



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

## Notice of Decision

Decision Date: February 14, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000015411

[REDACTED]

Dear [REDACTED],

On February 13, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's January 20, 2017 eligibility determination and February 2, 2017 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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DEPARTMENT OF HEALTH  
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## Decision

Decision Date: February 14, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000015411



## Issues

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

Did NY State of Health provide a timely determination of your eligibility as of March 1, 2017?

Did NY State of Health properly determine that you were eligible for and enrolled in the Essential Plan as of March 1, 2017?

## Procedural History

On November 14, 2016, NY State of Health (NYSOH) received your updated application for financial assistance with your health insurance.

On November 15, 2016, NYSOH issued a notice stating more information was needed to make a determination. The notice explained the income documentation you provided NYSOH did not match what was obtained from state and federal data sources. You were asked to submit income documentation for your household by November 29, 2016.

No income documentation was submitted, and on December 10, 2016, NYSOH redetermined your eligibility for financial assistance with health insurance.

On December 11, 2016, NYSOH issued a notice of eligibility determination stating that you were eligible to purchase a qualified health plan at full cost through NYSOH as of January 1, 2017. You were not eligible for Medicaid, or the

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Essential Plan because you did not submit the requested information to verify your income.

On December 19, 2016, NYSOH received your updated application for health insurance.

On December 20, 2016, NYSOH issued a notice stating more information was needed to make a determination. The notice explained the income documentation you provided NYSOH did not match what was obtained from state and federal data sources. You were asked to submit income documentation for your household by January 3, 2017.

Also on December 20, 2016, you faxed income documentation to NYSOH.

On January 19, 2017, NYSOH reviewed the income documentation you submitted and a new application was submitted on your behalf.

On January 20, 2017, NYSOH issued an eligibility determination notice was issued finding you eligible for the Essential Plan effective March 1, 2017.

On February 1, 2017 you selected an Essential Plan.

Also on February 1, 2017, you contacted the NYSOH Account Review Unit and requested an appeal of the start date of your coverage, requesting that it begin December 1, 2016.

On February 2, 2017, an enrollment confirmation notice was issued confirming your selection of an Essential Plan on February 1, 2017. The notice confirmed your enrollment in a plan starting March 1, 2017.

On February 8, 2017, you faxed in documentation from your doctor requesting an expedited appeal because of your urgent medical issues.

Also on February 8, 2017, your request for an expedited hearing was granted.

On February 13, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Under oath, you waived your right to formal notice of the hearing. The record was developed during the hearing and left open for two days to allow you the opportunity to submit income documentation showing your gross earnings for 2016.

Also on February 13, 2017, the Appeals Unit received via fax, a copy of your employee earnings record from January 1, 2016 to December 31, 2016. This documentation was 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 are seeking to have coverage as of December 1, 2016, so as to avoid a gap in coverage.
- 2) According to your NYSOH account, NYSOH received your updated application for financial assistance on November 14, 2016. That application indicated that your income was \$25,910.49.
- 3) On December 19, 2016, you updated your application for financial assistance. That application also indicated that your income was \$25,910.49.
- 4) On December 20, 2016, you submitted documentation of your income in the form of your employee earnings record, which showed your biweekly gross pay for November 4, 2016 of \$1,220.00, for November 18, 2016 of \$1,060.13, for December 2, 2016 of \$1,188.00, and for December 16, 2016 of \$1,493.25, for an eight week gross of \$4,961.38, as well as your year to date gross as of December 16, 2016 which was \$30,355.28, to NYSOH for verification of the income stated in your applications.
- 5) On January 19, 2017 your employee earnings record was verified by NYSOH. Based on that employee earnings record, NYSOH recalculated your household income to be \$34,856.25. That same day, NYSOH submitted a new application on your behalf, using this recalculated household income.
- 6) The record reflects that on February 1, 2017, you selected an Essential Plan for enrollment, which enrollment was to begin on March 1, 2017.
- 7) You testified that you will file your 2016 tax return as head of household and will claim three dependents on that return. You testified that you will not claim any deductions on that tax return.
- 8) You testified that your dependents have no income.
- 9) You testified that during 2016 you only had one employer, that you were paid biweekly by that employer, and that you continue to work for that same employer.
- 10) Following the hearing you submitted an employee earnings record which shows 26 biweekly paychecks you received from January 1, 2016 until

December 31, 2016, as well as your gross earnings for 2016 of \$31,605.28.

- 11) You testified, and the record reflects, that you receive all of your notices from NYSOH by regular mail.
- 12) You testified that you did receive the October 8, 2016 renewal notice, however you did not receive the November 15, 2016, November 22, 2016, and December 20, 2016 notices requesting income documentation.
- 13) No notices sent to you at the address listed on your NYSOH account have been returned as undeliverable.
- 14) You testified that you reside in Niagara County.

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

## **Applicable Law and Regulations**

### Verification Process

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 (45 CFR §155.320(c)(1)(i), 42 CFR § 435.945).

If NYSOH cannot verify the income information required to determine eligibility they must attempt to resolve the inconsistency including giving the applicant the opportunity to submit satisfactory documentary evidence (45 CFR §155.315(f) 42 CFR § 435.952).

### Timely Notice of Medicaid Eligibility

When an individual applies for insurance through NYSOH, NYSOH must determine that person's eligibility promptly and without undue delay (45 CFR § 155.310(e)(1); 42 CFR § 435.1200(b)(3)(iii)).

To assess whether an eligibility determination was untimely, NYSOH must base the time period from the date of application to the date NYSOH notifies the applicant of its decision (45 CFR § 155.310(e)(2)). However, if the applicant submits an incomplete application or there is not sufficient information for NYSOH to make an eligibility determination, then NYSOH must notify that applicant that more information is needed to complete the application (45 CFR § 155.310(k)(1)).

NYSOH must provide Medicaid applicants notice of their eligibility determination within 45 days from the date of the application (42 CFR § 435.912). NYSOH uses the same timeliness standards for eligibility determinations for the Essential Plan as for Medicaid (42 CFR §600.320(b)). Therefore, NYSOH must also provide Essential Plan applicants notice of their eligibility determination within 45 days from the date of the application (42 CFR §435.912; 42 CFR §600.320(b)).

### Medicaid Eligibility

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 \$24,300.00 for a four-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).

### Medicaid Effective Date

An individual is eligible for fee-for-service Medicaid effective on the first day of the month if an individual was eligible any time during that month (42 CFR § 435.915(b), Medicaid Eligibility Changes under the Affordable Care Act (ACA) of 2010,13ADM-03(III)(F)).

Medicaid Managed Care plan enrollments received on or before the fifteenth day of the month are effective the first day of the following month. Enrollments received after the fifteenth day of the month are effective the first day of the second following month (Medicaid Managed Care Model Contract (Appendix H-6(b)(ii) & (iii), effective 3/1/2014 – 2/28/2019; see 42 USC § 1315; § 364-j(1)(c); 18 NYCRR § 360-10.3(h), Medicaid Eligibility Changes under the Affordable Care Act (ACA) of 2010,13ADM-03(III)(F)).

### Essential Plan Eligibility

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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 \$24,250.00.00 for a four-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).

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)).

### Essential Plan Effective Date

For individuals seeking enrollment in an Essential Plan, New York State has elected to follow the same rules that NYSOH uses in determining effective dates for individuals seeking enrollment in qualified health plans (NY Social Services Law § 369-gg(4)(c); New York's Basic Health Plan Blueprint, p. 16, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

The effective date of coverage by an Essential Plan is determined by the date on which an applicant selects a plan for enrollment. For individuals who are eligible for enrollment, NYSOH must generally ensure that coverage is effective the first day of the following month for selections received by NYSOH from the first to the fifteenth of any month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(i); see *also* 42 CFR § 600.320). For selections received by NYSOH from the sixteenth to the last

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day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR §§ 155.410(f)(2), 155.420(b)(1)(ii)).

## **Legal Analysis**

The first issue is whether NYSOH's provided you with timely determination of your eligibility as of March 1, 2017.

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 including giving the applicant the opportunity to submit satisfactory documentary evidence.

You updated your NYSOH account on November 14, 2016. The income amount that was entered into this application did not match federal and state data sources. As a result, NYSOH asked that you submit additional documentation to confirm your income.

You testified that you did not receive the November 15, 2016, November 22, 2016, or December 20, 2016 notices from NYSOH telling you that you needed to provide income documentation. You testified, and your NYSOH account confirms, that you elected to receive notifications by regular mail. However, there is no evidence in the record that any of the notices that were sent to your mailing address were returned as undeliverable.

Therefore, the record reflects that NYSOH properly notified you of the need to submit income documentation in order for your eligibility to be determined.

On December 19, 2016, you updated your NYSOH account. The income amount that was entered into this application did not match federal and state data sources. As a result, NYSOH asked that you submit additional documentation to confirm your income.

On December 20, 2016, you submitted a copy of your employee earnings record and on January 19, 2017 NYSOH reviewed that documentation as proof of income, and redetermined your eligibility for financial assistance.

Therefore, your application was considered complete as of December 20, 2016 for purposes of issuing an eligibility determination.

NYSOH must provide Medicaid and Essential Plan applicants notice of their eligibility determination within 45 days from the date of the completed application.

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To assess whether an eligibility determination was untimely, NYSOH must base the time period from the date of the completed application to the date NYSOH notifies the applicant of its decision.

NYSOH issued an eligibility determination notice on January 20, 2017 that stated you were eligible for the Essential Plan effective March 1, 2017. Since NYSOH issued an eligibility determination 31 days from the date your application was considered complete, the January 20, 2017 eligibility determination was timely.

The second issue is whether NYSOH properly determined that you were eligible for and enrolled in the Essential Plan as of March 1, 2017.

The record reflects that you contacted NYSOH on February 1, 2017 and enrolled into an Essential plan.

The date on which enrollment in an Essential Plan can take effect depends on the day a person selects the plan for enrollment.

A plan that is selected from the first day to and including the fifteenth day of a month goes into effect on the first day of the following month. A plan that is selected from the sixteenth day of the month to the end of the month goes into effect on the first day of the second following month.

Since the January 20, 2017 eligibility determination notice was timely issued, you were able to select an Essential Plan as of January 20, 2017. Your plan would therefore properly take effect on the first day of the second month following after January 20, 2016; that is, on March 1, 2017.

Therefore, the January 20, 2017 eligibility determination notice and February 2, 2017 enrollment notice are correct and must be AFFIRMED, insofar as they found you eligible for and enrolled in the Essential Plan, effective March 1, 2017.

However, on January 19, 2017 when your employee earnings record was verified by NYSOH, they recalculated your household income to be \$34,856.25. Based on the documentation that was submitted that day, your total annual household income should have been no greater than \$32,248.97 (a gross of \$4,961.38 over 8 weeks, for a weekly average of \$620.17, multiplied by 52 weeks). Further, after the hearing you submitted an employee earnings record which shows 26 biweekly paychecks you received from January 1, 2016 until December 31, 2016, as well as your gross earnings for 2016 of \$31,605.28.

Since NYSOH improperly calculated your annual household income on January 19, 2017 based on the income documentation you submitted on December 20, 2016, your case is RETURNED to NYSOH to issue an eligibility redetermination as of January 19, 2017 using the correct annual household income of \$31,605.28, for a four-person household, residing in Niagara County. NYSOH is

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further directed to make any eligibility and enrollment that occurs as a result effective as if the redetermination and plan selection had been properly made on January 19, 2017.

## **Decision**

The January 20, 2017 eligibility determination notice is AFFIRMED.

The February 2, 2017 enrollment confirmation notice is AFFIRMED.

The case is RETURNED to NYSOH to issue an eligibility redetermination as of January 19, 2017 using the correct annual household income of \$31,605.28 for a four-person household, residing in Niagara County.

NYSOH is further directed to make any eligibility and enrollment that occurs as a result effective as if the redetermination and plan selection had been properly made on January 19, 2017.

**Effective Date of this Decision:** February 14, 2017

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

This is not a final decision on your eligibility.

Your case is being sent back to NYSOH to redetermine your eligibility as of January 19, 2017 based on the correct annual household income.

Any changes to your eligibility will be treated as though your eligibility and enrollment had been determined correctly as of January 19, 2017.

## **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.

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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 January 20, 2017 eligibility determination notice is AFFIRMED.

The February 2, 2017 enrollment confirmation notice is AFFIRMED.

The case is RETURNED to NYSOH to issue an eligibility redetermination as of January 19, 2016 using the correct annual household income of \$31,605.28 for a four-person household, residing in Niagara County.

This is not a final decision on your eligibility.

Your case is being sent back to NYSOH to redetermine your eligibility as of January 19, 2017 based on the correct annual household income.

NYSOH is further directed to make any eligibility and enrollment that occurs as a result effective as if the redetermination and plan selection had been properly made on January 19, 2017.

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Any changes to your eligibility will be treated as though your eligibility and enrollment had been determined correctly as of January 19, 2017.

## **Legal Authority**

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

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

