



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

Notice of Decision

Decision Date: November 22, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008849

[REDACTED]

Dear [REDACTED],

On October 26, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's December 21, 2015, eligibility determination, December 22, 2015 enrollment confirmation and April 13, 2016, eligibility determination.

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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DEPARTMENT OF HEALTH
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Decision

Decision Date: November 22, 2016

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000008849

[REDACTED]

Issues

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

Did NY State of Health (NYSOH) properly determine that you were enrolled in a full pay qualified health plan, and not the Essential Plan, effective January 1, 2016?

Did NYSOH provide a timely notice of eligibility determination for your child?

Procedural History

On October 24, 2015, NYSOH issued a notice that it was time to renew your health insurance for the upcoming coverage year. That notice stated that, based on information from federal and state sources, NYSOH could not make a decision about whether you or your child would qualify for financial help paying for your health coverage, and that you needed to update your account by December 15, 2015 or you might lose the financial assistance you were currently receiving.

No updates were made to your account by December 15, 2015.

On December 21, 2015 NYSOH issued an eligibility determination notice stating that you were newly eligible to purchase a qualified health plan at full cost. You were not eligible for financial assistance because you had not completed your renewal within the required time frame. This eligibility was effective as of January 1, 2016.

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Also on December 21, 2015, NYSOH issued an eligibility determination notice stating that your child was not eligible for Medicaid, Child Health Plus, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance. He also could not enroll in a qualified health plan at full cost. This was because you had not completed your renewal within the required time frame. His eligibility ended December 31, 2015.

On December 22, 2015, an enrollment confirmation notice was issued confirming your enrollment in a Silver level qualified health plan starting January 1, 2016. Your premium responsibility did not have an application of advance premium tax credits applied.

On March 2, 2016, NYSOH received your updated application for health insurance.

On March 3, 2016, a notice was issued stating more information was required to make a determination on your application. The notice stated that the income information you provided in your application did not match what had been obtained from state and federal data sources. You were asked to submit income documentation for your household by March 18, 2016.

That same day a disenrollment notice was issued terminating your enrollment in your full cost qualified health plan effective March 31, 2016.

On March 8, 2016, NYSOH received your faxed income documentation.

On March 28, 2016 your income documentation was invalidated by a NYSOH representative.

On April 12, 2016, received your updated application for health insurance and a preliminary determination was prepared stating that you were eligible to enroll in the Essential Plan, effective May 1, 2016. That same day you enrolled in an Essential Plan starting May 1, 2016.

Also on April 12, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that preliminary eligibility determination insofar as you were not eligible for the Essential Plan effective January 1, 2016.

On April 13, 2016, NYSOH issued an eligibility determination notice stating that you were eligible to enroll in the Essential Plan with a \$20.00 per month premium, effective May 1, 2016.

Also on April 13, 2016 NYSOH issued an enrollment confirmation notice stating that your enrollment in the Essential Plan would begin as of May 1, 2016.

Finally on April 13, 2016, NYSOH issued a notice stating that you needed to submit additional documentation in order for your child's eligibility to be determined. This was because the income information you provided did not match what NYSOH had obtained from state and federal data sources. You were asked to provide income documentation for your household by April 28, 2016.

On October 26, 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 are seeking insurance for yourself and your child [REDACTED] currently.
- 2) Your NYSOH account indicates that you receive notices from NYSOH by regular mail.
- 3) You testified that you did not receive any notices from NYSOH telling you that you needed to update the information in your NYSOH account to ensure that your coverage would not be interrupted and that your financial assistance would continue.
- 4) You testified you had not been receiving notices as part of your address was spelled wrong, specifically the word "Manhattan." This is not the case for the October 24, 2015, renewal notice.
- 5) No notices sent to you at the address listed on your NYSOH account have been returned as undeliverable.
- 6) The October 24, 2015, renewal notice was issued to your address as it appears in your NYSOH account.
- 7) You testified you are married, and have two children.
- 8) You testified you will be filing your 2016 taxes as married filing single.
- 9) You testified that you currently do not live with your spouse.
- 10) You testified that you were the only source of income for your household.

