



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

## Notice of Decision

Decision Date: June 26, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000013704

[REDACTED]

Dear [REDACTED],

On April 19, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's November 24, 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 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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STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
P.O. Box 11729  
Albany, NY 12211

## Decision

Decision Date: June 26, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000013704



## Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NY State of Health (NYSOH) properly determine your household income for the purpose of determining your, your spouse, and eldest child's eligibility for financial assistance?

## Procedural History

On September 19, 2016 and September 22, 2016, your NYSOH account was updated.

On September 20, 2016 and September 23, 2016, NYSOH issued:

- (1) Notices stating that your application for health insurance has been reviewed, however, the income in your application does not match what NYSOH received from state and federal data sources. The notice directed you to submit additional income documentation by October 4, 2016 for you and your eldest child;
- (2) Eligibility determination notices stating that your spouse was eligible to enroll in the Essential Plan for a limited time, effective as of November 1, 2016. The notice directed you to submit additional income documentation for your spouse by December 18, 2016.

On October 6, 2016 and October 12, 2016, your NYSOH account was updated.

On October 10, 2016, October 11, 2016, and October 13, 2016, NYSOH issued:

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- (1) Notices stating that your application for health insurance has been reviewed, however, the income in your application does not match what NYSOH received from state and federal data sources. The notice directed you to submit additional income documentation by October 19, 2016 and November 3, 2016 for you and your eldest child;
- (2) Eligibility determination notices stating that your spouse was eligible to enroll in the Essential Plan for a limited time, effective as of November 1, 2016. The notice directed you to submit additional income documentation for your spouse by December 18, 2016.

On November 3, 2016, your NYSOH account was updated.

On November 4, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible to purchase a qualified health plan at full cost, and your eldest child was eligible to enroll in a full price Child Health Plus plan or a Child-Only qualified health plan.

Also on November 4, 2016 and November 14, 2016, your NYSOH account was updated.

On November 5, 2016, and November 15, 2016, NYSOH issued:

- (1) Notices stating that your application for health insurance has been reviewed, however, the income in your application does not match what NYSOH received from state and federal data sources. The notice directed you to submit additional income documentation by November 19, 2016 for you and your eldest child;
- (2) Eligibility determination notices stating that your spouse was eligible to enroll in the Essential Plan for a limited time, effective as of December 1, 2016. The notice directed you to submit additional income documentation for your spouse by February 2, 2017.

On November 16, 2016 and November 21, 2016, your NYSOH account was updated.

On November 17, 2016 and November 22, 2016, NYSOH issued:

- (1) Notices stating that your application for health insurance has been reviewed, however, the income in your application does not match what NYSOH received from state and federal data sources. The notice directed you to submit additional income documentation by December 1, 2016 for you and your eldest child;
- (2) Eligibility determination notices stating that your spouse was eligible to enroll in the Essential Plan for a limited time, effective as of December 1, 2016. The notice directed you to submit additional income documentation for your spouse by February 14, 2017.

On November 23, 2016, your NYSOH account was updated.

On November 24, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible to purchase a qualified health plan at full cost, and your eldest child was eligible to enroll in a full price Child Health Plus plan or a Child-Only qualified health plan.

On November 25, 2016, your NYSOH account was updated.

On November 26, 2016, NYSOH issued:

- (1) Notices stating that your application for health insurance has been reviewed, however, the income in your application does not match what NYSOH received from state and federal data sources. The notice directed you to submit additional income documentation by December 10, 2016 for you and your eldest child;
- (2) Eligibility determination notices stating that your spouse was eligible to enroll in the Essential Plan for a limited time, effective as of December 1, 2016. The notice directed you to submit additional income documentation for your spouse by February 23, 2017.

On December 1, 2016, you spoke with NYSOH's Account Review Unit and requested an appeal insofar as the calculation of your household's income for the purpose of determining your, your spouse, and eldest child's eligibility for financial assistance.

On December 13, 2016, NYSOH issued an eligibility determination notice stating that you, your spouse, and eldest child were eligible for Medicaid for a limited time, effective as of November 1, 2016. The notice stated that you and your eldest child have been granted Aid to Continue until a decision has been made on your appeal.

Also on December 13, 2016, NYSOH issued an enrollment notice confirming that as of December 12, 2016, you and your eldest child were enrolled in a Medicaid Managed Care (MMC) plan and your spouse was enrolled in an Essential Plan.

On April 19, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Testimony was taken during the hearing, and the record was left open to allow you to submit additional income documentation to NYSOH's Appeal Unit.

