



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

Notice of Decision

Decision Date: May 19, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000015751

[REDACTED]

Dear [REDACTED]

On May 12, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's January 18, 2017 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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DEPARTMENT OF HEALTH
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Decision

Decision Date: May 19, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000015751



Issues

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

Did NY State of Health (NYSOH) properly determine you and your spouse were eligible to receive up to \$367.00 per month in advance payments of the premium tax credit (APTC), effective February 1, 2017?

Did NYSOH properly determine that you and your spouse were not eligible for the Essential Plan?

Procedural History

On December 28, 2016, you submitted an application for financial assistance and uploaded documents to your NYSOH account.

On December 29, 2016, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to enroll in the Essential Plan with at \$20.00 monthly premium for a limited time, effective February 1, 2017. The notice directed you to submit documentation of your income by March 28, 2017.

Also on December 29, 2016, NYSOH issued a notice of enrollment confirmation, confirming your, and your spouse's, enrollment in an Essential Plan 1, effective February 1, 2017.

On January 17, 2017, NYSOH reviewed the documentation you had uploaded to your NYSOH account, and reran your application for financial assistance.

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On January 18, 2017, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible for up to \$367.00 per month in APTC, and eligible for cost-sharing reductions, effective February 1, 2017. That notice also stated that you and your spouse were not eligible for the Essential Plan because your income was over the allowable income limit.

On January 19, 2017, NYSOH issued a disenrollment notice stating that your and your spouse's enrollment in your Essential Plan 1 was ending effective February 1, 2017.

On February 10, 2017, you spoke to NYSOH's Account Review Unit and filed an appeal, insofar as you and your spouse were not eligible for the Essential Plan.

On May 12, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the closed at the end of the hearing.

Findings of Fact

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

- 1) You testified that you expect to file your 2017 taxes with a tax filing status of married filing jointly. You will claim four dependents on that tax return.
- 2) You are seeking insurance for yourself and your spouse through this appeal.
- 3) The application that was submitted on December 28, 2016 listed annual household income of \$57,844.80, consisting of income you earn from your employment.
- 4) On December 28, 2016, you also uploaded four paystubs to your NYSOH account. These paystubs were for the following dates and amounts:
 - a. 12/2/16 - \$1,351.06, with \$121.60 in 401K contributions;
 - b. 12/9/16 - \$1,592.32, with \$143.31 in 401K contributions;
 - c. 12/16/16 - \$1,321.82, with \$118.96 in 401K contributions;
 - d. 12/23/16 - \$1,173.78, with \$105.64 in 401K contributions;

(Document [REDACTED]).

- 5) On January 17, 2017, a NYSOH employee reviewed these paystubs, and updated your application for financial assistance, changing your annual expected income to \$70,706.61.

- 6) You testified that you do not know if this amount is correct.
- 7) You testified that you work 40 hours per week, earning \$27.81 per hour, and are paid weekly.
- 8) You testified that you make contributions to a 401K retirement plan, and that these contributions are pre-tax deductions taken out of your salary.
- 9) You testified that your spouse is not currently working, and did not have any income in 2016 either.
- 10) You testified that you will not be taking any deductions on your 2017 tax return.
- 11) You testified that you pay for dental coverage through your employer, and that the cost is \$18.11 per month.
- 12) You testified that you have some kind of health insurance through your employer so that you will not incur a penalty for not having coverage, but that it does not cover any costs, and you have to pay 100% of the costs of any medical care you receive.
- 13) Your December 28, 2016 application does not contain any information about any available employer-sponsored health insurance.
- 14) Your application states that you live in Monroe County.
- 15) You testified that you and your spouse were eligible for the Essential Plan when you first met with a social worker to complete your application, and you do not know why you are no longer eligible for Essential Plan coverage.
- 16) Your NYSOH account reflects that you and your spouse are not currently enrolled in a health plan through NYSOH.

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

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 poverty level (FPL), (2) expects to file a tax

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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 \$32,580.00 for a six-person household (81 Federal Register 4036.).

For annual household income in the range of at least 200% but less than 250% of the 2016 FPL, the expected contribution is between 6.43% and 8.21% 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 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

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expected to have an annual household income that does not exceed 250% of the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested, and (4) is enrolled in a silver-level QHP (45 CFR § 155.300(a), 45 CFR § 155.305(g)(1)).

Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable 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 \$32,580.00 for a six-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)).

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)). The term "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)).

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“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)). Living expenses, such as rent and utilities are not an allowable deduction in computing adjusted gross income.

Employer-Sponsored Insurance

An employee who may enroll in an employer-sponsored health insurance plan and an individual who may enroll in the plan because of a relationship to the employee are considered eligible for minimum essential coverage as long as the plan “is affordable and provides minimum value” (26 CFR § 1.36B-2(c)(3)(i)).

An eligible employer-sponsored plan is “affordable” if the portion of the annual premium that the employee or related individual must pay for self-only coverage does not exceed the required contribution. The required contribution percentage is 9.69% of the employee’s household income for 2017 (26 CFR §1.36B-2(c)(3)(v), 26 CFR §1.36B-2T, IRS Rev. Proc. 2016-24).