- 11) You testified that you will be claiming your child as a dependent on your 2016 taxes, but that your spouse has claimed both of your children on his taxes for 2015.
- 12) You testified your two children reside with you currently.
- 13) Your application indicates that only one of your children is listed as residing at your current address.
- 14) Your March 2, 2016, application states you have an expected annual income of \$12,480.00, and that your spouse is not expecting income. You testified this was correct.
- 15) The income documentation which was faxed to NYSOH on March 8, 2016, consisted of a letter stating you were the only source of income for your family and that you support your spouse. [REDACTED].
- 16) The income documentation faxed to NYSOH on March 8, 2016, contained paystubs from your employer; a paystub dated 2/11/16 in the amount of \$412.04; a paystub dated 2/18/16 in the amount of \$275.08; a paystub dated 2/25/16 in the amount of \$300.39; and a paystub dated 3/3/16 in the amount of \$336.57. [REDACTED].
- 17) On March 28, 2016, your income documentation was invalidated by a NYSOH representative.
- 18) Your April 12, 2016 does not contain any information regarding your spouse.
- 19) Your application states that you live in Kings County.

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

Applicable Law and Regulations

Annual Eligibility Redetermination

Generally, NYSOH must conduct annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, such as tax credits and cost-sharing reductions, Medicaid, or Child Health Plus. In such cases, NYSOH is required to request that the qualified individual provide updated income and family size information

for use in an eligibility redetermination for the upcoming year (see 45 CFR § 155.335(a) and (b)).

NYSOH must send an annual renewal notice that contains the information by which NYSOH will use to redetermine a qualified individual's projected eligibility for that year (45 CFR § 155.335(c)(3)). If a qualified individual does not respond to the notice after a 30-day period, NYSOH must redetermine that individual's eligibility using the information and projected eligibility provided in the annual renewal notice (45 CFR § 155.335(g), (h)). NYSOH must ensure this redetermination is effective on the first day of the coverage year or in accordance with the rules specified in 45 CFR § 155.330(f) regarding effective dates, whichever is later (45 CFR § 155.335(i)). The rules specified in 45 CFR § 155.330(f) are not pertinent here.

Redetermination During a Benefit Year

When an eligibility redetermination results in a change in the amount of APTC for a part of the benefit year, NYSOH must recalculate the amount of APTC in such a manner as to account for any advance payments already made (or not 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 the overall benefit year (45 CFR § 155.330(g)).

Any change resulting from redeterminations during a benefit year should be made effective the first day of the month following the date of the notice of redetermination, except that redeterminations resulting from changes made after a date specified by the state, which can be no earlier than the 15th of the month, may not be made effective until the first day of the month after the month following the date of the notice of redetermination. (45 CFR § 155.330(f)(1) and (2)). New York has specified that changes made after the 15th of a given month will take effect the month after the following month.

End of Tax Year Reconciliation

At the end of a tax year, a person who elects to take APTC to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to NYSOH and their actual gross income for that year. A person who received less tax credit than her maximum entitlement, based on gross income, may receive an income tax refund, or owe less in taxes. A person who received more tax credit than his maximum entitlement, based on gross income, will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

Essential Plan

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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 that is at or below 150% of the FPL has a \$0.00 premium contribution (New York's Basic Health Plan Blueprint, p. 21, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

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)).

Medicaid

Medicaid can be provided through NYSOH to adults who: (1) are age 19 or older and under age 65, (2) are not pregnant, (3) are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act, (4) are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part, and (5) have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)), NY Social Services Law § 366(1)(b)).

In an analysis of Medicaid eligibility, the determination is based on the FPL "for the applicable budget period used to determine an individual's eligibility" (42 CFR § 435.4). On the date of your application, that was the 2015 FPL, which is

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\$20,090.00 for a three-person household, and \$11,770.00 for a one-person household (80 Fed. Reg. 3236, 3237).

