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

Notice of Decision

Decision Date: August 4, 2017

NY State of Health Account ID: [redacted]
Appeal Identification Number: AP000000017359

[redacted]

Dear [redacted]

On July 11, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's April 1, 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
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Decision

Decision Date: August 4, 2017

NY State of Health Account ID: [redacted]
Appeal Identification Number: AP000000017359

[redacted]

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 eligible to receive up to $475.00 per month in advance payments of the premium tax credit (APTC), effective May 1, 2017?
>
> Did NY State of Health properly determine that you and your spouse were not eligible for cost-sharing reductions?

Procedural History

On March 27, 2017, you updated your application for financial assistance and uploaded documentation to your NYSOH account. That day, a preliminary eligibility determination was prepared stating that you and your spouse were eligible to enroll in the Essential Plan with a $20.00 monthly premium for a limited time, effective May 1, 2017.

Also on March 27, 2017, you spoke to NYSOH's Account Review Unit and appealed the start date of your Essential Plan eligibility, insofar as it began on May 1, 2017 and not April 1, 2017.

On March 28, 2017, NYSOH issued a notice of eligibility determination, based on the March 27, 2017 application, stating that you and your spouse were eligible to enroll in the Essential Plan with a $20.00 monthly premium for a limited time, effective May 1, 2017. The notice directed you to submit documentation of your household income by June 25, 2017.

On March 31, 2017, you uploaded further documentation to your NYSOH account.

On April 1, 2017, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to receive up to $475.00 per month in APTC, effective May 1, 2017. The notice further stated that you were not eligible for cost-sharing reductions because your household income was over the allowable income limit.

On May 12, 2017, NYSOH issued a notice of enrollment confirmation, confirming your, and your spouse's, enrollment in a platinum-level qualified health plan (QHP), with a monthly premium of $1,081.62 after the application of your APTC, beginning May 1, 2017.

On July 11, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, the issue under appeal was amended on the record to reflect that you were now appealing the amount of APTC for which you had been found eligible. The record was developed during the hearing and held open until July 26, 2017, to allow you to submit supporting documents.

On July 25, 2017, you faxed an eight-page document to NYSOH's Appeals Unit, and indicated that you did not plan to submit any further documentation. The record is now closed.

Findings of Fact

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

1) You testified that you expect to file your 2017 taxes with a tax filing status of married filing jointly. You will claim two dependents on that tax return.

2) You are seeking insurance for yourself and your spouse.

3) NYSOH redetermined your eligibility on March 31, 2017, based on the income documentation you had previously provided.

4) That application stated that your expected gross annual income for 2017 was $52,000.00.

5) You testified that this amount was correct, but that it is a "draw" that must be paid back once you receive your commission.

6) You testified that, in the past five years, you have always earned at least enough to cover your draw.

7) You testified that your income is sometimes higher because you sell [redacted], and the sales cycle can be one to two years.

8) You testified that you probably earned $10,000.00 to $15,000.00 over your draw in 2016.

9) You testified that you had to take a “loan” from your employer in 2017 for approximately $40,000.00 to cover your mortgage, household expenses, and the cost of your monthly health insurance premium.

10) You testified that this “loan” was paid to you in a regular paycheck because it is expected that you will earn the additional commission necessary to cover this amount, on top of your regular minimum guaranteed earnings.

11) The March 31, 2017 application stated that your spouse’s expected annual income is $11,180.00, consisting entirely of Unemployment Insurance Benefits (UIB).

12) You testified that you believe this amount is approximately correct. You testified that you are not sure when he started receiving benefits, but that his last payment was three to four weeks before the hearing.

13) You testified that your spouse’s UIB weekly benefit rate was $430.00.

14) Your application states that you will not be taking any deductions on your 2017 tax return.

15) Your application states that you live in [redacted]

16) You testified that you would like to remain in your current QHP, but with more financial assistance.

17) You testified that you do not want to be eligible for the Essential Plan because the network of available doctors was not sufficient, as you had difficulty finding a board-certified physician.

18) After the hearing, your sent an eight-page fax to the Appeals Unit consisting of the following documentation:
    a. A one-page cover sheet;
    b. An email containing a three-page Official Record of Benefit Payment History showing that that your spouse’s last UIB payment was released on June 12, 2017, and that he has zero days remaining on his claim. It also shows that he received three

payments of $430.00 in 2016, and that the rest of his payments were received in 2017, for a claim total of $11,180.00;

c. A two-page letter dated June 12, 2011 from your employer, [redacted] explaining that you will be compensated through a draw against commission;
d. A copy of a paystub dated June 21, 2017 showing a supplemental bonus in the amount of $49,863.40 paid to you, year-to-date supplemental bonus earnings of $79,863.40, and year-to-date gross earnings of $103,863.40;
e. A one-page letter from the NYS Department of Labor dated June 16, 2017 stating that this letter is proof that you have received all regular UIB available on your current claim.

These documents are collectively marked and entered into the record as "Appellant's Exhibit One."

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 is generally available to a person who is eligible to enroll in a 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 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 $24,300.00 for a four-person household (81 Federal Register 4036).

For annual household income in the range of at least 250% but less than 300% of the 2016 FPL, the expected contribution is between 8.21% and 9.69% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2016-24).

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on NYSOH application) with their actual income (stated on their federal income tax return). Those who take less tax credit in advance than they claim on the tax return may get the rest of it as an income tax refund or have their tax bill reduced. Those who take more tax credit in advance than they can claim on their tax return will owe the difference as additional income taxes (26 CFR § 1.36B-4).

Cost-Sharing Reductions

Cost-sharing reductions 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)).

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)).

“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 finds 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.

Legal Analysis

The first issue under review is whether NYSOH properly determined that you and your spouse were eligible for APTC of up to $475.00 per month.

Based on the income documentation you submitted, NYSOH determined your gross annual household income to be $63,180.00, and the April 1, 2017 eligibility determination relied upon that information.

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

You reside in Westchester County, where the second lowest cost silver plan available for a couple through NYSOH costs $922.98 per month.

An annual income of $63,180.00 is 260% of the 2016 FPL for a four-person household. At 260% of the FPL, the expected contribution to the cost of the health insurance premium is 8.51% of income, or $448.00 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through NYSOH for a couple in your county ($922.98 per month) minus your expected contribution ($448.00 per month), which equals $474.93 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined you and your spouse to be eligible for up to $475.00 per month in APTC, based on the income documentation you had provided.

However, at the hearing, you testified that you received a “loan” from your employer in the amount of approximately $40,000.00, which you are expected to earn through your 2017 commissions. You testified that you asked for this money because you needed to be able to cover your mortgage, expenses, and the cost of your monthly QHP premium.

After the hearing, you submitted a paystub dated June 21, 2017 showing that you received a “supplemental bonus” in the amount of $49,863.40. The paystub also showed that you had so far received $24,000.00 of your expected $52,000.00 annual base salary. Additionally, the paystub showed your year-to-date supplemental bonus earnings were actually $79,863.40, and that your year-to-date gross earnings were $103,863.40 (Appellant’s Exhibit One).

Therefore, if you continue to receive your $2,000.00 biweekly base salary against commission, your expected annual income for 2017 is, at a minimum, $131,863.40.

You also submitted documentation showing that, of the $11,180.00 in UIB payments your spouse received in total, $9,890.00 of that figure was received in 2017 (Appellant's Exhibit One).

Therefore, your minimum gross annual expected household income for 2017 is $141,753.40.

The second issue under review is whether you and your spouse were properly found ineligible for cost-sharing reductions. Cost-sharing reductions are available to a person who has a household income no greater than 250% of the FPL. Since a household income of $63,180.00 is 260.00% of the applicable FPL, NYSOH correctly found you and your spouse to be ineligible for cost sharing reductions.

Since the April 1, 2017 eligibility determination properly stated that, based on the information you provided at that time, you and your spouse were eligible for up to $475.00 per month in APTC, and ineligible for cost-sharing reductions, it was correct and is AFFIRMED.

However, since you provided documentation after the hearing showing that your income is significantly higher than it was found to be on March 31, 2017, your case is RETURNED to NYSOH to redetermine eligibility for financial assistance for your family, based on a four-person household with an expected 2017 annual income of $141,753.40, residing in [redacted]

Decision

The April 1, 2017 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your family's eligibility for financial assistance, based on a four-person household with a 2017 expected annual income of $141,753.40, residing in Westchester County.

Effective Date of this Decision: August 4, 2017

How this Decision Affects Your Eligibility

You and your spouse were eligible for up to $475.00 per month in APTC, as of April 1, 2017.

You and your spouse are ineligible for cost-sharing reductions.

Your case is being sent back to NYSOH to redetermine your family's eligibility for financial assistance, based on the updated income documentation you provided after the hearing.

NYSOH will notify you in writing of your 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):

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 April 1, 2017 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your family's eligibility for financial assistance, based on a four-person household with a 2017 expected annual income of $141,753.40, residing in [redacted]

You and your spouse were eligible for up to $475.00 per month in APTC, as of April 1, 2017.

You and your spouse are ineligible for cost-sharing reductions.

Your case is being sent back to NYSOH to redetermine your family's eligibility for financial assistance, based on the updated income documentation you provided after the hearing.

NYSOH will notify you in writing of your 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:

[redacted]

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).

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 مجانًا.

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 महत्त्वपूर्ण 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 yɛ tow krataa a ho hia. Sɛ wo hia ɛho nkyerɛkyerɛmu a, yɛ srɛ wo, frɛ 1-855-355-5777. yƐbƐtumi ama wo obi a ɔkyerƐ kasa a woka no ase ama wo kwa a wontua hwee.

اردو (Urdu)

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم1-855-355-5777 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 דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.

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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