further stated that you no longer qualify for an advance premium tax credits with cost sharing reductions as of March 31, 2016. The determination was based on your attested household income of \$22,620.00.

On February 25, 2016, NYSOH received your updated application for financial assistance.

On February 26, 2016, an eligibility determination notice was issued finding you eligible to enroll in the Essential Plan starting April 1, 2016. This determination was based on your attested household income of \$18,720.00.

On May 24, 2016, a Notice of telephone hearing was issued for a hearing on June 30, 2016 at 9:00 a.m.

On June 30, 2016, a Hearing Officer from NYSOH's Appeals Unit attempted to contact you three times at the telephone number you provided but was unable to reach you. Your hearing was dismissed as a Failure to Appear, with a notice sent July 6, 2016.

You contacted NYSOH on July 11, 2016 and requested to vacate that dismissal. You uploaded a letter showing good cause for missing your hearing on July 21, 2016. See Document [REDACTED]

Your request was granted on July 28, 2016, by the NYSOH Appeals Unit.

A notice of hearing was issued on July 28, 2016, for a hearing on August 18, 2016 at 10:00 a.m.

A Hearing Officer from NYSOH's Appeals Unit contacted you at 10:00 a.m. You answered and stated you were with a client and were unable to proceed with the hearing as you had recently had the appointment scheduled for work. The Hearing Officer granted an adjournment to August 19, 2016 at 10:00 a.m.

On August 19, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. You further waived formal notice to the hearing on the record. During the hearing you stated that your issue is your eligibility for the Essential Plan and that you are seeking enrollment into a qualified health plan

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with Empire Blue Cross Blue Shield with APTC. 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 that you expect to file your 2016 taxes with a tax filing status of single. You will claim no dependents on that tax return.
- 2) You are seeking insurance for yourself.
- 3) You initially appealed the denial by NYSOH to allow you to switch your qualified health plan. You are now seeking to be found eligible for advance premium tax credits and to enroll in a silver level qualified health plan with Empire Blue Cross Blue Shield.
- 4) You testified you were told by NYSOH representatives that the Silver level qualified health plan through Empire Blue Cross Blue Shield you were previously enrolled in 2015, was not available for 2016.
- 5) The application that was submitted on February 22, 2016, which requested financial assistance, listed annual household income of \$22,620.00.
- 6) You testified, that your weekly gross income is \$432.00.
- 7) Your application states that you will not be taking any deductions on your 2015 tax return.
- 8) Your application states that you live in Suffolk County.

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

## **Applicable Law and Regulations**

### 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 federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-

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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 2015 FPL, which is \$11,770.00 for a one-person household (80 Fed. Reg. 3236, 3237).

A person who has a household income greater than 150% of the FPL or below 200% of the FPL has a \$20.00 per month premium contribution (New York's Basic Health Plan Blueprint, as approved January 2016).

The Essential Plan is considered minimum essential coverage therefore, a person who is eligible for the Essential Plan is not eligible for any premium tax credit because they are eligible for minimum essential coverage through the individual market (see 26 CFR § 1.36B-2(c)(1), 26 USC § 5000A(f)(1)(C)).

#### Advance Payments of the Premium Tax Credit:

Advance payments of the premium tax credit (APTC) are 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 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)).

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), 45 CFR § 155.305(f)(1)(i)). On the date of your application, that was the 2015 FPL, which is \$11,770.00 for a one -person household (80 Fed. Reg. 3236, 3237).

## **Legal Analysis**

The first issue under review is whether NYSOH properly determined that you were eligible for the Essential Plan, effective April 1, 2016.

You initially appealed the denial by NYSOH to allow you to switch your qualified health plan. You are now seeking to be found eligible for advance premium tax credits and to enroll in a silver level qualified health plan with Empire Blue Cross Blue Shield.

The application that was submitted on February 22, 2016, listed an annual household income of \$22,620.00, and the eligibility determination relied upon that information. You testified that your weekly gross income is \$432.00. For 52 weeks in a year your expected household income would be approximately \$22,464.00.

You are in a one-person household. You expect to file your 2016 income taxes as single and will claim no dependents on that tax return.

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$11,770.00 for a one-person household. Since an annual household income you applied with of \$22,620.00 is 192.18% of the 2015 FPL, NYSOH properly found you to be eligible for the Essential Plan.

Therefore the February 23, 2016 eligibility determination notice is AFFIRMED insofar as you were eligible for the Essential Plan April 1, 2016.

The second issue is did NY State of Health properly determine that you were not eligible for APTC, as of March 31, 2016.

An individual who requests financial assistance and is eligible to enroll in the Essential Plan is not eligible to receive advance payments of the premium tax credit to subsidize the purchase of a qualified health plan because they are considered eligible for minimum essential coverage through NYSOH.

Therefore the February 23, 2016 eligibility determination notice is AFFIRMED insofar as you are no longer eligible for advance premium tax credits effective March 31, 2016.

## **Decision**

The February 23, 2016 eligibility determination notice is AFFIRMED.

**Effective Date of this Decision:** August 25, 2016

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

You remain eligible for the Essential Plan.

You are not eligible for advance payments of the premium tax credit

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

This Decision is final unless you submit an appeal request to U.S. Department of Health and Human Services 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 after 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 U.S. Department of Health and Human Services. 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 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:  
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## **Summary**

The February 23, 2016 eligibility determination notice is AFFIRMED.

You remain eligible for the Essential Plan.

You are not eligible for advance payments of the premium tax credit

## **Legal Authority**

We are sending you this notice in accordance with 45 CFR § 155.545.

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

