



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

## Notice of Decision

Decision Date: February 7, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012519

[REDACTED]

Dear [REDACTED]

On January 26, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's October 14, 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

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NY State of Health Account ID: [REDACTED]  
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## 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 not eligible for advance payments of the premium tax credit or cost-sharing reductions, effective November 1, 2016?

Did NY State of Health properly determine you were ineligible for the Essential Plan effective November 1, 2016?

## Procedural History

On June 16, 2016, NY State of Health (NYSOH) received your household's application for financial assistance.

On June 17, 2016, an eligibility determination notice was issued finding you and your spouse conditionally eligible to enroll in the Essential Plan effective August 1, 2016. You were asked to provide income documentation before September 14, 2016. The determination was based on your household income of \$39,952.32.

On June 21, 2016, an enrollment confirmation notice was issued confirming your enrollment in the Essential Plan with a \$20.00 per month premium effective August 1, 2016.

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On October 7, 2016, you removed your spouse as a household member on your account.

On October 7, 2016, a disenrollment notice was issued terminating you and your spouse's enrollment in the Essential Plan effective October 31, 2016.

On October 13, 2016, NYSOH received your application for health insurance. That day, a preliminary eligibility determination was prepared finding you eligible to purchase a qualified health plan at full cost effective November 1, 2016. The application was based on your attested household income of \$47,408.60.

Also on October 13, 2016, you contacted NYSOH's Account Review Unit and requested an appeal of that preliminary eligibility determination as it related to your ineligibility for financial assistance.

On October 14, 2016, NYSOH issued an eligibility determination notice finding you eligible to purchase a qualified health plan at full cost effective November 1, 2016. It also stated you were not eligible for the Essential Plan because you did not meet the income limits for that program. The notice further stated that you were not eligible for a tax credit because you are married but expect to file taxes separately from your spouse.

On January 26, 2017, 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 will be filing your 2016 income tax return with a tax filing status of married filing separately. You will claim two dependents on that income tax return.
- 2) You testified that you are currently married and that you do currently have separation proceedings before a court. You testified there has been no official decree of divorce issued from a judge. You testified you were told not to expect this documentation for another six months.
- 3) You testified that you last lived with your spouse in November, 2016.
- 4) You testified your annual household income was correct at \$47,408.60 which you provided on your October 13, 2016 application.
- 5) Your application states that you live in Nassau County.

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

## **Applicable Law and Regulations**

### Advance Payments of the Premium Tax Credit

APTC is available to a person who is eligible to enroll in a qualified health plan (QHP) and (1) expects to have a household income between 200% and 400% of the applicable 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)).

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).

Additionally, a tax filer who is married must file a joint return with his or her spouse in order to qualify for APTC (45 CFR §§ 155.305(f), 155.310(d); 26 CFR § 1.36B-2).

However, an individual will be treated as not married at the close of the taxable year if the individual

- 1) Is legally separated from his/her spouse under a decree of divorce or of separate maintenance, or
- 2) Meets all of the following criteria:
  - a. files a separate return from his/her spouse and maintains his/her household as the primary home for a qualifying child;
  - b. pays more than one half of the cost of keeping up his/her home for the tax year; and
  - c. does not have his/her spouse as a member of the household during the last 6 months of the tax year

(26 USC § 7703).

## 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 \$20,090.00 for a three-person household (80 Fed. Reg. 3236, 3237).

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).

## **Legal Analysis**

The first issue is whether NYSOH properly determined that you are not eligible for APTC and cost-sharing reductions.

In the eligibility determination notice issued on October 14, 2016, NYSOH denied an APTC to you because you indicated that you were married but did not plan to file a joint federal income tax return.

To qualify for APTC, a person who is married must either file taxes jointly with his or her spouse or qualify as “not married” at the close of the tax year.

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According to the information in the record and your testimony at the hearing, you are still married to your spouse and have not obtained a decree of divorce. Also, you confirmed that you do not plan to file a joint federal income tax return with your spouse for the 2016 tax year.

There is an exception, as noted above, that allows a tax filer to be treated as “not married” at the close of a taxable year, making the tax filer eligible for APTC. However, the record does not support a finding that you meet the necessary requirements for that exception. Mainly, that you lived apart from your spouse for at least six months out of the year. You testified your spouse last lived with you in November, 2016.

Therefore, NYSOH was correct when it found that you were not eligible for APTC due to your tax filing status.

Cost-sharing reductions are available only to those who meet the requirements for APTC. Since you did not qualify for APTC, NYSOH correctly found that you were not eligible for cost-sharing reductions.

Since NYSOH correctly determined that you are not eligible for APTC or cost-sharing reductions, the October 14, 2016 notice of eligibility determination is AFFIRMED in this respect.

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

The application that was submitted on October 13, 2016 listed an annual household income of \$47,408.60 and the eligibility determination relied upon that information.

You are in a three- person household as you expect to claim your two children as dependents on your 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 application, the relevant FPL was \$20,090.00 for a three-person household. Since an annual household income of \$47,408.60 is 235.98% of the 2015 FPL, NYSOH properly found you to be ineligible for the Essential Plan.

As a result, the October 14, 2016, eligibility determination notice finding you ineligible for the Essential Plan is AFFIRMED. Should your tax filing status change, or your income change for 2017 you may update your application so that NYSOH may redetermine your eligibility.

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).

## **Decision**

The October 14, 2016, eligibility determination notice is AFFIRMED.

**Effective Date of this Decision:** February 7, 2017

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

You remain eligible to purchase a qualified health plan at full cost through New York State of Health.

You remain ineligible for an APTC because you are married but not filing your 2016 federal income tax return jointly.

You remain ineligible for cost-sharing reductions because you are not eligible for an advance premium tax credit.

You remain ineligible for the Essential Plan as a result of your household income.

## **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:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:  
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Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The October 14, 2016, eligibility determination notice is **AFFIRMED**.

You remain eligible to purchase a qualified health plan at full cost through New York State of Health.

You remain ineligible for an APTC because you are married but not filing your 2016 federal income tax return jointly.

You remain ineligible for cost-sharing reductions because you are not eligible for an advance premium tax credit.

You remain ineligible for the Essential Plan as a result of your household income.

## **Legal Authority**

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

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