Legal Analysis

The first issue under review is whether NYSOH properly determined that you and your spouse were eligible for APTC of up to \$367.00 per month, effective February 1, 2017.

The application that was submitted on December 28, 2016 listed an annual household income of \$57,844.80. However, you were asked to submit income documentation to confirm this information, and you uploaded income documentation to your NYSOH account that same day.

A NYSOH employee reviewed the income documentation in your account on January 17, 2017, and used it to redetermine your, and your spouse’s eligibility for financial assistance. It appears that this person added the four gross weekly income amounts from your paystub, which equals \$5,438.98, and divided that amount by four to get an average weekly income of \$1,359.75. This amount was then multiplied by 52 (since you are paid weekly), which resulted in an annual expected income of \$70,706.74.

However, the paystubs you submitted indicate that you make weekly contributions to a 401K retirement plan, and that these deductions are pre-tax. You confirmed this in your testimony.

NYSOH bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code. "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.

In this case, the pre-tax contributions that you make to your 401K retirement plan should have been excluded from your gross income when NYSOH determined your eligibility. If NYSOH had properly excluded these contributions, your average weekly income would have been \$1,237.64, and your annual expected income would have been \$64,357.15

Therefore, NYSOH's January 18, 2017 eligibility determination, stating that you and your spouse were eligible to receive up to \$367.00 in APTC, based on an annual expected income of \$70,706.64, was incorrect, as it was based on incorrect information.

The second issue under review is whether NYSOH properly determined that you and your spouse were not eligible for the Essential Plan because your expected annual income was over the allowable income limit for that program.

You are in a six-person household. You expect to file your 2017 income taxes as married filing jointly and will claim four dependents on that tax return.

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$32,580.00 for a six-person household. Since an annual household income of \$64,357.15 is 197.54% of the 2016 FPL, NYSOH's determination that you and your spouse were not eligible for the Essential Plan because your income was over the allowable income limit for that program is not correct.

However, there are also non-financial requirements for the Essential Plan, including the requirement that an Essential Plan application is not otherwise eligible for minimum essential coverage, except through the individual market. Employer-sponsored health insurance, if it is affordable and provides minimum value, is considered minimum essential coverage.

Your application for financial assistance of December 28, 2016 indicated that you and your spouse do not have access to health insurance coverage through a job. However, you testified during the hearing that you have access to health insurance through your employer, but that you chose a plan that costs no money, and that requires you to pay all medical expenses out of pocket.

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Since your testimony indicated that you may have access to some sort of employer-sponsored health insurance, more information is needed to determine your, and your spouse's, eligibility for financial assistance through NYSOH.

Therefore, your case is RETURNED to NYSOH to assist you in updating your application for health insurance to include information about any employer-sponsored health insurance coverage that you may have access to, and to determine whether this purported coverage would preclude you receiving financial assistance through NYSOH. NYSOH is directed to then re-determine your, and your spouse's, eligibility for financial assistance, based on a six-person household with annual expected income of \$64,357.15.

Decision

The January 18, 2017 eligibility determination was incorrect, based on the income documentation you provided to NYSOH, and is RESCINDED.

Your case is RETURNED to NYSOH to assist you in updating your application to include information about any employer-sponsored health insurance coverage that you may have access to, and to determine whether this purported coverage would preclude you receiving financial assistance through NYSOH.

NYSOH is directed to redetermine your, and your spouse's, eligibility for financial assistance, after this information has been updated, based on a six-person household with an annual expected income of \$64,357.15.

Effective Date of this Decision: May 19, 2017

How this Decision Affects Your Eligibility

You and your spouse may be financially eligible for the Essential Plan, based on the income documentation that you provided to NYSOH.

However, since you indicated that you may have access to employer-sponsored health insurance, you must provide information about that insurance to NYSOH before you, and your spouse's, eligibility can be determined.

NYSOH will contact you to update your application, and will notify you in writing of your, and your spouse's, new 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 Have Questions about this Decision (Customer Service Resources):

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- 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 January 18, 2017 eligibility determination was incorrect, based on the income documentation you provided to NYSOH, and is **RESCINDED**.

Your case is **RETURNED** to NYSOH to assist you in updating your application to include information about any employer-sponsored health insurance coverage that you may have access to, and to determine whether this purported coverage would preclude you receiving financial assistance through NYSOH.

NYSOH is directed to redetermine your, and your spouse's, eligibility for financial assistance, after this information has been updated, based on a six-person household with an annual expected income of \$64,357.15.

You and your spouse may be financially eligible for the Essential Plan, based on the income documentation that you provided to NYSOH.

However, since you indicated that you may have access to employer-sponsored health insurance, you must provide information about that insurance to NYSOH before you, and your spouse's, eligibility can be determined.

NYSOH will contact you to update your application, and will notify you in writing of your, and your spouse's, new eligibility.

Legal Authority

We are sending you this notice 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)

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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।

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. ye&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.

שׂוּדִישׁ (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.

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