



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

Notice of Decision

Decision Date: February 10, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000011143

[REDACTED]

Dear [REDACTED],

On December 12, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's July 28, 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 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
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Decision

Decision Date: February 10, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000011143

[REDACTED]

Issues

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

Did NYSOH properly determine that you were eligible to purchase a qualified health plan (QHP) at full cost through NYSOH, effective September 1, 2016?

Did NY State of Health properly determine that your children were eligible to enroll in a full-price Child Health Plus (CHP) or Child-Only qualified health plan, effective September 1, 2016?

Procedural History

On February 5, 2016, NY State of Health (NYSOH) received your completed financial assistance application for health insurance for your family.

On February 6, 2016 and February 18, 2016, NYSOH issued notices stating that your application had been reviewed and that you and your children may be eligible for health insurance but more information was needed in order to make a determination. You were requested to provide income documentation for your household by February 21, 2016 and March 4, 2016, respectively.

On February 22, 2016, NYSOH issued a notice acknowledging that you had submitted documentation but it was insufficient to resolve the request. Additional information was required to confirm your eligibility and you were asked to review the attachment to identify what types of documents could be used to confirm your income. There was no due date listed for submission of these documents.

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On March 10, 2016, NYSOH issued a notice stating that your application had been reviewed and that you and your children may be eligible for health insurance but more information was needed to order to make a determination. You were asked to provide income documentation for your household by March 25, 2016.

On April 21, 2016, NYSOH issued an eligibility redetermination notice, based on your April 20, 2016 updated application, that stated you were eligible for a limited time to enroll in the Essential Plan at \$20.00 per month, effective June 1, 2016; and your children were eligible for a limited time to enroll in CHP, for a \$9.00 monthly premium each, effective June 1, 2016. You were asked to confirm your income by July 19, 2016 for your Essential Plan eligibility and your children's eligibility for their CHP plan.

Also on April 21, 2016, NYSOH issued an enrollment notice, confirming that you had enrolled in Essential Plan 1 issued by Fidelis Care, with coverage beginning June 1, 2016 at a premium rate of \$20.00 per month. The notice also confirmed that your children were enrolled in a Child Health Plus plan issued by Fidelis Care for a \$18.00 month premium with a plan enrollment start date of June 1, 2016.

On July 13, 2016, NYSOH issued a notice stating that the documentation you submitted did not confirm the information in your application. Additional information was required to confirm your eligibility and you were asked to review the attached list of documents that could be used to confirm your income. You were also asked to provide income documentation to confirm your Essential Plan eligibility by August 3, 2016, and your children's CHP eligibility by July 19, 2016.

On July 28, 2016, NYSOH issued an eligibility redetermination notice that stated you were newly eligible to purchase a QHP at full cost through NYSOH, effective September 1, 2016. The notice also stated you were eligible to select a health plan outside of the open enrollment period for 2016. You were asked make your health plan selection no later than September 25, 2016. The notice also stated that your children were eligible to enroll in a full cost CHP plan, effective September 1, 2016.

Also on July 28, 2016, NYSOH issued a disenrollment notice that stated your coverage in your Essential Plan 1 with Fidelis Care would end effective August 31, 2016. That notice further stated that your children's coverage in their CHP plan with Fidelis would end effective August 31, 2016.

Also on July 28, 2016, NYSOH issued an enrollment notice confirming that your children were enrolled in CHP plan with Fidelis Care effective September 1, 2016 with a \$370.70 monthly premium. The notice further stated that you needed to pick a QHP.

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On July 29, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of the July 28, 2016 eligibility determination and enrollment notices.

On December 12, 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 head of household. You will claim two dependents on that tax return.
- 2) You are seeking insurance for yourself and your two children.
- 3) In the application for health insurance submitted on February 5, 2016, you attested to an annual household income of \$23,920.00. You testified that that was accurate at the time because you had not worked for one of your per diem agencies in several months.
- 4) The application that was submitted on April 20, 2016, listed annual household income of \$40,000.00, consisting of income you earn from your employment with two different agencies as a per diem health care provider. You testified that the hours you work for these two agencies varies and is not consistent. You testified that your actual income for 2016 will probably be around \$47,000.00.
- 5) Your application states that you will not be taking any deductions on your 2016 tax return.
- 6) Your application states that you and your children live in Queens County, New York.
- 7) On February 9, 2016, you submitted bi-weekly pay stubs dated 1/15/2016 with gross pay of \$20.00 and 1/29/2016 with gross pay of \$900.00 from one agency. You also stated in your submission that you work per diem for another agency but have not worked for them recently.
- 8) On February 22, 2016, NYSOH issued a letter stating they had reviewed the documents you submitted but they did not resolve the inconsistency with federal and state data source information. You were requested to provide additional proof of income.

- 9) On February 29, 2016, you submitted a letter from the one agency stating you were per diem, worked on an “as needed” basis and last worked for them for the week ending 12/26/2015.
- 10) On March 2, 2016, you submitted two bi-weekly pay stubs. The first was dated 2/12/2016 with gross pay of \$960.00; and the second was dated 2/26/2016 with gross pay of \$376.00.
- 11) According to your NYSOH account, these documents were verified on March 9, 2016 and your application income was changed from \$23,488.00 to \$17,368.00 based on the system income calculator.
- 12) On March 10, 2016, an eligibility determination notice was issued based on the updated March 9, 2016 application stating that the income information did not match state and federal data sources and that you were required to submit additional proof of income by March 25, 2016.
- 13) According to your NYSOH account, on April 20, 2016, your application was updated with the assistance of an application counselor and your expected yearly income was changed to \$40,000.00.
- 14) On April 21, 2016, NYSOH issued an eligibility redetermination based on the updated April 20, 2016 application, that stated you were eligible to enroll for a limited time in the Essential Plan and your children were eligible to enroll for a limited time in a CHP plan. You were requested to provide proof of income by July 19, 2016.
- 15) On July 7, 2016 you uploaded to your NYSOH account the following pay stubs:
 - a. [REDACTED]; pay date 6/15/2016 - \$1,080.00, Gross pay Year to Date: \$7,530.00.
 - b. [REDACTED]; pay date 6/22/2016 - \$1,080.00, Gross pay Year to Date: \$8,610.00.
 - c. [REDACTED]; bi-weekly pay date 6/17/2016 - \$1,482.00, Gross pay Year to Date: \$10,535.00.
 - d. [REDACTED]; bi-weekly pay date 7/01/2016 - \$1,316.00, gross Pay Year to Date; \$11,851.00.
- 16) On July 13, 2016, NYSOH issued a notice stating the documentation you submitted had been reviewed but it did not confirm the information in your application. You were requested to submit acceptable proof of income by August 3, 2016. That same notice stated that you needed to submit proof of income in regards to your children’s CHP eligibility by July 19, 2016.

- 17) According to your NYSOH account, on July 27, 2016, based on the submitted pay stubs, NYSOH's system recalculated your yearly expected income from Good Samaritan to \$35,574.11 and updated your expected income from Total HealthCare to \$51,480.00 for a combined income of \$87,054.11.
- 18) According to your NYSOH account, the eligibility redetermination that was issued on July 28, 2016 that found you eligible for a full cost QHP and your children eligible for a full cost CHP plan, effective September 1, 2016, was based on this system-calculated yearly income of \$87,054.11.
- 19) On August 18, 2016, you uploaded a copy of your 2015 Form 1040 U.S. Individual Income Tax Return, signed and dated "04-02-2016." That return showed an adjusted gross income of \$47,956.00. You testified that your 2016 income would be comparable to this amount.
- 20) You testified that you do not have any outstanding medical bills.
- 21) You testified that you and one of your son's do have a chronic medical condition and need medication.
- 22) You testified that since being found eligible for full cost health insurance, you have been unable to afford insurance. You testified that you and your children have not had health insurance since August 31, 2016.
- 23) You testified that you are concerned you will be penalized by the IRS because you and your children did not have health insurance for several months during 2016.

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

Applicable Law and Regulations

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)). 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)).

Essential Plan

The Marketplace must determine an applicant eligible for the Essential 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 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 under the age of 64, (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), N.Y. Soc. Serv. Law § 369.9g(3)).

In an analysis of Essential Plan eligibility, the determination is based on the FPL for 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 \$20,090.00 for a three-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, as approved January 2016).

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, thus a person who is eligible for the Essential Plan is not eligible for an advance 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 § 5000(f)(C)).

Advance Payments of Premium Tax Credit

Advance payments of the premium tax credit (APTC) are generally available to a person who is eligible to enroll in a qualified health plan (QHP) and (1) expects to have a household income between 138% and 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 requirements to enroll in a QHP, 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)).

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 2016 is set by federal law at 2.03% to 9.66% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc. 2014-37).

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 2015 FPL, which is \$20,090.00 for a three-person household (80 Federal Register 3236, 3237).

For annual household income in the range of at least 200% but less than 250% of the 2016 FPL, the expected contribution is between 6.41% and 8.18% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37).

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).

Child Health Plus

A child who meets the eligibility requirements for Child Health Plus (CHP) may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the federal poverty level (FPL) (New York Public Health Law (PHL) § 2511(2)(a)(iii)). To be eligible to enroll in CHP with subsidy payments, a child must not be "eligible for medical assistance"; that is, must not be eligible for Medicaid (NY Public Health Law § 2511(2)(b)).

CHP is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see NY Public Health Law § 2510 et seq).

and 42 USC § 1397(a)). Eligibility rules are set out in NY Public Health Law § 2511(2), as well as in the NYSDOH 2008-2012 Contract and Plan Manual.

The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in CHP depends upon the child's family household income (PHL § 2510(9)(d)). No payments are required for eligible children whose family household income is less than 160% of the FPL. If the family household income is 160% or higher, premiums range from \$9.00 per month to \$60.00 per month (PHL § 2510(9)(d)).

The CHP premium is \$9.00 per month for a child whose family household income is between 160% and 222% of the FPL (PHL § 2510(9)(d)(ii)).

The CHP premium is \$15.00 per month for a child whose family household income is between 223% and 250% of the FPL (PHL § 2510(9)(d)(iii)).

The CHP premium is \$30.00 per month for a child whose family household income is between 251% and 300% of the FPL (PHL § 2510(9)(d)(iv)).

The CHP premium is \$45.00 per month for a child whose family household income is between 301% and 350% of the FPL (PHL § 2510(9)(d)(v)).

The CHP premium is \$60.00 per month for a child whose family household income is between 351% and 400% of the FPL (PHL § 2510(9)(d)(vi)).

In an analysis of Child Health Plus 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 was \$20,090 for a three-person household (80 Fed. Reg. 3236, 3237).

Legal Analysis

The issue is whether NYSOH properly determine that you were eligible to purchase a qualified health plan (QHP) at full cost through NYSOH and whether your children were eligible for CHP plan or Child-Only qualified health plan at full cost, effective September 1, 2016.

You testified that you work for two different employers as a per-diem health care provider on an as needed basis. You testified and the record reflects that your income varies month to month.

You expect to file your 2016 federal tax return as head of household and claim two dependents. Therefore, you are in a three-person household for purposes of this analysis.

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).

You and your children reside in Queens County, New York.

Your children were originally found eligible for CHP and enrolled effective June 1, 2016.

The record reflects that your income as of July 1, 2016, as stated on your paystubs, totaled year-to date earnings from both jobs of \$20,461.00 for half of 2016. Therefore, your expected household income of \$40,922.00 was ascertainable at the time you submitted these documents on July 8, 2016.

