

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

Notice of Decision

Decision Date: January 13, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009735

[REDACTED]

[REDACTED]

On November 21, 2016, you appeared at a telephone hearing on your appeal of the May 15, 2016 eligibility redetermination 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 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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Decision

Decision Date: January 13, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000009735

[REDACTED]

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 you were eligible to enroll in a qualified health plan at full cost, effective June 1, 2016?

Procedural History

On May 14, 2016, NYSOH received your updated application for financial assistance in securing health insurance coverage through its Marketplace.

On May 15, 2016, NYSOH issued a notice of eligibility redetermination stating that you were eligible to purchase a qualified health plan (QHP) at full cost, effective June 1, 2016, and may qualify to select a health plan outside of the open enrollment period for 2016. You were instructed to sign into your NYSOH account and answer questions about the Special Enrollment Period.

On May 19, 2016, you spoke to NYSOH's Account Review Unit and appealed the eligibility determination insofar as you felt purchasing a QHP at full cost was unaffordable.

On June 9, 2016, NYSOH issued a notice that stated the documents you submitted as proof of income did not match what it had obtained from Federal and State data sources and your reported income. The notice further stated that, in order for your eligibility to be redetermined, you must submit income documentation for your household by June 24, 2016 to confirm that the information you provided in your application was accurate.

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On August 5, 2016, NYSOH issued another eligibility redetermination notice that stated you were eligible to purchase a QHP at full cost, effective September 1, 2016, and needed to access your NYSOH account and answer questions to see if you qualified for a Special Enrollment Period.

On November 21, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open up to December 6, 2016 to afford you the opportunity to submit supporting documentation.

As of December 6, 2016, no supporting documentation was received by the Appeals Unit and none were viewable in your NYSOH account such that the record was closed at the end of the business day. This Decision is based on the record as developed at the time of the hearing.

Findings of Fact

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

- 1) According to your NYSOH account, you initially applied for financial assistance and health insurance through NYSOH on December 16, 2015.
- 2) According to the preliminary eligibility determination of that date, your eligibility could not be determined because the information you provided did not match what NYSOH obtained from Federal and State data sources.
- 3) You did not appeal this preliminary eligibility determination.
- 4) You testified that you did not file an income tax return in 2015 because your only source of income was Supplemental Security Income (SSI) and you were not required to file.
- 5) According to your testimony and a letter you authored, dated January 4, 2016, you had Medicaid through New York City Human Resources Administration since 2008. You testified that you were cut off without notice as of July 31, 2015.
- 6) You submitted an updated application to NYSOH for financial assistance on May 14, 2016.
- 7) According to your NYSOH application and your testimony, you listed a household income of \$16,000.00 at that time. You testified that this amount was correct then, but you expect to make more than that amount but less than \$20,000.00 in 2016 from rental income.

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- 8) According to your NYSOH account and your testimony, you are single and have no dependents. You will file your 2016 federal income taxes using the filing status of Single.
- 9) You testified that your SSI benefits ended in June 2015 and you submitted to NYSOH proof to this effect on December 30, 2015, via facsimile (see Document [REDACTED]). The notice stated that your SSI payment would be lowered from \$733.00 to \$0.00 beginning in June 2015, because you “have countable resources worth more than \$2,000.00” (*id.*).
- 10) You testified that you had purchased rental property in [REDACTED] with inheritance you received and have had tenants renting that property since August 1, 2015.
- 11) According to your NYSOH account, on June 6, 2016, NYSOH uploaded a portion of a four page facsimile sent by you on June 4, 2016 (see Document [REDACTED]). At Page 3 of 4, a portion of your lease at Paragraph 4 showed an annual lease of \$15,000.00 for a twelve month term with rent payable monthly at \$1,250.00.
- 12) You testified that your rental income was \$1,250.00 per month from January 1, 2016 through August 31, 2016, or \$10,000.00 annually, and as of September 1, 2016 increased to \$1,375.00 per month, or \$5,500.00 annually.
- 13) You further testified that you have no other sources of income except that you sold personal items in 2016 for approximately \$1,000.00.
- 14) You testified that you need financial assistance through NYSOH in order to afford health insurance, which you need for prescription medication and medical care and treatment that you are currently going without.
- 15) You also testified that you are concerned about being exposed to an IRS tax penalty for not having health insurance in 2016.

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

Applicable Law and Regulations

Redetermination During a Benefit Year

When a redetermination is issued as a result of a change in an applicant's information, NYSOH must generally make that redetermination effective on the

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first day of the month following the date NYSOH is notified of the change (45 CFR § 155.330 (f)(1)(ii)). However, NYSOH may determine that its policy will be that any change made after the 15th of any month will not be effective until the first of the second following month (45 CFR § 155.330(f)(2)).

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)).

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 May 14, 2016 application, that was the 2016 FPL, which is \$11,880.00 for a one-person household (81 Fed. Reg. 4036.).

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).