A child who is at least one year of age but younger than nineteen is eligible for Medicaid if he or she meets the non-financial criteria and has a household modified adjusted gross income that falls at or below 154% of the FPL for the applicable family size (42 CFR § 435.118(c); New York Department of Social Services Administrative Directive 13ADM-03).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

Household Composition

Generally, a child who is claimed as a tax dependent by their custodial parent has the same household size as the parent that is claiming them (42 CFR § 435.603(f)(2)).

In the case where a child is claimed by a non-custodial parent, the child's family includes the following persons, if living with the child: (1) the child's parents, (2) the child's spouse, (3) the child's children and siblings under the age of 19, or 21 if a full-time student (42 CFR § 435.603(f)(2)(iii)).

Verification Process

For all individuals whose income is needed to calculate the household's eligibility, NYSOH must request data that will allow NYSOH to verify the household's income (45 CFR §155.320(c)(1)(i), 42 CFR § 435.945).

If NYSOH cannot verify the income information required to determine eligibility they must attempt to resolve the inconsistency including giving the applicant the opportunity to submit satisfactory documentary evidence (45 CFR §155.315(f) 42 CFR § 435.952).

Timely Notice of Medicaid Eligibility

When an individual applies for insurance through NYSOH, NYSOH must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 CFR § 435.1200(b)(3)(iii)).

To assess whether an eligibility determination was untimely, NYSOH must base the time period from the date of application to the date NYSOH notifies the applicant of its decision (45 CFR § 155.310(e)(2)). However, if the applicant submits an incomplete application or there is not sufficient information for

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NYSOH to make an eligibility determination, then NYSOH must notify that applicant that more information is needed to complete the application (45 CFR § 155.310(k)(1)).

NYSOH must provide Medicaid applicants notice of their eligibility determination within 45 days from the date of the application (42 CFR § 435.912).

Legal Analysis

The first issue under review is whether NYSOH properly determined that you were enrolled in a full pay qualified health plan, and not the Essential Plan, effective January 1, 2016

NYSOH must redetermine a qualified individual's eligibility for health insurance and financial assistance to help pay for that health insurance annually. NYSOH must issue a renewal notice that contains the individual's projected eligibility. If an individual does not respond to this notice, NYSOH must issue an eligibility determination for the upcoming coverage year based on the information contained in the renewal notice.

On October 24, 2015, NYSOH issued an annual renewal notice in your case. That notice stated that based on information from federal and state sources, NYSOH could not make a decision about whether or not you would qualify for financial help with paying for your health coverage. You were asked to update the information in your account by December 15, 2015, or the financial help you were receiving might end.

Because there was no timely response to this notice, your eligibility for financial assistance was terminated effective December 31, 2015. You were then enrolled in a full cost qualified health plan effective January 1, 2016.

You testified that you did not receive any notice from NYSOH telling you that you needed to update the information in your NYSOH account. You testified, and your NYSOH account confirms, that you elected to receive notifications by regular mail. You explained that in years prior you had not been receiving notices as part of your address was spelled wrong, specifically the word "Manhattan." This is not the case for the October 24, 2015, renewal notice.

However, there is no evidence in the record that any of the notices that were sent to your mailing address were returned as undeliverable during the time period in question. Furthermore, the renewal notice issued on October 24, 2015, had your correct and accurate address as confirmed by you and your NYSOH account.

Therefore, the record reflects that NYSOH properly notified you of your annual renewal and that information in your NYSOH account needed to be updated in

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order to ensure your enrollment in your health plan and eligibility for financial assistance would continue.

The record indicates, that you updated your NYSOH application on March 8, 2016 but a determination was unable to be made until you submitted additional income documentation. On April 12, 2016 NYSOH received your updated application and a determination was made that you were eligible to enroll in the Essential Plan. That day, you selected an Essential Plan and the start date of that Essential Plan was May 1, 2016.

The date on which enrollment in an Essential 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 the fifteenth day of a month goes into effect on the first day of the following month. A plan that is selected from the sixteenth day of the month to the end of the month goes into effect on the first day of the second following month.

On April 12, 2016, you selected an Essential Plan, so your enrollment properly took effect on the first day of the first month following April; that is, on May 1, 2016.

Therefore, the December 21, 2015, eligibility determination stating that you were not eligible for financial assistance is AFFIRMED and the March 29, 2016 enrollment confirmation notice stating that your enrollment in the Essential Plan was effective May 1, 2016, is correct and must be AFFIRMED.

The second issue under review is whether NYSOH provided a timely notice of eligibility determination for your child.

For all individuals whose income is needed to calculate the household's eligibility, NYSOH must request data that will allow NYSOH to verify the household's income.

If NYSOH cannot verify the income information required to determine eligibility they must attempt to resolve the inconsistency including giving the applicant the opportunity to submit satisfactory documentary evidence.

You updated your NYSOH account on March 2, 2016. At that time, you, your spouse, and your child were listed as members of your household. The income amount that was entered into this application did not match federal and state data sources for the purposes of determining your child's eligibility. As a result, NYSOH asked that you submit additional documentation to confirm your income.

You submitted income documentation on March 8, 2016 consisting of a letter stating you were the only source of income for your family and that you support

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your spouse. The income documentation also contained paystubs from your employer; a paystub dated 2/11/16 in the amount of \$412.04; a paystub dated 2/18/16 in the amount of \$275.08; a paystub dated 2/25/16 in the amount of \$300.39; and a paystub dated 3/3/16 in the amount of \$336.57.

On March 28, 2016, your income documentation was invalidated by a NYSOH representative because four consecutive paystubs were not received.

The record indicates that you did in fact submit four consecutive paystubs and your child's eligibility could have been determined based on the income information provided.

However, during the hearing you testified that you in fact have two children residing with you and that you will be claiming one of your children as a dependent on your 2016 taxes, but that your spouse has claimed both of your children on his taxes for 2015. This information is not contained in your March 2016 applications for health insurance, therefore NYSOH did not have a complete application.

Further, on April 12, 2016 the information in your account was again updated and your spouse was deleted from the application. On April 13, 2016, NYSOH issued a notice stating that you needed to submit additional documentation in order for your child's eligibility to be determined and you were asked to provide income documentation for your household by April 28, 2016.

The record indicates that no other documentation or updates were provided in your account before April 28, 2016. Therefore, your application was incomplete for the purposes of determining your child's eligibility.

Therefore, NYSOH did not fail to issue a timely notice of eligibility determination because you failed to submit a completed application.

Since your child has been without coverage through NYSOH we will RETURN your case to NYSOH to assist you in updating your application with the correct household size information regarding the living situation of your two children as well as to assist you with the submission of any additional income documentation that may be needed.

Decision

The December 21, 2015, eligibility determination is AFFIRMED.

The April 13, 2016 enrollment confirmation notice is AFFIRMED.

Your case is RETURNED to NYSOH to assist you in updating your application with the correct household size information regarding the living situation of your two children as well as to assist you with the submission of any additional income documentation that may be needed.

Effective Date of this Decision: November 22, 2016

How this Decision Affects Your Eligibility

You are not eligible for advance payments of the premium tax credit effective December 31, 2015.

You were eligible for the Essential Plan effective May 1, 2016. This decision has no effect on subsequent determinations made by NYSOH, and does not change your current enrollment.

Your case is being sent back to NYSOH to assist you in updating your application for your child.

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):

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- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
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- By fax: 1-855-900-5557

Summary

The December 21, 2015, eligibility determination is **AFFIRMED**.

The April 13, 2016 enrollment confirmation notice is **AFFIRMED**.

You are not eligible for advance payments of the premium tax credit effective December 31, 2015.

You were eligible for the Essential Plan effective May 1, 2016. This decision has no effect on subsequent determinations made by NYSOH, and does not change your current enrollment.

Your case is **RETURNED** to NYSOH to assist you in updating your application with the correct household size information regarding the living situation of your two children as well as to assist you with the submission of any additional income documentation that may be needed.

Your case is being sent back to NYSOH to assist you in updating your application for your 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:

