



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

## Notice of Decision

Decision Date: January 18, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000011207

[REDACTED]

[REDACTED],

On December 29, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's August 2, 2016 and November 10, 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.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

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## Decision

Decision Date: January 18, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000011207

[REDACTED]

## Issues

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

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

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

Did NY State of Health properly determine that you were not eligible for Medicaid as of September 1, 2016?

Did NY State of Health properly determine that you and your son were not eligible for Medicaid as of December 1, 2016?

## Procedural History

On August 1, 2016, NY State of Health (NYSOH) received your updated application for financial assistance. That day, a preliminary eligibility determination was prepared with regard to that application, stating that you were eligible to enroll in the Essential Plan for a limited time, effective September 1, 2016.

Also on August 1, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that preliminary eligibility determination insofar as you were not found eligible for Medicaid.

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On August 2, 2016, NYSOH issued an eligibility determination based on the August 1, 2016 application, stating that you are eligible to enroll in the Essential Plan for a limited time, effective September 1, 2016. That notice stated that you were not eligible for Medicaid because your household income was over the allowable income limit for that program.

On November 10, 2016, you updated your application for financial assistance with health insurance.

On November 11, 2016, NYSOH issued a notice of eligibility determination based on the November 10, 2016 application, stating that you and your son were eligible to enroll in the Essential Plan for a limited time, effective December 1, 2016.

On December 29, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During that hearing, you requested that your son's eligibility also be addressed, because, since the time you originally filed the appeal, your son had been determined eligible for the Essential Plan, and you were requesting that your son be found eligible for Medicaid. The record was developed during the hearing and left open for 14 days to allow you time to submit supporting income documentation. No documentation was received within the allotted time. The record is now closed.

## **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 one dependent on that tax return.
- 2) You are seeking insurance for yourself and your son.
- 3) The application that was submitted on August 1, 2016, which requested financial assistance, listed an annual household income of \$24,634.00, consisting of \$24,634.00 you earn from your employment.
- 4) The application that was submitted on November 10, 2016, listed an annual household income of \$27,311.00, consisting of \$27,311.00 you earn from your employment. You testified that this amount was correct.
- 5) You testified that you are paid on a weekly basis, and that you are paid each Friday. You testified that you are paid \$520.00 per week gross, \$413.00 per week after taxes.

- 6) You testified that your son had no income in 2016 and that he will not file taxes.
- 7) You testified that you will not be taking any deductions on your 2016 tax return.
- 8) You testified that you pay \$684.00 in rent per month, in addition to paying for utilities and living expenses related to your son, and that you receive \$167.00 per month in food stamps.
- 9) You testified that you anticipate your income will decrease in 2017.
- 10) You testified 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**

### Modified Adjusted Gross Income

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” means, in the case of an individual taxpayer, gross federal taxable income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of funds from time savings accounts, deductions attributable to royalties, and certain retirement savings (26 USC § 62(a)). Living expenses, such as rent and utilities are not an allowable deduction in computing adjusted gross income.

### 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

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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 \$15,930.00 for a two-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).

### 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 2016 FPL, which is \$16,020.00 for a two-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).

## **Legal Analysis**

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

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The application that was submitted on August 1, 2016 listed an annual household income of \$24,634.00 and the eligibility determination relied upon that information. During the hearing, you asked that your current expenses, which include rent, utilities and other living expenses, be considered when calculating your annual household income.

Since the Internal Revenue Service rules do not allow living expenses such as rent, utilities, cable and phone to be deducted from the calculation of your adjusted gross income, they cannot be deducted when NYSOH computes your modified adjusted gross income for APTC purposes. Therefore, NYSOH correctly determined your household income to be \$24,634.00.

You are in a two-person household. You expect to file your 2016 income taxes as head of household and will claim one dependent 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 August 1, 2016 application, the relevant FPL was \$15,930.00 for a two-person household. Since an annual household income of \$24,634.00 is 154.64% of the 2015 FPL, NYSOH properly found you to be eligible for the Essential Plan.

The second issue under review is whether NYSOH properly determined that you and your son were eligible for the Essential Plan, effective December 1, 2016.

The application that was submitted on November 10, 2016 listed an annual household income of \$27,311.00 and the eligibility determination relied upon that information. During the hearing, you testified that this amount was correct.

On the date of your November 10, 2016 application, the relevant FPL was \$15,930.00 for a two-person household. Since an annual household income of \$27,311.00 is 171.44% of the 2015 FPL, NYSOH properly found you and your son to be eligible for the Essential Plan.

The third issue is whether NYSOH properly determined that you were not eligible for Medicaid as of September 1, 2016.

Medicaid can be provided through NYSOH to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income that is at or below 138% of the FPL for the applicable family size. On the date of your August 1, 2016 application, the relevant FPL was \$16,020.00 for a two-person household. Since \$24,634.00 is 153.77% of the 2016 FPL, NYSOH properly found you to be ineligible for Medicaid on an

expected annual income basis, using the information provided in your August 1, 2016 application.

However, financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size.

You testified that you were paid a gross pay amount of \$520.00 each Friday. In August 2016, there were four Fridays. Therefore, you received \$2,080.00 in income in August 2016.

To be eligible for Medicaid, you would need to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$1,843.00 per month. Since the testimony you provided shows that you earned \$2,080.00 in August 2016 you do not qualify for Medicaid on the basis of monthly income as of the date of your August 1, 2016 application.

Since the August 2, 2016 eligibility determination properly stated that, based on the information you provided, you were eligible for the Essential Plan, effective September 1, 2016, it was correct and is AFFIRMED.

The fourth issue is whether NYSOH properly determined that you and your son were not eligible for Medicaid as of December 1, 2016.

On the date of your November 10, 2016 application, the relevant FPL was \$16,020.00 for a two-person household. Since \$27,311.00 is 170.48% of the 2016 FPL, NYSOH properly found you and your son to be ineligible for Medicaid on an expected annual income basis, using the information provided in your November 10, 2016 application.

In November 2016 there were four Fridays. Therefore, based on your testimony, you received \$2,080.00 in income in November 2016.

Since the testimony you provided shows that you earned \$2,080.00 in November 2016, which is greater than 138% of the monthly 2016 FPL of \$1,843.00, you and your son do not qualify for Medicaid on the basis of monthly income as of the date of your November 10, 2016 application.

Since the November 11, 2016 eligibility determination properly stated that, based on the information you provided, you and your son were eligible for the Essential Plan, effective December 1, 2016, it was correct and is AFFIRMED.

During the hearing, you testified that your income will decrease in 2017. You will need to contact NYSOH and update your information when your income changes.



## **Decision**

The August 2, 2016 eligibility determination notice is AFFIRMED.

The November 11, 2016 eligibility determination notice is AFFIRMED.

**Effective Date of this Decision:** January 18, 2017

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

You and your son remain eligible for the Essential Plan.

You and your son are not eligible for Medicaid.

During the hearing, you testified that your income will decrease in 2017. You will need to contact NYSOH and update your information when your income changes.

## **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.

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## **If You Have Questions about this Decision (Customer Service Resources):**

You can contact us in any of the following ways:

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- By mail at:  
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- By fax: 1-855-900-5557

## **Summary**

The August 2, 2016 eligibility determination notice is AFFIRMED.

The November 11, 2016 eligibility determination notice is AFFIRMED.

You and your son remain eligible for the Essential Plan.

You and your son are not eligible for Medicaid.

During the hearing, you testified that your income will decrease in 2017. You will need to contact NYSOH and update your information when your income changes.

## **Legal Authority**

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

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

