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

Notice of Decision

Decision Date: October 5, 2017

NY State of Health Account ID: [redacted]
Appeal Identification Number: AP000000018263

[redacted]

Dear [redacted],

On September 26, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's April 8, 2017 eligibility determination notice.

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
P.O. Box 11729
Albany, NY 12211

Decision

Decision Date: October 5, 2017

NY State of Health Account ID: [redacted]
Appeal Identification Number: AP000000018263

[redacted]

Issue

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

> Did NY State of Health (NYSOH) properly determine that you were eligible to receive up to $155.00 per month in advance payments of the premium tax credit, not eligible for cost-sharing reductions, and not eligible for the Essential Plan, all effective May 1, 2017?

Procedural History

On January 13, 2017, NYSOH received an update to your application of health insurance.

On January 14, 2017, NYSOH issued an eligibility determination notice based on the information contained in the January 13, 2017 application update. The notice stated that you were eligible to enroll in the Essential Plan for a limited time, effective February 1, 2017. You were directed to provide income documents by April 12, 2017 to confirm your eligibility.

Also on January 14, 2017, NYSOH issued an enrollment notice confirming your selection of an Essential Plan for your enrollment as of January 13, 2017. The notice stated that your Essential Plan coverage would begin effective February 1, 2017.

On March 31, 2017, NYSOH received four earnings statements issued to you by your employer, [redacted]., between February 2, 2017 and March 17, 2017.

On April 1, 2017, NYSOH received (1) a letter from you stating, among other things, that your base pay is $1,125.00 gross income, and your commission varies on a month to month basis contingent solely on company performance and should not be included within your income, and (2) a duplicate set of the four earnings statements issued to you by your employer between February 2, 2017 and March 17, 2017.

On April 7, 2017, NYSOH redetermined your eligibly for health insurance.

On April 8, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible to receive an advance premium tax credit (APTC) of up to $155.00 per month, effective May 1, 2017. That notice also stated that you were not eligible for either CSR or the Essential Plan because your income was over the allowable income limits for those programs.

On April 21, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you were seeking for your Essential Plan coverage to be reinstated.

On September 26, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and remained open as the Hearing Officer directed you to provide as additional evidence to corroborate your testimony the most recent earnings statement you received from your employer, reflecting any decrease in your commission and your current year-to-date gross income. The record was to be closed on September 27, 2017, or upon the receipt of the above referenced documents, whichever occurred earlier.

On September 27, 2017, you provided the above referenced documents to the NYSOH Appeals Unit through facsimile.

Accordingly, the record was closed on September 27, 2017.

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 head of household. You will claim your child as your dependent on that tax return.

2) You are seeking insurance for yourself only, since your child is already enrolled in Child Health Plus.

3) The application that was submitted on January 12, 2017 listed annual household income of $29,250.00, consisting of $1,1,25.00 you earn from

your employment with [redacted] once every two weeks. You testified that this amount was correct. Based on this application update, you were found eligible to enroll in the Essential Plan for a limited time, pending receipt of income documentation to confirm your eligibility.

4) On March 31, 2017, you provided four earnings statements issued to you by your employer, reflecting that you received $1,125.00 in base pay on February 2, 2017, February 17, 2017, March 2, 2017 and March 17, 2017, which coincided with your application and testimony during the hearing. However, the February 17, 2017 and March 17, 2017 earnings statements reflects that you also received $1,239.61 and $2,288.44 in incentive pay. You testified that these incentive payments are variable and are made solely upon the company meeting certain performance benchmarks.

5) Based on the additional income documentation you provided on March 31, 2017, NYSOH redetermined your eligibility based on a household income of $41,875.32. You were found eligible for an APTC of up to $155.00 per month, but no longer eligible for the Essential Plan, effective May 1, 2017.

6) Your Essential Plan coverage ended, effective April 30, 2017.

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

8) You live in [redacted], New York.

9) You testified that you do not believe the incentive pay should not be included within your overall adjusted gross income when assessing your eligibility for health insurance programs since it is variable, cannot be relied upon, and is not part of your base pay.

10) On September 27, 2017, your provided to NYSOH a copy of your most recent earnings statement issued on September 18, 2017, reflecting that you had received $1,125.00 in base pay and $1,418.55 in incentive pay. Your year-to-date overall gross income as of September 18, 2017 was listed as $32,824.11.

