



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

Notice of Decision

Decision Date: February 21, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012290

[REDACTED]

Dear [REDACTED]

On January 31, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 10, 2016 eligibility determination 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.

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: February 21, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000012290



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 receive up to \$161.00 per month in advance payments of the premium tax credit, effective October 1, 2016?

Did NY State of Health properly determine that you were eligible for cost-sharing reductions?

Did NY State of Health properly determine that you were not eligible for the Essential Plan?

Procedural History

On June 14, 2016, NY State of Health (NYSOH) received your completed application for health insurance.

On June 15, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to enroll in the Essential Plan for a limited time, effective July 1, 2016. This same notice directed you to submit income documentation by September 12, 2016.

On September 2, 2016, income documentation was uploaded to your NYSOH account.

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On September 9, 2016, NYSOH recalculated your household income based on the income documentation you submitted. That same day, an application was submitted on your behalf based on the household income NYSOH recalculated.

On September 10, 2016, NYSOH issued a notice of eligibility redetermination which stated that you were eligible to receive up to \$161.00 per month in advance payments of the premium tax credit (APTC) as well as cost-sharing reductions if you selected a silver level qualified health plan, effective October 1, 2016.

On September 29, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that eligibility determination insofar as you were no longer eligible for the Essential Plan.

On January 31, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and left open for fourteen days to allow you the opportunity to submit income documentation. On February 10, 2017, income documentation was uploaded to your NYSOH account. This submission consisted of five paystubs and your 2016 W-2. These documents were collectively marked as Appellant's Exhibit #1 and incorporated into the record. 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 single. You will claim one dependent on that tax return.
- 2) You are seeking insurance for yourself.
- 3) The application that was submitted on June 14, 2016 listed annual household income of \$26,000.00.
- 4) On September 2, 2016, two paystubs were uploaded to your NYSOH account. The first is for pay date August 11, 2016 for a gross pay amount of \$1,346.16; the second is for pay date August 25, 2016 for a gross pay amount of \$1,346.16.
- 5) Based upon the income documentation you submitted, on September 9, 2016, NYSOH recalculated your income as \$35,000.16.
- 6) On February 10, 2017, five paystubs were uploaded to your NYSOH account. The first is for pay date June 2, 2016 for a gross pay amount of \$1,121.79; the second is for pay date June 16, 2016 for a gross pay

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amount of \$1,121.79; the third is for pay date June 30, 2016 for a gross pay amount of \$1,121.79; the fourth is for pay date September 8, 2016 for a gross pay amount of \$1,534.12; and the fifth is for pay date September 22, 2016 for a gross pay amount of \$1,346.16.

- 7) On February 10, 2017, your 2016 W-2 was uploaded to your NYSOH account. The W-2 indicates that your gross earnings for 2016 were \$34,494.08.
- 8) You testified that you will not be taking any deductions on your 2016 tax return.
- 9) You testified that the only income your dependent receives is \$375.00 per month in child support.
- 10) You testified that you were previously paid biweekly, however, you are now paid on the fifteenth of the month and the final day of the month. You testified that your annual income would remain the same, however you would only receive 24 checks rather than 26 checks.
- 11) You testified that you are salaried. You testified that when you were paid biweekly, you were paid a gross of \$1,346.16 and a net of \$995.00.
- 12) You testified that your net earnings for 2016 were approximately \$26,000.00.
- 13) You testified that you lived in Kings County throughout 2016.
- 14) You testified that you cannot afford to pay the current premiums for health insurance because you are responsible for paying for rent, for child expenses, utility bills, and for food.
- 15) You testified that you are seeking to be found eligible for the Essential Plan.

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

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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.

Generally, payments made for the support of children are not included in the gross income of the parent receiving the payment (26 USC § 71(c)(1)).

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, IRS Rev. Proc. 2014-62).

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 \$15,930.00 for a two-person household (80 Federal Register 3236, 3237).

For annual household income in the range of at least 200% but less than 250% of the 2015 FPL, the expected contribution is between 8.18% and 6.41% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2014-37, IRS Rev. Proc. 2014-62).

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).

Cost-Sharing Reductions

Cost-sharing reductions (CSR) are available to a person who (1) is eligible to enroll in a QHP through NYSOH, (2) meets the requirements to receive APTC, (3) is expected to have an annual household income that does not exceed 250% of the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested, and (4) is enrolled in a silver-level QHP (45 CFR § 155.300(a), 45 CFR § 155.305(g)(1)).

Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable federal poverty level (FPL) or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

In an analysis of Essential Plan eligibility, the determination is based on the FPL in effect on the first day of the benefit year for which coverage is requested (45 CFR § 155.300(a)). On the date of your application, that was the 2015 FPL, which is \$15,930.00 for a two-person household (80 Fed. Reg. 3236, 3237).

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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)).

Legal Analysis

The first issue is whether NYSOH properly determined that you were eligible for an APTC of up to \$161.00 per month.

Based on the income documentation that was uploaded to your NYSOH account on September 2, 2016, NYSOH recalculated your household income to be \$35,000.16. (A gross of \$2,692.32 paid over the course of four weeks, divided by four weeks, for a weekly average of \$673.08, multiplied by 52 weeks, yields an annual household income of \$35,000.16).

On September 9, 2016, NYSOH submitted a new application on your behalf with the annual household income updated to \$35,000.16 to reflect the information contained in the paystubs you submitted.

During the hearing, you asked that your current expenses, which include rent, utilities, food, 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 the Marketplace computes your modified adjusted gross income for APTC purposes. The child support you receive for your son was properly excluded from your income. Therefore, NYSOH correctly determined your household income to be \$35,000.16.

You are in a two-person household. You expect to file your 2016 income taxes as single and will claim one dependent on that tax return.

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You reside in Kings County, where the second lowest cost silver plan available for an individual through NYSOH costs \$368.26 per month.

An annual income of \$35,000.16 is 219.71% of the 2015 FPL for a two-person household. At 219.71% of the FPL, the expected contribution to the cost of the health insurance premium is 7.11% of income, or \$207.31 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through NYSOH for an individual in your county (\$368.36 per month) minus your expected contribution (\$207.31 per month), which equals \$160.95 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined you to be eligible for up to \$161.00 per month in APTC.

The second issue is whether you were properly found eligible for cost-sharing reductions. Cost-sharing reductions are available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$35,000.16 is 219.71% of the applicable FPL, NYSOH correctly found you to be eligible for cost sharing reductions.

The third issue under review is whether NYSOH properly determined that you were ineligible for the Essential Plan, effective October 1, 2016.

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income (MAGI) that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$15,930.00 for a two-person household. Since an annual household income of \$35,000.16 is 219.71% of the 2015 FPL, NYSOH properly found you to be ineligible for the Essential Plan.

Since the September 10, 2016 eligibility determination properly stated that, based on the income documentation you provided, you were eligible for up to \$161.00 per month in APTC, eligible for cost-sharing reductions, and ineligible for the Essential Plan, it is correct and is AFFIRMED.

Following the hearing you produced your 2016 W-2 which indicates a gross income for 2016 of \$34,494.08. As we are now in the 2017 enrollment period, the NYSOH Appeals Unit cannot direct NYSOH to redetermine your eligibility for 2016. If you have used APTC to help pay for health insurance premiums in 2016, you must file a federal tax return. Your APTC, regardless of whether correctly or incorrectly determined by NYSOH, will be reconciled on your 2016 tax return by the IRS.

Decision

The September 10, 2016 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: February 21, 2017

How this Decision Affects Your Eligibility

You remain eligible for up to \$161.00 in APTC.

You are eligible for cost-sharing reductions.

You are ineligible for the Essential Plan.

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

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

Summary

The September 10, 2016 eligibility determination notice is AFFIRMED.

You remain eligible for up to \$161.00 in APTC.

You are eligible for cost-sharing reductions.

You are ineligible for the Essential Plan.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

