



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

Notice of Decision

Decision Date: August 3, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000015885

[REDACTED]

Dear [REDACTED]

On July 11, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's February 15, 2017, February 16, 2017, and March 7, 2017 eligibility determination 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 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: August 3, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000015885

[REDACTED]

Issue

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

Did NY State of Health properly determine you and your spouse were not eligible for the Essential Plan, effective March 1, 2017?

Procedural History

On February 14, 2017, NY State of Health (NYSOH) received an updated application for financial assistance with health insurance on behalf of you and your spouse.

On February 15, 2017, NYSOH issued an eligibility determination notice stating you and your spouse were eligible to receive up to \$652.00 per month in advance payments of the premium tax credit (APTC), effective March 1, 2017. The notice also stated that you and your spouse were eligible for cost-sharing reductions if you enrolled in a silver level plan. You and your spouse were not eligible for the Essential Plan, because the annual household income you provided of \$48,636.61 was over the allowable income limit of \$48,600.00 for that plan.

On February 15, 2017, NYSOH received another updated application for financial assistance with health insurance on behalf of you and your spouse.

Also on February 15, 2017, you contacted NYSOH's Account Review Unit and requested an appeal of the determination insofar as you and your spouse were not eligible for the Essential Plan.

On February 16, 2017, NYSOH issued an eligibility determination notice, based on your February 15, 2016 updated application, stating you and your spouse were eligible to enroll in the Essential Plan with a \$20.00 monthly premium, for a limited time, effective March 1, 2017. The notice directed you to submit proof of your household income to confirm your eligibility by May 16, 2017 or you and your spouse might lose your insurance or receive less help paying for your coverage.

Also on February 16, 2017, NYSOH issued an enrollment confirmation notice stating you and your spouse were enrolled in an Essential Plan with a \$20.00 monthly premium, effective March 1, 2017.

On March 6, 2017, NYSOH systematically redetermined the eligibility of you and your spouse.

On March 7, 2017, NYSOH issued an eligibility determination notice stating you and your spouse were eligible to receive up to \$583.00 per month in APTC, effective April 1, 2017.

Also on March 7, 2017, NYSOH issued a disenrollment notice stating the coverage through the Essential Plan you and your spouse enrolled in would end on March 31, 2017, because you were no longer eligible for the plan.

On March 23, 2017, NYSOH issued an eligibility determination notice stating you and your spouse were eligible for the Essential Plan with a \$20.00 monthly premium, for a limited time, effective April 1, 2017, because you had been granted Aid to Continue pending the outcome of your appeal.

Also on March 23, 2017, NYSOH issued an enrollment notice, confirming you and your spouse were enrolled in an Essential Plan, effective March 1, 2017, pursuant to your grant of Aid to Continue.

On July 11, 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 to July 25, 2017 to allow you to submit supporting documents.

On July 13, 2017 and July 21, 2017, NYSOH received the requested documentation and it was incorporated into the record as Appellant's Exhibit #1. The record closed thereafter.

Findings of Fact

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

- 1) You testified this review only involves the eligibility of you and your spouse. You are not appealing your children's eligibility.
- 2) You testified, and your account confirms, you completed an application online on February 14, 2017. That application listed your annual household income as \$48,636.61 consisting of income your spouse earned from his full-time job. You testified this amount was from his 2016 W-2.
- 3) That application indicated you and your spouse would file your 2017 tax return with a tax filing status of married filing jointly and you would claim your two children as dependents. You testified that information was accurate.
- 4) Based on the income information in the February 14, 2017 application, NYSOH determined you and your spouse eligible to receive up to \$652.00 in APTC per month, effective March 1, 2017.
- 5) You appealed that determination insofar as you and your spouse were not eligible for the Essential Plan.
- 6) You testified that you called NYSOH the following day, because you did not understand why you and your spouse were not eligible for the Essential Plan. You testified you updated your household income information by providing the amount of your spouse's February 2017 biweekly paycheck. You testified the representative calculated your annual household income based on that information.
- 7) Your account confirms that on February 15, 2017, an updated application was submitted on behalf of you and your spouse, decreasing your spouse's attested annual income amount to \$48,500.00.
- 8) Based on the information in the February 15, 2017 application, NYSOH determined you and your spouse conditionally eligible to enroll in the Essential Plan with a \$20.00 monthly premium, pending receipt of income documentation by May 16, 2017 to confirm your eligibility. You and your spouse enrolled in an Essential Plan with coverage effective March 1, 2017.
- 9) On February 24, 2017, NYSOH received the following biweekly paystubs for your spouse.

- a. Paystub with check date of January 13, 2017 in the gross amount of \$1,814.05.
 - b. Paystub with check date of January 27, 2017 in the gross amount of \$2,764.65 including a \$1,269.95 commission payment.
 - c. Paystub with check date of February 10, 2017 in the gross amount of \$1,422.00 with a year to date amount of \$6,000.70.
- 10) According to your account, on March 6, 2017, NYSOH verified your income documentation and increased your household income to \$54,526.45, based on the monthly gross income amount from the January 2017 paystubs.
- 11) Based on the recalculated household income amount, NYSOH determined you and your spouse eligible to receive up to \$583.00 in monthly APTC, effective April 1, 2017.
- 12) You and your spouse were disenrolled from your Essential Plan, effective March 31, 2017.
- 13) According to your account, you and your spouse were granted Aid to Continue in your Essential Plan on March 22, 2017 pending the outcome of your previously filed appeal. You and your spouse were reenrolled in your Essential Plan, effective March 1, 2017.
- 14) You testified you are seeking eligibility to enroll in the Essential Plan for you and your spouse, because it is unfair that your household is only \$36.00 over the income limit to qualify for the Essential Plan. You testified that you should not have to pay hundreds of dollars more for insurance because of \$36.00.
- 15) You testified you cannot afford to pay for a qualified health plan while paying for your various household expenses including food for your children.
- 16) You testified that your spouse is paid biweekly, but his paycheck varies depending on the number of hours he works. You testified that your spouse also earns commission based on his sales which is paid monthly, but the amount is not always the same. You testified that NYSOH may have over-estimated your spouse's income based on the paystubs submitted, because he does not always get as much commission as was included in the January 2017 paystubs.

- 17) At the hearing, you were directed to submit your spouse's paystubs for the months of February, March, and April 2017 to establish the average amount of monthly commission your spouse receives.
- 18) On July 13, 2017, the NYSOH Appeals Unit received the following biweekly paystubs for your spouse:
 - a. Paystub with check date of March 10, 2017 in the gross amount of \$1,398.51 with a year to date amount of \$9,793.24.
 - b. Paystub with check date of March 24, 2017 in the gross amount of \$2,730.81 including an illegible amount of commission payment.
 - c. Paystub with check date of April 7, 2017 in the gross amount of \$1,443.77.
 - d. Paystub with check date of April 21, 2017 in the gross amount of \$3,020.44 including an illegible amount of commission payment.
 - e. Paystub with check date of May 5, 2017 in the gross amount of \$1,421.10.
 - f. Paystub with check date of May 19, 2017 in the gross amount of \$1,437.45 with a year to date amount of \$19,846.81.

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

Applicable Law and Regulations

Verification of Eligibility for the 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).

NYSOH must verify the eligibility of an applicant for the Essential Plan consistent with the standards set in 45 CFR § 155.315 and § 155.320 (New York's Basic Health Plan Blueprint, pgs. 16-17, as approved January 2016; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>; 42 CFR § 600.345(a)(2)).

An applicant is required to attest to their household's projected annual income. (45 CFR § 155.320(c)(3)(ii)(B)). For all individuals whose household income is needed, NYSOH must request tax return data from the Secretary of the Treasury and data regarding Social Security benefits from the Commissioner of Social Security in order to confirm that the information the applicant is attesting to is accurate (45 CFR § 155.320(c)(1)(i); 45 CFR § 155.320(c)(3)(ii)(A)).

If income data is unavailable, or if an applicant's attestation is not reasonably compatible with the income data NYSOH obtains, NYSOH must request additional information from the applicant to resolve the inconsistency (45 CFR § 155.320 (c)(3)(iii), (iv)).

NYSOH must provide the applicant with notice of the inconsistency in their account and 90 days to provide satisfactory documentary evidence to resolve the inconsistency (45 CFR § 155.315 (f)(2)). If NYSOH remains unable to verify the attestation of the applicant, NYSOH must redetermine the applicant's eligibility based on the information available from the data sources unless the applicant demonstrates that they are unable to provide the required documentation (45 CFR § 155.315(f)(2), (g)).

Upon making an eligibility redetermination, NYSOH must notify the applicant and implement any updates in eligibility to the Essential Plan effective the first day of the following month for changes received by NYSOH from the first to the fifteenth of any month (45 CFR § 155.420(b)(1)(i); see also 42 CFR § 600.320(c)). For updates received by NYSOH from the sixteenth to the last day of any month, NYSOH must ensure coverage is effective the first day of the second following month (45 CFR § 155.420(b)(1)(ii); see also 42 CFR § 600.320(c)).

Legal Analysis

The first issue is whether NYSOH properly determined you and your spouse were eligible to receive up to \$652.00 per month in advance premium tax credits, effective March 1, 2017.

You submitted an updated application online on February 14, 2017 listing an annual household income amount of \$48,636.61 consisting of income your spouse earned from his full-time job. You testified this amount was from your spouse's 2016 W-2. NYSOH relied on the information in that application and determined you and your spouse were eligible to receive up to \$652.00 in APTC

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per month, effective March 1, 2017. You appealed that determination insofar as you and your spouse were not eligible for the Essential Plan.

However, according to your account, the following day another updated application was submitted on behalf of you and your spouse reducing your annual household income to \$48,500.00. As a result of the new income information, NYSOH determined you and your spouse conditionally eligible to enroll in the Essential Plan with a \$20.00 monthly premium, effective March 1, 2017, and you and your spouse enrolled in a plan. You were directed to submit proof of your income to confirm the eligibility of you and your spouse to remain in your Essential Plan.

On February 24, 2017, NYSOH received two biweekly paystubs for your spouse for the month of January 2017 and one paystub for February 2017. The paystubs varied in amount and the January 27, 2017 paystub included an additional commission payment of \$1,269.95. On March 7, 2017, NYSOH recalculated your annual household income by apparently utilizing the information in the January 2017 paystubs as the monthly average. As a result, your household income amount was increased to \$54,526.45 and you and your spouse were determined eligible to receive up to \$583.00 in monthly APTC, effective April 1, 2017.

It is noted that you and your spouse were disenrolled from your Essential Plan because of the new eligibility determination; however, you were granted Aid to Continue in your Essential plan pending the outcome of this decision.

You testified that your spouse is paid biweekly, but his paycheck varies depending on the number of hours he works. You testified that your spouse also earns commissions based on his sales, which are paid monthly, but the amount is not always the same. You testified that NYSOH may have over-estimated your spouse's income based on the paystubs submitted, because he does not always receive as much commission as was included in the January 2017 paystubs.

At the hearing, you were directed to submit your spouse's paystubs for the months of February, March, and April 2017 to establish the average amount of monthly commission your spouse receives.

The record establishes that you have submitted all your spouse's biweekly paystubs from January through May 2017 with the exception of the February 24, 2017 paystub. However, the May 19, 2017 paystub indicates your spouse had earned, as of that date, \$19,846.81 through the first 10 biweekly pay periods in 2017. Accordingly, the documentation is sufficient to determine your spouse's average biweekly earnings through the first five months of 2017 is \$19,846.81. Based on that information, your spouse's annual income would be \$51,601.68.

Given the evidence, including your testimony, that your spouse's paychecks vary and that the amount of monthly commission he will earn is difficult to anticipate, it

is concluded that the best estimate of your spouse's income in 2017 is \$51,601.68, based on averaging five full months of your spouse's actual pay. Therefore, this is the income amount that should be used to determine the eligibility of you and your spouse for health insurance.

It is noted that the February 2017 applications submitted on behalf of you and your spouse underreported your spouse's income based on the documentation submitted. Additionally, NYSOH over-estimated your spouse's annual income based only on the January 2017 paystubs. As such, the eligibility determinations issued on February 15, 2017, February 16, 2017, and March 7, 2017 are no longer supported by the record, because they are based on inaccurate income information. Therefore, those eligibility determinations must be RESCINDED.

Your case is RETURNED to NYSOH to redetermine the eligibility of you and your spouse, as of the date of your February 14, 2017 application, based on an expected annual household income of \$51,601.68 and a household of four as supported by the now developed record.

Decision

The February 15, 2017, February 16, 2017, and March 7, 2017 eligibility determination notices are RESCINDED.

Your case is RETURNED to NYSOH to redetermine the eligibility of you and your spouse, as of the date of your February 14, 2017 application, based on an annual household income of \$51,601.68 and a household of four as supported by the now developed record.

Effective Date of this Decision: August 3, 2017

How this Decision Affects Your Eligibility

This is not a final determination of the eligibility of you and your spouse.

Your case is being sent back to NYSOH to redetermine the eligibility of you and your spouse based on the updated income information submitted.

You will receive an updated eligibility determination notice from NYSOH.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to the Federal Marketplace or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the Federal Marketplace. This must be done within 30 days of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

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

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211

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- By fax: 1-855-900-5557

Summary

The February 15, 2017, February 16, 2017, and March 7, 2017 eligibility determination notices are RESCINDED.

Your case is RETURNED to NYSOH to redetermine the eligibility of you and your spouse, as of the date of your February 14, 2017 application, based on an annual household income of \$51,601.68 and a household of four as supported by the now developed record.

This is not a final determination of the eligibility of you and your spouse.

Your case is being sent back to NYSOH to redetermine the eligibility of you and your spouse based on the updated income information submitted.

You will receive an updated eligibility determination notice from NYSOH.

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)

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).

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 bɛtumi ama wo obi a okyerɛ kasa a woka no ase ama wo kwa a wontua hwee.

(Urdu) اردو

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

Tiếng Việt (Vietnamese)

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

אידיש (Yiddish)

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

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