



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

## Notice of Decision

Decision Date: August 30, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007660

[REDACTED]

Dear [REDACTED],

On August 18, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's December 12, 2015, and February 20, 2016 eligibility determination 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 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.

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## Decision

Decision Date: August 30, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000007660



## Issue

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

Did NY State of Health properly determine that you were eligible for advance premium tax credits of up to \$186.00 per month effective January 1, 2016?

## Procedural History

On December 11, 2015, NY State of Health (NYSOH) received your updated application for financial assistance.

On December 12, 2015, NYSOH issued an eligibility determination based on the December 11, 2015 application, stating that you are newly eligible to receive advance premium tax credits of up to \$186.00 per month effective January 1, 2016. The determination was based on your household income of \$30,000.00.

Also on December 12, 2015, NYSOH issued an enrollment confirmation notice confirming your enrollment on December 11, 2015 in a Gold level qualified health plan effective January 1, 2016.

On February 19, 2016, NYSOH received your updated application for financial assistance.

On February 20, 2016, NYSOH issued an eligibility determination notice finding you eligible to enroll in the Essential Plan effective April 1, 2016. The notice stated you no longer qualified for advance premium tax credits effective March

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31, 2016. The determination was based on your attested household income of \$22,287.00.

Also on February 20, 2016, NYSOH issued an enrollment confirmation notice confirming your enrollment in the Essential Plan with a premium responsibility of \$20.00 per month, starting April 1, 2016.

On March 3, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of the December 12, 2015, eligibility determination notice insofar as you were not found eligible for the Essential Plan effective January 1, 2016.

On August 18, 2016, 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 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 are seeking to be found eligible for the Essential Plan effective January 1, 2016, and to be reimbursed premium payments made to your Gold level qualified health plan.
- 4) The application that was submitted on December 11, 2015, which requested financial assistance, listed annual household income of \$30,000.00, consisting of income you earn from your self-employment. You testified this amount was not correct.
- 5) You testified that you provided your income to your application counselor. The record supports that your application counselor with an [REDACTED] submitted your application on December 11, 2015.
- 6) You testified you are a sole proprietor of your own business as a freelance designer.
- 7) You testified that none of your business deductions which were included on your 2015 tax return were included in your December 11, 2015 application to NYSOH.

- 8) You testified that you had your accountant contact NYSOH and included your business deductions towards your attested household income on your February 19, 2016 application. The result was your annual household income decreased to \$22,287.00, finding you now eligible for the Essential plan effective April 1, 2016.
- 9) You testified that you were not sure what business deductions your accountant had included in your updated application on February 19, 2016.
- 10) Your February 19, 2016, application states that you will be taking deductions in the amount of \$7,713.00.
- 11) You testified you paid premiums for your Gold level qualified health plan for the months of January, February, and March, 2016.
- 12) Your application states that you live in Albany 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-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).

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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).

#### MAGI

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” is the gross income of the taxpayer minus the deductions permitted (26 USC § 62). Subject to some limitations, deductions that are attributable to a trade or business may be deductions from a taxpayers adjusted gross income (26 USC § 62 (a)(1)).

## **Legal Analysis**

The only issue under review is whether NYSOH properly determined that you were eligible for advance premium tax credits of up to \$186.00 per month effective January 1, 2016 and not the Essential Plan.

The application that was submitted on December 11, 2015, listed an annual household income of \$30,000.00, and the eligibility determination relied upon that information.

On December 12, 2015, NYSOH issued an eligibility determination based on the December 11, 2015 application, stating that you are newly eligible to receive advance premium tax credits of up to \$186.00 per month effective January 1, 2016. The determination was based on your household income of \$30,000.00.

You testified that you provided your income to your application counselor with an [REDACTED] who then submitted your application on December 11, 2015 for financial assistance. You are a sole proprietor of your own business as a freelance designer. None of your business deductions which were included on your 2015 tax return were included in your December 11, 2015 application to NYSOH.

Subject to some limitations, deductions that are attributable to a trade or business may be deductions from a taxpayer's adjusted gross income. When you had realized your application counselor did not include your business expenses of approximately \$7,713.00, you had your accountant contact NYSOH and included your business deductions towards your attested household income on your February 19, 2016 application. The result was your annual household income decreased to \$22,287.00, finding you eligible for the Essential plan effective April 1, 2016.

You are now seeking to be found eligible for the Essential Plan starting January 1, 2016, and would like to be reimbursed premium payments made to your Gold Level qualified health plan.

You are in a one-person household. You expect to file your 2015 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 of \$22,287.00 is 189.35% of the 2015 FPL, NYSOH properly found you to be eligible for the Essential Plan.

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.

The December 12, 2015, eligibility determination finding you eligible for an advance premium tax credit of \$186.00 per month is **RESCINDED**.

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Since the February 20, 2016, eligibility determination properly stated that, based on the information you provided, you were eligible for the Essential Plan effective April 1, 2016, it was correct and is MODIFIED to reflect an effective date of January 1, 2016 because your application counselor provided the incorrect information in your previous application.

NYSOH Appeals Unit does not have the authority to direct a plan to reimburse you any premium payments you may have made. Your case is RETURNED to NYSOH to effectuate changing the start date of your Essential Plan to January 1, 2016, you may then request premium payments be reimbursed by your qualified health plan.

## **Decision**

The December 12, 2015, eligibility determination finding you eligible for an advance premium tax credit of \$186.00 per month is RESCINDED.

The February 20, 2016, eligibility determination is MODIFIED to reflect an effective date of January 1, 2016 for the Essential Plan.

Your case is RETURNED to NYSOH to effectuate changing the start date of your Essential Plan to January 1, 2016

**Effective Date of this Decision:** August 30, 2016

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

You are eligible for the Essential Plan effective January 1, 2016.

You are not eligible for advance payments of the premium tax credit, cost-sharing reductions, or Medicaid.

## **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

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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:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

The December 12, 2015, eligibility determination finding you eligible for an advance premium tax credit of \$186.00 per month is **RESCINDED**.

The February 20, 2016, eligibility determination is **MODIFIED** to reflect an effective date of January 1, 2016 for the Essential Plan.

Your case is **RETURNED** to NYSOH to effectuate changing the start date of your Essential Plan to January 1, 2016

You are eligible for the Essential Plan effective January 1, 2016.

You are not eligible for advance payments of the premium tax credit, cost-sharing reductions, or Medicaid.

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## **Legal Authority**

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