As of July 27, 2016, you attested to your income being the same as last year in the amount of \$40,000.00, which was comparable to the ascertainable amount from your paystubs.

However, on July 27, 2016, NYSOH based the eligibility redetermination on a system-calculated amount of \$87,054.11. This determination was based on an income amount that was inconsistent with the documentation submitted and listed in your applications, and was done in error.

Ordinarily, as a result of this error, the July 28, 2016 eligibility redetermination notice stating that you were not eligible for financial assistance and were eligible to purchase a QHP at full cost through NYSOH and that your children were eligible for CHP plan at full cost, effective September 1, 2016, was incorrect and would be RESCINDED.

Also, the July 28, 2016 disenrollment notice stating that your coverage in Essential Plan 1 and your children's coverage in their CHP with Fidelis Care would end August 31, 2016 would be RESCINDED.

Similarly, the July 28, 2016 enrollment confirmation notice would be RESCINDED.

In addition, your case would be RETURNED to NYSOH to redetermine your eligibility and your children's eligibility for financial assistance as of July 7, 2016, using a three-person household for a family residing in Queens County, with expected 2016 annual income of \$47,953.00, based on your 2015 federal income tax return and your credible testimony that your income in 2016 would be comparable.

However, you credibly testified that you have not incurred any medical bills and are currently concerned about being exposed to an IRS tax penalty for not having health insurance coverage for yourself and your children 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

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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.

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.

According to your NYSOH account you submitted several updated applications for financial assistance for you and your children after filing this appeal. This decision does not affect those subsequent eligibility decisions.

Decision

Given NYSOH's system income calculation error, ordinarily, the following findings would be made by this decision:

The July 28, 2016 eligibility determination notice would be RESCINDED.

The July 28, 2016 disenrollment notice would be RESCINDED.

The July 28, 2016 enrollment confirmation notice would RESCINDED.

And, your case would be RETURNED to NYSOH to redetermine your eligibility and your children's eligibility for financial assistance as of July 7, 2016, using a three-person household for a family residing in Queens County, with expected 2016 annual income of \$47,953.00.

However, you credibly testified that you have not incurred any medical bills and are currently concerned about being exposed to an IRS tax penalty for not having health insurance coverage for yourself and your children for the requisite number of months in 2016.

This Decision does not affect any subsequent eligibility redeterminations made or enrollments confirmed by NYSOH.

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Effective Date of this Decision: February 10, 2017

How this Decision Affects Your Eligibility

This decision does not affect your or your children's eligibility for financial assistance nor direct any of your re-instatements into health plans as of September 1, 2016.

The decision acknowledges that NYSOH's system erred in recalculating your income on July 27, 2016, which resulted in you and your children losing financial assistance, effective September 1, 2016.

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.

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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NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211

- By fax: 1-855-900-5557

Summary

Given NYSOH's system income calculation error, ordinarily, the following findings would be made by this decision:

The July 28, 2016 eligibility determination notice would be RESCINDED.

The July 28, 2016 disenrollment notice would be RESCINDED.

The July 28, 2016 enrollment confirmation notice would RESCINDED.

And, your case would be RETURNED to NYSOH to redetermine your eligibility and your children's eligibility for financial assistance as of July 7, 2016, using a three-person household for a family residing in Queens County, with expected 2016 annual income of \$47,953.00.

However, you credibly testified that you have not incurred any medical bills and are currently concerned about being exposed to an IRS tax penalty for not having health insurance coverage for yourself and your children for the requisite number of months in 2016.

This Decision does not affect any subsequent eligibility redeterminations made or enrollments confirmed by NYSOH.

This decision does not affect your or your children's eligibility for financial assistance nor direct any of your re-instatements into health plans as of September 1, 2016.

The decision acknowledges that NYSOH's system erred in recalculating your income on July 27, 2016, which resulted in you and your children losing financial assistance, effective September 1, 2016.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