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

Advance payments of the 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 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)).

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 $16,020.00 for a two-person household (81 Federal Register 4036).

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 one-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)).

"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 issue is whether NYSOH properly determined that you were eligible to receive an APTC of up to $155.00 per month, not eligible for CSR, and not eligible for the Essential Plan, effective May 1, 2017.

You are in a two-person household. You expect to file your 2017 income taxes as head of household and will claim no dependents on that tax return.

You testified, and your NYSOH account reflects, that you live in [redacted], New York.

Based on the income documents that you submitted to NYSOH on April 26, 2017, NYSOH redetermined your eligibility based on a household income of $41,875.32. The eligibility determination relied upon that information.

You testified that your earnings from your employer fluctuate considerably, and provided income documents to NYSOH on March 31, 2017, at NYSOH's request. The earnings statements reflected that you received a total of (1) $1,125.00 on February 2, 2017, (2) $2,364.00 on February 17, 2017 (of which $2,364.61 was incentive pay), (3) $1,125.00 on March 2, 2017, and (4) $3,413.44 on March 17, 2017 (of which $3,413.44 was incentive pay).

It appears that upon reviewing your earnings over a four-week period to calculate your anticipated household income, the NYSOH representative totaled the income you received, and redetermined your eligibility based on household income of $41,875.32. However, we are unable to determine how this figure was calculated by the NYSOH representative since based on the four separate earnings statements you provided between February 2, 2017 and March 17, 2017, your gross income should have been totaled and divided by the number of weeks worked.

The record reflects that you provided eight weeks of earnings statements, and those documents reflect that you received a total of $8,028.05 in gross income, $5,778.05 of which was paid to you in the form of incentive pay. Since the incentive pay is taxable under federal regulations as part of your gross income, it must be included within your overall income for determining your eligibility for hearing insurance programs.

Therefore, based only the earnings statements you provided between February 2, 2017 and March 17, 2017, we find that your eligibility would have been redetermined based on a household income of $52,182.33 ($8,028.05 / 8 weeks x 52 weeks).

However, to support your case that you should be eligible for either the Essential Plan or more APTC, you provided additional documentation, in the form of the last earnings statement issued to you by your employer on September 18, 2017. This earnings statement reflects that you were paid $2,543.55, of which $1,418.55 was incentive pay. Your year-to-date gross income as of September 18, 2017 was $32,824.11.

Assuming that the schedule of payments remains constant in that you are paid $1,125.00 in base pay once every other week, and paid incentive pay once per month, your approximate weekly gross income of $1,003.51 ($8,028.05 / 8 weeks) means that you could reasonably anticipate earning an additional $14,049.09 in gross pay over the final 14 weeks of the year after your September 18, 2017 earnings statement.

Therefore, we find there is sufficient evidence that the April 8, 2017 eligibility determination notice is no longer supported by the credible evidence of record and must be RESCINDED.

The now developed record reflects that your current anticipated income for 2017 is more accurately reflected as $46,873.20 ($32,824.11 year-to-date earnings plus $14,049.09 in anticipate gross income for the remainder of 2017).

Your case is RETURNED to NYSOH to redetermine your eligibility based on an anticipated household income $46,873.20 in a two-person household in [redacted] as of April 7, 2017.

Decision

The April 8, 2017 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to (1) redetermine your eligibility based on an anticipated household income $46,873.20 in a two-person household in [redacted] as of April 7, 2017, and (2) to facilitate your selection of a health plan once you receive a new determination reflecting your eligibility as of April 7, 2017.

Effective Date of this Decision: October 5, 2017

How this Decision Affects Your Eligibility

You will receive a new determination notice shortly reflecting your updated 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 8, 2017 eligibility determination notice is RESCINDED.

Your case is being sent back to NYSOH to (1) redetermine your eligibility based on an anticipated household income $46,873.20 in a two-person household in Suffolk County as of April 7, 2017, and (2) to facilitate your selection of a health

plan once you receive a new determination reflecting your eligibility as of April 7, 2017.

You will receive a new determination notice shortly reflecting your updated 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.

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).

বাংলা **(Bengali)**

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 नि:शुल्क 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.

(Urdu)اردو

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.

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).

(Yiddish) אידיש

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).