An individual is eligible for fee-for-service Medicaid effective on the first day of the month if an individual was eligible any time during that month (42 CFR § 435.915(b), Medicaid Eligibility Changes under the Affordable Care Act (ACA) of 2010,13ADM-03(III)(F)).

Medicaid Managed Care plan enrollments received on or before the fifteenth day of the month are effective the first day of the following month. Enrollments received after the fifteenth day of the month are effective the first day of the second following month (Medicaid Managed Care Model Contract (Appendix H-6(b)(ii) & (iii), effective 3/1/2014 – 2/28/2019; see 42 USC § 1315; § 364-j(1)(c); 18 NYCRR § 360-10.3(h), Medicaid Eligibility Changes under the Affordable Care Act (ACA) of 2010,13ADM-03(III)(F)).

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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).

If the applicant submits an incomplete application or there is not sufficient information for 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)).

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 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

Initially, at the hearing you expressed concern that your December 15, 2015 application was not timely acted upon by NYSOH. Your NYSOH account demonstrates that NYSOH could not determine your eligibility at that time because the information you provided did not match what it had obtained from Federal and State data sources. The record reflects that your first appeal was filed on May 19, 2016.

Individual applicants and enrollees must request a hearing within sixty (60) days of the date of their notice of eligibility determination by NYSOH (45 CFR § 155.520(b)(2); 18 NYCRR § 358-3.5(b)(1)).

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For an appeal to have been valid on the issue of NYSOH not being able to determine your eligibility for financial assistance as of your December 15, 2015 application, a complaint and/or an appeal should have been filed by February 13, 2016. According to the credible evidence in the record, you did not contact NYSOH until May 19, 2016 to file a formal appeal and no formal complaint was filed before then. Since May 19, 2016 is well beyond 60 days from the December 15, 2015 preliminary eligibility determination, there has been no valid timely appeal and your request to review this issue must be DISMISSED.

The issue under review turns to whether NYSOH properly determine that you were eligible to purchase a QHP at full cost as of June 1, 2016 and then again as of September 1, 2016.

The record shows that, on May 14, 2016, you updated the information in your NYSOH account and NYSOH issued an eligibility redetermination notice that stated you were eligible to purchase a QHP at full cost, effective June 1, 2016, based on the available information regarding your income. You appealed this determination on May 19, 2016.

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.

Therefore, NYSOH's May 15, 2016 eligibility determination notice is AFFIRMED because it properly began your eligibility to purchase a QHP at full cost on June 1, 2016.

Thereafter, on June 6, 2016, you submitted proof of rental income and had previously submitted proof on December 30, 2015 that your SSI benefits ended in June 2015. Therefore, it is reasonable to conclude that your application was complete as of June 6, 2016, with income from rental income that would equal \$15,000.00 annually at that time.

However, NYSOH issued a notice on June 9, 2016 that stated the information you provided did not match what it had obtained from Federal and State data sources. The notice further stated that, in order for your eligibility to be redetermined, you must submit income documentation for your household by June 24, 2016 to confirm that the information you provided in your application was accurate. No further documentation was provided by that deadline.

Your eligibility for financial assistance was next redetermined on August 4, 2016 and an eligibility redetermination notice was issued on August 5, 2016.

To assess whether an eligibility determination was untimely, NYSOH must base the time period from the date of the completed application to the date NYSOH

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notifies the applicant of its decision. Here, it has been concluded that your application as complete by June 6, 2016, but NYSOH next issued an eligibility redetermination notice on August 5, 2016, which was 59 days later and more than 45 days as permitted by law. For this reason, NYSOH's eligibility redetermination was not timely and is RESCINDED.

You also credibly testified at the hearing that you did not file an income tax return in 2015 because your only source of income was SSI benefits and you were not required to file. You further credibly testified that you have no other sources of income in 2016 other than rental income totaling \$10,000.00 and \$5,500.00, except for \$1,000.00 you received for selling personal items. Since the evidence demonstrates that your income for 2016 totals \$16,500.00, your case is returned to NYSOH to redetermine your eligibility for financial assistance as of June 6, 2016 for an individual in a one-person household, residing in New York County, with a projected annual income of \$16,500.00 and a monthly income of \$1,375.00, and, at your option, afford you the opportunity to enroll in health insurance as of July 1, 2016.

Alternatively, it appears that your income in 2017 will be based on rental income that will be at least \$1,375.00 monthly or \$16,500.00 annually as projected at present. At your option, NYSOH will redetermine your eligibility for health insurance in 2017 for an individual in a one-person household, residing in New York County, with a projected annual income of \$16,500.00 and a current monthly income of \$1,375.00. You will be required to submit a copy of the complete and current lease agreement for your [REDACTED] rental property in order for NYSOH to do so.

NYSOH will contact you to discuss both options and, once you have selected an option, will redetermine your eligibility for financial assistance accordingly and notify you of your eligibility for financial assistance.

