



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

Notice of Decision

Decision Date: June 26, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000015958

[REDACTED]

Dear [REDACTED],

On May 25, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's January 23, 2017, January 25, 2017 and February 1, 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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NY State of Health Account ID: [REDACTED]
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Issues

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

Did NY State of Health (NYSOH) properly determine that you and your spouse were not eligible for advance payments of the premium tax credit (APTC) or cost-sharing reductions, effective March 1, 2017?

Did NYSOH properly determine that you and your spouse were not eligible for the Essential Plan, effective March 1, 2017.

Procedural History

On November 8, 2016, NYSOH issued an eligibility determination notice stating that you and your spouse were eligible to enroll in the Essential Plan for a limited time, effective December 1, 2016. You and your spouse were subsequently enrolled in Essential Plan 1 Plus Vision and Dental with a \$46.43 monthly premium each with an enrollment start date of October 1, 2016.

On December 22, 2016, NYSOH issued an eligibility determination notice stating that you were eligible to enroll in the Essential Plan for a limited time with a \$20.00 monthly premium, effective February 1, 2017. The notice directed you to submit proof of income for you by December 29, 2016. Your eligibility for the Essential Plan was based on your reported household income of \$31,200.00.

The notice further stated that your spouse was newly eligible to purchase a qualified health plan (QHP) at full cost, effective February 1, 2017. Your spouse was not eligible for Medicaid, Child Health Plus, the Essential Plan, or to receive

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APTC or cost-sharing reductions to help pay for the cost of insurance. This was because NYSOH had not received the documentation needed to verify the income listed in your application within the required timeframe.

Also on December 22, 2016, NYSOH issued a disenrollment notice stating that your spouse's coverage in her Essential Plan 1 Plus Vision and Dental would end on January 31, 2017. This was because your spouse was no longer eligible to enroll in the Essential Plan.

Also on December 22, 2016, NYSOH issued a plan enrollment notice confirming your Essential Plan 1 Plus Vision and Dental with a plan enrollment start date of October 1, 2016. That notice further stated that your spouse's coverage in a QHP would not start until you picked a plan for her.

On January 20, 2017, NYSOH issued an eligibility determination notice based on your January 19, 2017 updated application, stating that you and your spouse were eligible to purchase a QHP at full cost through NYSOH, effective March 1, 2017. You and your spouse were not eligible for Medicaid, Child Health Plus, the Essential Plan, or to receive tax credits or cost-sharing reductions to help pay for the cost of insurance. This was because federal and state data sources showed that your income was above the allowable limit for these programs. Federal and state data sources were used because you did not provide proof of your household income within the required timeframes.

On January 21, 2017, NYSOH issued a disenrollment notice stating that your coverage with Essential Plan 1 Plus Vision and Dental would end on February 28, 2017. This was because you were no longer eligible to enroll in the Essential Plan.

On January 22, 2017, January 24, 2017 and January 31, 2017, you updated your application for health insurance for you and your spouse.

On January 23, 2017, January 25, 2017 and February 1, 2017, NYSOH issued eligibility determination notices based on the information contained in the January 22, 2017, January 24, 2017 and January 31, 2017 updated applications respectively. Those eligibility redetermination notices stated that you and your spouse were eligible to purchase a QHP at full cost beginning March 1, 2017. The notices stated that you and your spouse were not eligible for Medicaid, Child Health Plus or the Essential Plan because you did not meet the income limits for these programs. The notices further stated that you and your spouse do not qualify for APTC because your applications state that the primary tax filers in your household are married but not filing taxes jointly. It also stated that you do not qualify for cost sharing reductions because you are not eligible for APTC.

On February 17, 2017, you contacted NYSOH's Account Review Unit and requested an appeal of those eligibility redetermination notices as they related to

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your and your spouse's inability to receive financial assistance to purchase health insurance through NYSOH. You also requested aid to continue for you and your spouse in your Essential Plan 1 Plus Vision and Dental during the appeals process.