On April 19, 2017 and April 20, 2017, additional income documentation was uploaded to your NYSOH account [REDACTED]; [REDACTED]; [REDACTED]). That

documentation has been incorporated into the record, and the record is complete and closed.

## Findings of Fact

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

- 1) You testified the basis for your appeal is that NYSOH is miscalculating your household income.
- 2) You testified you are seeking health insurance through NYSOH for you, your spouse, and eldest child.
- 3) You testified that your youngest child was enrolled in Medicaid through [REDACTED] Local Department of Social Services.
- 4) According to your NYSOH account, your eldest child was born on [REDACTED].
- 5) According to your NYSOH account, you expected to file your 2016 federal income tax return, jointly with your spouse, and expected to claim your two children as dependents on that return.
- 6) According to your NYSOH account and testimony, you reside in Ulster County, New York.
- 7) On September 23, 2016, your 2015 Form 1040 U.S. Individual Income Tax Return was uploaded to your account ([REDACTED]). The return reflects the following income:
  - (a) Line 8a: Taxable interest of \$733;
  - (b) Line 13: Capital Gain or (loss) of \$347,453;
  - (c) Line 21: Other income: Net Operating Loss (NOL) -\$10,515;
  - (d) Line 37: Adjusted Gross Income of \$337,671.
- 8) On September 23, 2016, your 2015 Form 1040 Schedule D and 2015 Form 8949 were uploaded to your account ([REDACTED]; [REDACTED]). Form 8949 reflects that on August 3, 2015, you sold your home and experienced a gain of \$347,453. Line 15 of the Schedule D reflects that the \$347,453 was claimed as a net long-term capital gain.
- 9) On September 23, 2016, a letter explaining your household income was uploaded to your account ([REDACTED]). The letter stated: "My income from 2015 resulted largely from the sale of my family residence in [REDACTED] in New York City. It is a capital gain from that one sale and it

cannot be repeated and should not be taken into account in determining my projected income for 2016.”

- 10) According to your account, on November 3, 2016, November 16, 2016, and November 23, 2016, NYSOH determined your eligibility for financial assistance based on the documentation submitted. Your account reflects that the \$347,453 capital gain was added to your expected yearly income.
- 11) On November 21, 2016, your 2015 Form 1040 Schedule C was uploaded to your account [REDACTED]. Line 31 of the Schedule C reflects that your net profit or (loss) was \$0.00.
- 12) You testified that you are self-employed.
- 13) According to the documentation uploaded to your account on November 21, 2016, your self-employment income for the last three months were:
  - (a) \$0.00 income and \$0.00 expenses in August 2016;
  - (b) \$2,250.00 income and \$549.00 in expenses in September 2016;
  - (c) \$0.00 income and \$737.00 in expenses

[REDACTED].

- 14) You testified that your spouse began working at [REDACTED] in November 2016.
- 15) According to your November 21, 2016 application, you attested that your spouse was earning \$672.00 every two weeks from [REDACTED].
- 16) On December 23, 2016, your spouse’s biweekly earning statements from [REDACTED] were uploaded to your account [REDACTED]. For the week endings of 12/10/2016 and 12/24/2016, your spouse was issued \$672.00 in gross earnings.

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)).

“Gross income” is all the income from whatever source derived, unless specifically excluded. Examples of gross income, but not limited to, including: compensation for services; income derived from business; gains derived from dealings in property; interest; rents, and royalties (26 USC § 61(a)).

“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)).

“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)).

#### 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 that is at or below 138% of the federal poverty for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.603(d)(4)), N.Y. Soc. Serv. Law § 366(1)(b)).

A child who is at least one year of age but younger than nineteen is eligible for Medicaid if he or she meets the non-financial criteria and has a household modified adjusted gross income that falls at or below 154% of the FPL for the applicable family size (42 CFR § 435.118(c); New York State Department of Health Administrative Directive 13 OHIP/ADM-03).

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 \$24,300.00 for a four-person household (81 Fed. Reg. 4036).

In determining current monthly or projected annual household income and family size, NYSOH may adopt a reasonable method to include a prorated portion of reasonably predictable future income, to account for a reasonably predictable increase or decrease in future income, or both, as evidenced by a signed contract for employment, a clear history of predictable fluctuations in income, or other clear indicia of such future changes in income (42 CFR § 435.603(h)(3),



State Plan Amendment (SPA) 13-0055-MM3, as approved by the US Department of Health and Human Services, March 19, 2014).

## Legal Analysis

The issue under review is whether NYSOH properly calculated your household income in order to determine the amount of financial assistance you, your spouse, and eldest child were eligible to receive.

NYSOH determines an individual's financial assistance based on an individual's modified adjusted gross income. 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. If NYSOH cannot verify the income information required to determine eligibility, they must attempt to resolve the inconsistency by giving the applicant the opportunity to submit satisfactory documentary evidence.

On September 23, 2016, you submitted your 2015 Form 1040 U.S. Individual Income Tax Return, Form 1040 Schedule D, and Form 8949 to NYSOH (see [REDACTED]; [REDACTED]; [REDACTED]). The return reflects that your adjusted gross income was \$337,671 in 2015. Furthermore, Form 8949 reflects that on August 3, 2015, you sold your home and experienced a gain of \$347,453. The Schedule D reflects that the \$347,453 was claimed as a net long-term capital gain on your 2015 federal tax return.

On September 23, 2016, you submitted a letter explaining that your 2015 was not representative of your 2016 because of the sale of your family residence in New York City. You explained that it was a capital gain from a one-time sale that would not be repeated in 2016. Therefore, it should not be used to compute your household's eligibility for financial assistance (see [REDACTED]).

The record reflects that on November 3, 2016, November 16, 2016, and November 23, 2016, NYSOH determined your household's eligibility for financial assistance and the \$347,453 capital gain was included in your expected yearly income. Therefore, NYSOH improperly calculated your household's expected income by including the capital gain from the sale of your home. The November 24, 2016, NYSOH eligibility determination notice is RESCINDED insofar as NYSOH determining that you, your spouse, and eldest child were ineligible for financial assistance on the basis of income.

According to the record, you expected to file a 2016 federal income tax return, jointly with your spouse, and expected to claim your two children as dependents on that return. Therefore, you are in a four-person household.

On the dates of your applications, the FPL was \$24,300.00 for a four-person household.

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).

The record supports that you are self-employed. Your 2015 Form 1040 U.S. Individual Income Tax Return and Schedule C were submitted to NYSOH as evidence of your income. That documentation stated that your income was \$733.00 in taxable interest and \$0.00 in net profit or loss in 2015 (see [REDACTED]; [REDACTED]).

However, you provided NYSOH a statement of self-employment income and expenses for the months of August, September, and October 2016. You indicated net profits or losses of: \$0.00 for August 2016; \$1,701.00 for September 2016, and -\$737.00 for October 2016 (see [REDACTED]).

Based on the documentation submitted, your projected yearly income was  $((\$0.00 + \$1,701.00 + -\$737.00) \times 4 + \$733.00)$  \$4,589.00.

The record reflects that your spouse began working at [REDACTED] in November 2016. On your November 21, 2016 application, you attested that your spouse was earning \$672.00 every two weeks from [REDACTED]. As evidence of your spouse's income, biweekly earning statements for the week endings of 12/10/2016 and 12/24/2016, were submitted to NYSOH ([REDACTED]). The statements indicate that your spouse was issued \$672.00 in gross earnings.

Based on the documentation submitted, your spouse's projected yearly income was  $(\$672.00 \times 26)$  \$17,472.00.

Therefore, the record supports that your household's projected yearly income was  $(\$4,589.00 + \$17,472.00)$  \$22,061.00.

Therefore, your case is RETURNED to NYSOH to recalculate your, your spouse and eldest child's eligibility for financial assistance based on a four-person household, residing in Ulster County, with an annual household income of \$22,061.00.

## **Decision**

The November 24, 2016 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to recalculate your, your spouse, and eldest child's eligibility for financial assistance based on a four-person household, residing in Ulster County, with an annual household income of \$22,061.00 as of November 24, 2016.

**Effective Date of this Decision:** June 26, 2017

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

NYSOH improperly calculated your household income.

Your case is RETURNED to NYSOH to recalculate your, your spouse, and eldest child's eligibility for financial assistance based on a four-person household, residing in Ulster County, with an annual household income of \$22,061.00 as of November 24, 2016.

NYSOH shall issue a new eligibility determination notice notifying you, your spouse, and eldest child of your new financial assistance eligibility.

## **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 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).

## **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  
Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

NYSOH improperly calculated your household income.

The November 24, 2016 eligibility determination notice is RESCINDED.

Your case is returned to NYSOH to recalculate your, your spouse, and eldest child's eligibility for financial assistance based on a four-person household, residing in Ulster County, with an annual household income of \$22,061.00 as of November 24, 2016.

NYSOH shall issue a new eligibility determination notice notifying you, your spouse, and eldest child of your new financial assistance eligibility.

## **Legal Authority**

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

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



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).

## 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。我们可以为您免费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)

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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### **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 sre wo, fre 1-855-355-5777. y&b&tumi ama wo obi a okyerE 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.

### **שׂוֹדֵשׁ (Yiddish)**

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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.

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).