You also contended at the hearing that your Medicaid coverage ended through New York County HRA, effective July 31, 2015 without notice. Please note that NYSOH Appeals Unit does not have jurisdiction over such matters. You can obtain information as to the fair hearing process in this regard at [otda.ny.gov/Programs & Services](http://otda.ny.gov/Programs%20and%20Services).

Lastly, you express concern during the hearing that you may be exposed to an IRS tax penalty for not having health insurance coverage for the requisite number of months in 2016.

Sometimes after an appeal decision, an appellant can claim an exemption from the requirement to have health insurance. You might qualify for a health coverage exemption in 2016 if you didn't have health coverage while you were waiting for an appeal decision about coverage eligibility or savings *and* your appeal was eventually successful (*emphasis added*).

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You must claim this exemption through the United States Department of Health and Human Services (HHS). Currently, NYSOH does not accept hardship exemption applications.

You will find the information you need to claim the exemption due to an appeal decision at <https://www.healthcare.gov/exemptions-tool/#/results/2016/details/eligible-based-on-appeal>. You can also call 1-800-318-2596.

Important: If you do not get a response from HHS to your exemption application in time to file your tax return, write the word “pending” in column “c” and file your return. If HHS does not approve your exemption, you will need to file an amended return later.

Decision

Your request to appeal NYSOH's December 15, 2015 preliminary determination is untimely and, therefore, must be DISMISSED.

The May 15, 2016 eligibility redetermination notice is AFFIRMED.

The August 5, 2016 eligibility redetermination notice was untimely and is RESCINDED.

Your case is RETURNED to redetermine your eligibility for financial assistance based on an individual in a one-person household, residing in New York County, as follows and at your option:

- 1) As of July 1, 2016, using a projected annual income of \$16,500.00 and a monthly income of \$1,375.00, and, at your option, to afford you the opportunity to enroll in health insurance as of July 1, 2016; or,
- 2) As of January 2017, using a projected annual income of \$16,500.00 and a current monthly income of \$1,375.00. You will be required to submit a copy of the complete and current lease agreement for your [REDACTED] rental property in order for NYSOH to do so.

NYSOH will contact you to discuss both options and, once you have selected an option, will redetermine your eligibility for financial assistance and notify you accordingly.

Effective Date of this Decision: January 13, 2017

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How this Decision Affects Your Eligibility

Your request to have the December 15, 2015 preliminary eligibility determination made by NYSOH reviewed on appeal is untimely and must be **DISMISSED**.

The May 14, 2016 eligibility redetermination finding you eligible to purchase a QHP at full cost, effective June 1, 2016, was correct when made based on the information available in your NYSOH account at that time and, therefore, is **AFFIRMED**.

By this Decision, your application is deemed complete as of June 6, 2016.

The August 5, 2016 eligibility redetermination notice was untimely and is being **RESCINDED**.

Your case is being sent back to NYSOH to contact you for you to decide which option you would like to pursue, to redetermine your eligibility based on the pertinent information at the time of your June 6, 2016 completed application or as of January 2017, to notify you of its redetermination, and assist you in enrolling in health insurance.

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 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 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.

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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

Your request to appeal NYSOH's December 15, 2015 preliminary determination is untimely and, therefore, must be **DISMISSED**.

The May 15, 2016 eligibility redetermination notice is **AFFIRMED**.

The August 5, 2016 eligibility redetermination notice was untimely and is **RESCINDED**.

Your case is **RETURNED** to redetermine your eligibility for financial assistance based on an individual in a one-person household, residing in New York County, as follows and at your option:

- 3) As of July 1, 2016, using a projected annual income of \$16,500.00 and a monthly income of \$1,375.00, and, at your option, to afford you the opportunity to enroll in health insurance as of July 1, 2016; or,
- 4) As of January 2017, using a projected annual income of \$16,500.00 and a current monthly income of \$1,375.00. You will be required to submit a copy of the complete and current lease agreement for your [REDACTED] rental property in order for NYSOH to do so.

NYSOH will contact you to discuss both options and, once you have selected an option, will redetermine your eligibility for financial assistance and notify you accordingly.

Your request to have the December 15, 2015 preliminary eligibility determination made by NYSOH reviewed on appeal is untimely and must be **DISMISSED**.

The May 14, 2016 eligibility redetermination finding you eligible to purchase a QHP at full cost, effective June 1, 2016, was correct when made based on the

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information available in your NYSOH account at that time and, therefore, is AFFIRMED.

By this Decision, your application is deemed complete as of June 6, 2016.

The August 5, 2016 eligibility redetermination notice was untimely and is being RESCINDED.

Your case is being sent back to NYSOH to contact you for you to decide which option you would like to pursue, to redetermine your eligibility based on the pertinent information at the time of your June 6, 2016 completed application or as of January 2017, to notify you of its redetermination, and assist you in enrolling in health insurance.

Legal Authority

We are issuing this determination in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:

