



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

## Notice of Decision

Decision Date: March 23, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012947

[REDACTED]

Dear [REDACTED]

On February 1, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's October 28, 2016 disenrollment notice, and October 29, 2016 eligibility determination and enrollment confirmation 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 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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## Decision

Decision Date: March 23, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000012947

[REDACTED]

## Issues

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

Did NY State of Health (NYSOH) properly determined that your spouse was eligible for Medicaid, effective October 1, 2016?

Did NY State of Health (NYSOH) properly determine that your spouse's enrollment in her Essential Plan coverage ended, effective September 30 2016?

## Procedural History

On November 16, 2015, NYSOH received your updated application for financial assistance with health insurance.

On November 22, 2015, NYSOH issued an eligibility determination notice, based on your November 16, 2015 application, stating that you and your spouse were eligible to enroll in the Essential Plan, effective January 1, 2016. You and your spouse were subsequently enrolled into an Essential Plan.

On October 13, 2016, NYSOH issued a notice that it was time to renew your health insurance for the upcoming coverage year. That notice stated that based on information from federal and state sources, NYSOH could not make a decision about whether you and your spouse would qualify for financial help paying for your health coverage, and that you needed to update your account by December 15, 2016, or you might lose the financial assistance you were currently receiving.

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On October 27, 2016, you updated your application for financial assistance with health insurance through NYSOH.

On October 28, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to enroll in the Essential Plan, effective December 1, 2016. The notice also stated that your spouse was conditionally eligible for Medicaid, effective October 1, 2016. The notice further directed you to submit proof of your spouse's income by November 11, 2016, and proof of your income by January 25, 2017.

Also on October 28, 2016, NYSOH issued a notice of disenrollment, stating that your spouse's enrollment in her Essential Plan coverage was terminated effective September 30, 2016 because she was no longer eligible to remain enrolled in her current health insurance.

That same day, you again updated your application for financial assistance with health insurance through NYSOH.

On October 29, 2016, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to enroll in the Essential Plan with a \$20.00 monthly premium, effective December 1, 2016. The notice stated that your spouse no longer qualified for Medicaid as of November 30, 2016.

Also on October 29, 2016, NYSOH issued a notice of enrollment confirmation stating that your spouse was enrolled into an Essential Plan, effective December 1, 2016.

On October 31, 2016, you spoke to NYSOH's Account Review Unit and appealed the fact that your spouse was disenrolled from her Essential Plan coverage as of September 30, 2016, and that her re-enrollment into Essential Plan coverage did not begin until December 1, 2016.

On February 1, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The hearing had been administratively rescheduled from the previous week, so during the hearing you waived, under oath, the right to receive 15 days' written notice of the hearing. The record was developed during the hearing and closed at the end of the hearing.

On March 2, 2017, NYSOH issued a notice stating that the last day of your spouse's Essential Plan coverage had been changed to October 31, 2016.

## Findings of Fact

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

- 1) You and your spouse were determined eligible for the Essential Plan on November 22, 2016, with an effective date of January 1, 2016.
- 2) You were sent a renewal notice on October 13, 2016 informing you that it was time to update your application for financial assistance.
- 3) Your NYSOH account reflects that, on October 27, 2016, you updated your NYOH application online. In that application, you indicated that your spouse was pregnant, and that she was expecting one child on [REDACTED]  
[REDACTED]
- 4) Your NYSOH account reflects that, on October 28, 2016, you updated your NYSOH application by phone with a NYSOH representative. In that application, you indicated that your spouse was not pregnant.
- 5) The expected annual household income listed in the October 27, 2016 application was \$30,000.00. On October 28, 2016, that amount was changed to \$25,000.00.
- 6) You testified that you were not updating your account on October 27, 2016 in response to the October 13, 2016 renewal notice.
- 7) You testified that you logged into your NYSOH account late at night on October 27, 2016 to “browse around” and look at the plans that were available, but that the way that the website is set up forced you to go through the whole application process.
- 8) Your NYSOH account reflects that you made changes to your account at approximately 12:35 AM on October 27, 2016.
- 9) You testified that you “made some errors” when you updated the application on October 27, 2016 which resulted in your spouse’s Essential Plan coverage being terminated.
- 10) You testified that you could not undo the changes you had made to the application, so you called NYSOH the following day to try to get help with doing so.
- 11) You testified that, when you updated the application again, your spouse was put back into the Essential Plan, but her coverage did not start until December 1, 2016.

- 12) You testified that the NYSOH representatives that you spoke with informed you that there was nothing they could do, and you would have to file an appeal.
- 13) When asked whether you indicated that your spouse was pregnant on the October 27, 2016 application, you testified that [REDACTED] [REDACTED].”
- 14) You then testified that you were not going to talk about your spouse’s [REDACTED].”
- 15) When asked if you had changed your application on October 28, 2016 because you were not happy with the results when you indicated that your spouse was pregnant, you testified that you were “entering a hypothetical,” and that you did not understand that you were submitting an application.
- 16) You testified that you picked a [REDACTED] for your spouse’s [REDACTED] [REDACTED] on the October 27, 2016 application.
- 17) You testified that you did not understand that the changes you were making would not be “undoable,” and that you did not know how else to find out what your coverage would look like [REDACTED].
- 18) You testified that your spouse had nothing to do with the changes you made on October 27, 2016, so she should not be penalized by losing her coverage for two months.
- 19) You testified that you called immediately to remedy the “error” you had made on October 27, 2016, so you do not feel it is right that your spouse lost her coverage.
- 20) You testified that your spouse had paid her Essential Plan premium for the month of October 2016 and used the coverage in that month, prior to it begin retroactively terminated on October 28, 2016, effective September 30, 2016.
- 21) You testified that you are now being billed for medical services your spouse received in October 2016 that were initially covered by her Essential Plan.
- 22) Your NYSOH account reflects that your spouse’s coverage through NYSOH ended on December 31, 2016.

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

## **Applicable Law and Regulations**

### Household Composition

For purposes of advance premium tax credit (APTC) and cost-sharing reductions (CSR), the household size equals the number of individuals for whom the taxpayer is allowed a deduction under 26 USC § 151 for the taxable year, which typically includes: (1) the taxpayer, (2) his or her spouse, and (3) any claimed dependents (26 USC § 36B(d)(1)).

For purposes of Medicaid eligibility, however, the household size of either a pregnant woman or a person who is in the family of a pregnant woman includes not only the pregnant woman, but also the number of children she expects to deliver (42 CFR § 435.603(b); State Plan Amendment (SPA) 13-0055-MM3, as approved by the US Department of Health and Human Services, March 19, 2014).

### Medicaid FPL for Pregnant Women

Medicaid is currently available to pregnant women who have a modified adjusted gross income at or below 223% of the federal poverty level (FPL) for the applicable family size (see 42 CFR § 435.116(c); NY Department of Health Administrative Directive 13ADM-03).

### 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 \$20,160.00 for a three-person household (81 Federal Register 4036).

### 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 FPL or, in the case of an individual who is a lawfully present non-citizen who is ineligible for

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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 \$11,770.00 for a one-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).

## Legal Analysis

The first issue under review is whether NYSOH properly determined that your spouse was eligible for Medicaid, effective October 1, 2016.

On October 27, 2016, you updated your application for financial assistance with health insurance coverage. In that application, you indicated that your expected annual household income was \$30,000.00, and that your spouse [REDACTED]

For purposes of Medicaid eligibility, the household size of either a pregnant woman or a person who is in the family of a pregnant woman includes not only the pregnant woman, but also the number of children she expects to deliver. Medicaid is currently available to pregnant women who have a modified adjusted gross income at or below 223% of the FPL for the applicable family size.

Based on the changes that you made to the application on October 27, 2016, your spouse's eligibility was based on a household of three (as she was listed as expecting one child) with an expected annual income of \$30,000.00. Since a household income of \$30,000.00 is 148.81% of the 2016 FPL for a three-person household, your spouse was found conditionally eligible for Medicaid, pending proof of your household income.



When asked during the hearing whether you indicated that your spouse [REDACTED] on the October 27, 2016 application for financial assistance, you first testified that you were [REDACTED]” When pressed by the Hearing Officer as to whether you were refusing to answer the question, you testified that you were not going to discuss your spouse’s private health information. Finally, when informed by the Hearing Officer that you had attested to your spouse’s pregnancy on an application, and when you were reminded that you were currently under oath, you then testified that your wife was not pregnant, and that you were just putting in “hypothetical” information to see what would happen to your coverage if your wife were pregnant. You further testified that just picked a “random future date” when you entered a due date of [REDACTED] in your October 27, 2016 application.

Your testimony is deemed to be unreliable and not credible, based on the fact that you avoided the Hearing Officer’s direct question, and gave three vague and inconsistent answers. The fact that you listed your spouse as pregnant one day, and not pregnant the next, and listed your expected annual household as \$30,000.00 one day, and \$25,000.00 the next, supports the conclusion that you changed your application on October 28, 2016 because you were trying to control the outcome so that your spouse would be eligible for the Essential Plan and not, as you testified, to correct “mistakes” that you had made on October 27, 2016.

Therefore, NYSOH’s October 28, 2016 eligibility determination stating that your spouse was conditionally eligible for Medicaid, effective October 1, 2016, was correct and is AFFIRMED.

Additionally, the October 29, 2016 eligibility determination is RESCINDED, insofar as it states that your spouse was eligible for the Essential Plan, effective December 1, 2016. Since it has been determined that the information stated in your October 28, 2016 application was not correct, your spouse remained eligible for Medicaid until her coverage through NYSOH ended on December 31, 2016.

The second issue under review is whether your spouse’s enrollment in her Essential Plan coverage properly ended as of September 30, 2016.

Your account was updated on October 27, 2016. Until that point, your spouse had been actively enrolled in Essential Plan coverage. Though NYSOH was correct in finding that your spouse was eligible for Medicaid, her enrollment in her Essential Plan should not have ended until October 31, 2016.

NYSOH issued a notice on March 2, 2017 stating that the last day of your spouse’s coverage in her Essential Plan was changed to October 31, 2016.

In order to reconcile the October 28, 2016 disenrollment notice with the March 2, 2017 notice, the October 28, 2016 is MODIFIED to state that your spouse’s

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Essential Plan coverage terminated on October 31, 2016. Your case is RETURNED to NYSOH to reinstate your spouse into her Essential Plan coverage for the month of October 2016, if NYSOH has not already done so.

## **Decision**

The October 28, 2016 eligibility determination notice is AFFIRMED.

The October 28, 2016 disenrollment notice is MODIFIED to state that your spouse's enrollment in her Essential Plan coverage ended as of October 31, 2016.

The October 29, 2016 eligibility determination is RESCINDED, insofar as it stated that your spouse was eligible for the Essential Plan, effective December 1, 2016.

Your case is RETURNED to NYSOH to:

1. Reinstate your spouse into her Essential Plan coverage for the month of October 2016, if this has not already been done, AND
2. Place your spouse into Medicaid coverage for the period of November and December 2016.

**Effective Date of this Decision:** March 23, 2017

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

Your spouse was eligible for Medicaid, effective October 1, 2016.

Your spouse's enrollment in her Essential Plan coverage should not have terminated until October 31, 2016.

Your spouse remained eligible for Medicaid as of December 1, 2016, and was not eligible for the Essential Plan.

Your case is being sent back to NYSOH to reinstate your spouse's coverage in her Essential Plan for the month of October 2016, and to place your spouse into Medicaid coverage for the period of November 1, 2016 through December 31, 2016.

## **If You Disagree with this Decision (Appeal Rights)**

This Decision is final unless you submit an appeal request to the Federal Marketplace 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 Federal Marketplace. 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 have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:  
Health Insurance Marketplace  
Attn: Appeals  
465 Industrial Blvd.  
London, KY 40750-0061
- By fax: 1-877-369-0129

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:  
NY State of Health Appeals  
P.O. Box 11729

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Albany, NY 12211

- By fax: 1-855-900-5557

## Summary

The October 28, 2016 eligibility determination notice is AFFIRMED.

The October 28, 2016 disenrollment notice is MODIFIED to state that your spouse's enrollment in her Essential Plan coverage ended as of October 31, 2016.

The October 29, 2016 eligibility determination is RESCINDED, insofar as it stated that your spouse was eligible for the Essential Plan, effective December 1, 2016.

Your case is RETURNED to NYSOH to:

1. Reinstate your spouse into her Essential Plan coverage for the month of October 2016, if this has not already been done, AND
2. Place your spouse into Medicaid coverage for the period of November and December 2016.

Your spouse was eligible for Medicaid, effective October 1, 2016.

Your spouse's enrollment in her Essential Plan coverage should not have terminated until October 31, 2016.

Your spouse remained eligible for Medicaid as of December 1, 2016, and was not eligible for the Essential Plan.

Your case is being sent back to NYSOH to reinstate your spouse's coverage in her Essential Plan for the month of October 2016, and to place your spouse into Medicaid coverage for the period of November 1, 2016 through December 31, 2016.

## Legal Authority

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

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



## Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

### Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

### 中文 (Traditional Chinese)

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

### Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

### 中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您提供相应语种的口译服务。

### Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

### 한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

### Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

### العربية (Arabic)

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 1-855-355-5777. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجاناً.

### বাংলা (Bengali)

এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

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## **Français (French)**

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

## **हिंदी (Hindi)**

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

## **日本語 (Japanese)**

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

## **नेपाली (Nepali)**

यो एउटा महत्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई निःशुल्क दोभाषे उपलब्ध गराउन सक्छौं।

## **Polski (Polish)**

To jest ważny dokument. W przypadku konieczności skorzystania z pomocy w celu zrozumienia jego treści należy zadzwonić pod numer 1-855-355-5777. Istnieje możliwość uzyskania bezpłatnej usługi tłumacza języka, którym się posługujesz.

## **Twi (Twi)**

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye srε wo, frε 1-855-355-5777. ye&btumi ama wo obi a okyerε kasa a woka no ase ama wo kwa a wontua hwee.

## **(Urdu) اردو**

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم 1-855-355-5777 پر کال کریں۔ ہم آپ کو آپ کی مادری زبان میں ایک مفت مترجم فراہم کر سکتے ہیں۔

## **Tiếng Việt (Vietnamese)**

Đây là tài liệu quan trọng. Nếu quý vị cần trợ giúp để hiểu tài liệu này, vui lòng gọi 1-855-355-5777. Chúng tôi có thể cung cấp thông dịch viên miễn phí nói ngôn ngữ của quý vị.

## **אידיש (Yiddish)**

דאס איז א וויכטיגער דאקומענט. אויב איר דארפט הילף עס צו פארשטיין, ביטע רופט 1-855-355-5777. מיר קענען אייך געבן א דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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