On February 22, 2017, NYSOH granted your request for aid to continue for the period from March 1, 2017 to December 31, 2017 pending the outcome of your appeal.

On February 23, 2017, NYSOH issued eligibility determination and plan enrollment notices confirming that aid to continue had been granted pending outcome of the appeal and that you and your spouse were enrolled in your Essential Plan 1 Plus Vision and Dental with a monthly premium of \$47.47 each, effective March 1, 2017 (see Incident # [REDACTED]).

On May 25, 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 until June 8, 2017 to allow you to submit supporting documentation.

On June 5, 2017, NYSOH Appeals Unit received via secure facsimile your eight-page submission, which included a cover page and paystubs for you and your spouse for the month of May 2017. That document was made part of the record as "Appellant's Exhibit # 1." The record is now closed.

Findings of Fact

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

- 1) According to your NYSOH account, the applications you submitted on January 22, 2017, January 24, 2017 and January 31, 2017, you are married and intended to file your taxes as married filing single.
- 2) You are seeking health insurance for yourself and your spouse.
- 3) You testified that now that your spouse is in the country with you, that you intend to file your 2017 tax return as married filing jointly. You testified that you will not be taking any deductions on that tax return.
- 4) According to your NYSOH account your spouse is an Immigrant Non-Citizen.
- 5) According to your NYSOH account and your testimony, your spouse obtained an Employment Authorization Card which is valid from 10/10/16 to 10/9/17. Your spouse also obtained a social security card on 12/01/2016. (see Document [REDACTED]).

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- 6) The applications that were submitted on January 22, 2017, January 24, 2017 and January 31, 2017, listed an annual household income of \$43,767.75 in your earnings from employment. You testified that that was a good estimate of your expected income. Those same applications listed your spouse's income as \$0.00.
- 7) At the May 25, 2017 hearing, you testified that your spouse had been employed for about five months.
- 8) In Appellant's Exhibit # 1, you submitted four pay advices that indicate you work a 40-hour week at \$14.00 per hour and receive various overtime pay at a rate of \$21.00 per hour. On the June 1, 2017 pay advice, your year-to-date gross earnings were \$20,400.80. The pay advices submitted for your spouse indicate she works at two different employers earning \$10.00 per hour at each location and the hours worked varied. However, the year-to-date gross earnings for your spouse on the pay advice from one of her employers, dated 05/20/17, was \$4,877.50 and the year-to-date gross earnings on the pay advice from another employer, dated 5/31/2017, was \$2,290.00.
- 9) Your application states that you and your spouse live in Westchester County, New York.

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

Applicable Law and Regulations

Advance Payments of the Premium Tax Credit

APTC is 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 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)).

Additionally, a tax filer who is married must file a joint return with his or her spouse in order to qualify for APTC (45 CFR §§ 155.305(f), 155.310(d); 26 CFR § 1.36B-2).

However, an individual will be treated as not married at the close of the taxable year if the individual:

- 1) Is legally separated from his/her spouse under a decree of divorce or of separate maintenance, or
- 2) Meets all of the following criteria:
 - a. files a separate return from his/her spouse and maintains his/her household as the primary home for a qualifying child;
 - b. pays more than one half of the cost of keeping up his/her home for the tax year; and
 - c. does not have his/her spouse as a member of the household during the last 6 months of the tax year

(26 USC § 7703).

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% 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 \$16,020.00 for a two-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)).

Legal Analysis

The first issue under review is whether NYSOH properly determined that you and your spouse were not eligible for APTC and cost sharing reductions, effective March 1, 2017.

In the eligibility determination notices issued on January 23, 2017, January 25, 2017 and February 1, 2017, NYSOH denied an APTC to you and your spouse because you indicated that you were married but did not plan to file a joint federal income tax return.

To qualify for APTC, a person who is married must either file taxes jointly with his or her spouse or qualify as "not married" at the close of the tax year.

According to the information in the record and your testimony, the applications you submitted on January 22, 2017, January 24, 2017 and January 31, 2017 indicated that you were married and intended to file taxes as single. Further, there is nothing in the record to indicate that you met any of the exceptions to qualify as "not married." Therefore, NYSOH correctly determined in the January 23, 2017, January 25, 2017 and February 1, 2017 eligibility determination notices that you and your spouse were not eligible for APTC due to your tax filing status.

Cost sharing reductions is available only to those who meet the requirements for APTC. Since you and your spouse did not qualify for APTC, NYSOH correctly found that you and your spouse were also not eligible for cost sharing reductions.

The second issue under review is whether NYSOH properly determined that you and your spouse were ineligible for the Essential Plan, effective March 1, 2017.

The applications that were submitted on January 22, 2017, January 24, 2017 and January 31, 2017 listed an annual household income of \$ 43,767.75 and the eligibility determinations relied upon that information.

You are in a two-person household for purposes of this analysis. This is because your applications stated that you expected to file your 2017 income taxes as married filing single and will claim no 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 (MAGI) that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$16,020.00 for a two-person household. Since an annual household income of \$43,767.75 is 273.20% of the 2016 FPL, NYSOH properly found you and your spouse to be ineligible for the Essential Plan.

Since the January 23, 2017, January 25, 2017 and February 1, 2017 eligibility determination notices properly stated that, based on the information you provided, you and your spouse were ineligible for the Essential Plan, they are correct and are AFFIRMED.

However, you testified that now that your spouse is in this country and has obtained the necessary documentation for employment, she has been steadily employed in 2017 and you now intend to file your tax return as married filing jointly.

According to the information in the record and your testimony, your year-to-date earnings as of the end of May 2017 equaled \$20,400.00. This indicates your average monthly earnings as \$4,080.00 per month ($\$20,400.00 / 5$ months) or \$48,960.00 per year ($\$4,080.00 \times 12$ months). In addition, you testified that your spouse has been working for about 5 months and you submitted four pay stubs for her for the month of May 2017. The gross year-to-date earnings for your spouse as of the end of May 2017 equaled approximately \$7,167.00. On a monthly basis, that would be approximately \$1,433.00 ($\$7,167.00 / 5$ months) or \$17,200.00 per year ($\$1,433.00 \times 12$ months).

As such, your case is RETURNED to NYSOH to redetermine your and you spouse's eligibility for financial assistance using a two-person household, for a couple residing in Westchester County with an expected income of \$66,166.00 ($\$48,960.00 + \$17,200.00$), with a tax filing status of married filing jointly.

Decision

The January 23, 2017, January 25, 2017 and February 1, 2017 eligibility determination notices are AFFIRMED.

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).

Your case is RETURNED to NYSOH to redetermine your and your spouse's eligibility for financial assistance using a two-person household, for a couple residing in Westchester County with an expected income of \$66,166.00 (\$48,960.00 + \$17,200.00), with a tax filing status of married filing jointly, and to notify you accordingly.

Effective Date of this Decision: June 26, 2017

How this Decision Affects Your Eligibility

At present, you and your spouse have Essential Plan 1 Plus Vision and Dental coverage as of March 1, 2017, as aid to continue during the appeal process.

Your enrollment will not be disturbed until your eligibility is re-determined by NYSOH. NYSOH will notify you once this has been done and what further action may be required on your part, if applicable.

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.

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).

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
- By fax: 1-855-900-5557

Summary

The January 23, 2017, January 25, 2017 and February 1, 2017 eligibility determination notices are AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your and your spouse's eligibility for financial assistance using a two-person household, for a couple residing in Westchester County with an expected income of \$66,166.00 (\$48,960.00 + \$17,200.00), with a tax filing status of married filing jointly, and to notify you accordingly.

At present, you and your spouse have Essential Plan 1 Plus Vision and Dental coverage as of March 1, 2017, as aid to continue during the appeal process.

Your enrollment will not be disturbed until your eligibility is re-determined by NYSOH. NYSOH will notify you once this has been done and what further action may be required on your part, if applicable.

Legal Authority

We are issuing this determination in accordance with 45 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).

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&btumi 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.

אידיש (Yiddish)

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

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