



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

## Notice of Decision

Decision Date: March 22, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000014181

[REDACTED]

Dear [REDACTED],

On March 8, 2017 you appeared by telephone at a hearing on your appeal of NY State of Health's November 17, 2016 eligibility determination.

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: March 22, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000014181



## Issues

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

Did NY State of Health properly determine that your spouse was eligible to receive \$0.00 per month in advance payments of the premium tax credit, effective January 1, 2017?

Did NY State of Health properly determine that your spouse was ineligible for cost-sharing reductions?

Did NY State of Health properly determine that your spouse was ineligible for the Essential Plan?

Did NY State of Health properly determine that your spouse was ineligible for Medicaid?

## Procedural History

On November 16, 2016, you submitted an application for financial assistance for your spouse.

On November 17, 2016, NY State of Health (NYSOH) issued a notice of eligibility determination stating that you were eligible to receive \$0.00 in advance payments of the premium tax credit (APTC), effective January 1, 2017. That notice also stated that your spouse was not eligible for cost-sharing reductions, the Essential Plan, or Medicaid because your household income was over the allowable income limits for those programs.

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On December 20, 2016 you spoke to NYSOH's Account Review Unit and appealed the eligibility determination insofar as your spouse was not found eligible for additional financial assistance.

On March 8, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open up to March 29, 2017, to allow you to submit supporting documents.

On March 13, 2017 the Appeals Unit received via fax a 20 page document consisting of a statement from the Social Security Administration indicating your 2017 monthly benefit amount; a letter from the Social Security Administration indicating that your oldest child is no longer entitled to Social Security benefits as of October 2016; a copy of your oldest child's 2016 federal tax return; a profit and expense statement for your spouse's business for November and December 2016; and a copy of your and your spouse's joint 2015 federal tax return including schedule A for itemized deductions, schedule C for profit and loss from business, form 4562 for depreciation and amortization, and schedule SE for the self-employment tax. 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 2017 taxes with a tax filing status of married filing jointly. You will claim three dependents on that tax return.
- 2) You are seeking insurance for your spouse.
- 3) The application that was submitted on November 16, 2016 listed annual household income of \$98,440.00, which consisted of \$19,200.00 you receive in Social Security Disability benefits, \$60,000.00 your spouse received in earned income, and \$19,240.00 your oldest child received in earned income. You testified that these amounts were incorrect and you are not entirely sure where this figure came from.
- 4) The application that was submitted on November 16, 2016 states that neither you, nor your spouse, nor your oldest child will be taking any deductions on your 2017 tax return. You testified that this is also incorrect.
- 5) You testified that you and your spouse claim deductions associated with your spouse's business.

- 6) You testified that your only source of income is your Social Security Disability. You provided documentation that for 2017 your monthly Social Security Disability payment is a gross amount of \$1,143.00.
- 7) You testified that you receive \$500.00 per month in child support for your oldest child.
- 8) You testified that your oldest child was receiving Social Security in the amount of \$190.00 per month. However, since she turned 18, this has stopped. You further testified that your oldest child works a part-time job and does not earn much. You provided documentation from the Social Security Administration that your oldest child received her last payment for Social Security in September 2016. You also provided a copy of your oldest child's 2016 federal tax return which indicates that her 2016 earned income was \$4,371.00.
- 9) You testified that your spouse is self-employed and that this is his only source of income. You produced an earnings and expense statement for your spouse's business which indicates that the business earned \$8,709.00 in November 2016 and had \$1,374.00 in expenses in November 2016, and had \$5,784.00 in earnings in December 2016 and had \$1,716.00 in expenses in December 2016. You testified that the earnings for the business fluctuate throughout the year and currently, the business is very slow.
- 10) You testified that you expect the business income to be about the same for 2016 as it was for 2015. You produced a copy of your and your spouse's joint federal tax return for 2015. This shows a total business income of \$21,955.00.
- 11) You testified that your two youngest children receive \$286.00 per month in Social Security payments.
- 12) You testified that you live in ██████ County.

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

## **Applicable Law and Regulations**

### 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

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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 2017 is set by federal law at 2.04% to 9.69% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc.2016-24).

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 2016 FPL, which is \$28,440.00 for a five-person household (81 Fed. Reg. 4036.).

For annual household income in the range of at least 300% but less than 400% of the 2016 FPL, the expected contribution is 9.69 % of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2016-24).

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%

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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 2016 FPL, which is \$28,440.00 for a five-person household (81 Fed. Reg. 4036.).

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)).

### 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 \$28,440.00 for a five-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 is whether NYSOH properly determined that your spouse was eligible for APTC of \$0.00 per month.

The application that was submitted on November 16, 2016 listed an annual household income of \$98,440.00 and the eligibility determination relied upon that information.

Your spouse is in a five-person household. You expect to file your 2017 income taxes as married filing jointly and will claim three dependents on that tax return.

Your spouse resides in ██████ County, where the second lowest cost silver plan available for an individual through NYSOH costs \$566.12 per month.

An annual income of \$98,440.00 is 346.13% of the 2016 FPL for a five-person household. At 346.13% of the FPL, the expected contribution to the cost of the health insurance premium is 9.69% of income, or \$794.90 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 (\$566.12 per month) minus your expected contribution (\$794.90 per month). As your spouse's expected contribution exceeds the cost of the second lowest cost silver plan available through NYSOH for an individual in your county, NYSOH properly determined that your spouse was eligible for \$0.00 per month in APTC.

The second issue is whether your spouse was properly found ineligible 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 \$98,440.00 is 346.13% of the applicable FPL, NYSOH correctly found your spouse to be ineligible for cost sharing reductions.

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The third issue under review is whether NYSOH properly determined that your spouse was ineligible for the Essential Plan.

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$28,440.00 for a five-person household. Since an annual household income of \$98,440.00 is 346.13% of the 2016 FPL, NYSOH properly found you to be eligible for the Essential Plan.

The fourth issue is whether NYSOH properly determined that your spouse was ineligible for Medicaid.

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 application, the relevant FPL was \$28,440.00 for a five-person household. Since \$98,440.00 is 346.13% of the 2016 FPL, NYSOH properly found your spouse to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

Since the November 17, 2016 eligibility determination properly stated that, based on the information you provided, your spouse was eligible for \$0.00 per month in APTC, ineligible for cost-sharing reductions, ineligible for the Essential Plan and ineligible for Medicaid, it is correct and is AFFIRMED.

However, at the hearing you testified that your annual household income is different than what was attested to in your application on November 16, 2016. On March 13, 2017 you submitted income documentation showing an annual household income of \$35,641.00.

Since the record now contains a more accurate representation of what your expected annual household income is, your case is RETURNED to NYSOH to redetermine your spouse's eligibility for 2017 coverage based on a five-person household, residing in ██████████ County with an annual household income of \$35,641.00.

## **Decision**

The November 17, 2016 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your spouse's eligibility for 2017 coverage based on a five-person household, residing in Ulster County with an annual household income of \$35,641.00.

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**Effective Date of this Decision:** March 22, 2017

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

This is not a final determination on your spouse's eligibility.

Your case is being sent back to NYSOH to redetermine your spouse's eligibility for 2017 coverage based on the information you provided during your hearing.

## **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
- By mail at:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The November 17, 2016 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your spouse's eligibility for 2017 coverage based on a five-person household, residing in Ulster County with an annual household income of \$35,641.00.

This is not a final determination on your spouse's eligibility.

Your case is being sent back to NYSOH to redetermine your spouse's eligibility for 2017 coverage based on the information you provided during your hearing.

## **Legal Authority**

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

Tina LoBrutto-Gross  
28 Tracy Road  
New Paltz, NY 12561