

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

Notice of Decision

Decision Date: October 3, 2017

NY State of Health Account ID:

Appeal Identification Number: AP00000018485



Dear ,

On August 11, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's April 11, 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.



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

Decision

Decision Date: October 3, 2017

NY State of Health Account ID
Appeal Identification Number: AP00000018485



Issues

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

Did NY State of Health properly determine you were not eligible for the Essential Plan?

Did NY State of Health properly determine you were not eligible for Medicaid?

Did NY State of Health properly determine you were not eligible to receive advance payments of the premium tax credit?

Procedural History

On February 22, 2017, NYSOH issued an eligibility determination notice, based on your February 21, 2017 updated application, stating you were eligible to enroll in the Essential Plan with a \$20.00 monthly premium, for a limited time, effective April 1, 2017. The notice directed you to submit proof of your income to confirm your eligibility by May 22, 2017 or you might lose your insurance or receive less help paying for your coverage.

Also on February 22, 2017, NYSOH issued an enrollment notice confirming you were enrolled in an Essential Plan, effective April 1, 2017.

On April 10, 2017, NYSOH systematically redetermined your eligibility.

On April 11, 2017, NYSOH issued an eligibility determination notice stating you were newly eligible to purchase a qualified health plan (QHP), effective May 1, 2017. The notice indicated you were not eligible for Medicaid or the Essential Plan, because you did not meet the income limits for those programs. The notice further stated that you were not eligible to receive advance payments of the premium tax credit (APTC), because you indicated you would not file a federal tax return, or you were married and filing your taxes separately from your spouse, or you received APTC in a prior year in which you did not file a federal tax return.

Also on April 11, 2017, NYSOH issued a disenrollment notice stating your Essential Plan coverage would end on April 30, 2017 because you were no longer eligible to enroll in the plan.

On April 28, 2017, you spoke to NYSOH's Account Review Unit and appealed that determination insofar as you were not eligible to receive financial assistance to help pay for the cost of health insurance.

On May 3, 2017, NYSOH issued a notice of eligibility determination indicating you had been granted Aid to Continue in your Essential Plan pending the decision in your appeal. You were reenrolled in your Essential Plan, effective May 1, 2017.

On August 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 allow you to submit supporting documents.

On August 13, 2017, NYSOH Appeals Unit 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) The updated application submitted on February 21, 2017 indicated your annual income was \$20,208.24 consisting of \$388.62 you earned weekly from your employment.
- 2) According to your account, NYSOH was unable to verify the income information in your application. You were determined conditionally eligible to enroll in the Essential Plan pending receipt of documentation to confirm your income.

- 3) On April 3, 2017, NYSOH received your updated weekly paystubs. Each indicated that you earned \$500.00 gross weekly. According to your account, NYSOH validated your paystubs and increased your annual income to \$26,000.00 based on the income amount in your paystubs. The pay stubs indicate you are paid weekly on Fridays.
- 4) NYSOH redetermined your eligibility based on your recalculated income amount and determined you were not eligible for Medicaid or the Essential Plan because you were over the allowable income amount for those programs.
- 5) NYSOH determined that you were not eligible to receive APTC, because you indicated you would not file a federal tax return, or you were married and filing your taxes separately from your spouse, or you received APTC in a prior year in which you did not file a federal tax return.
- 6) There is no evidence in your account that you have ever received APTC.
- 7) Your February 21, 2017 application indicated you were "separated" and you would file your 2017 tax return with a tax filing status of single and that you would claim no dependents on that tax return.
- 8) You testified that you are not sure if you will claim your child as a dependent on your 2017 tax return. You were advised to seek the advice of a tax professional and update your application accordingly if it was determined that your dependent situation for 2017 had changed.
- 9) You were disenrolled from your Essential Plan, effective April 30, 2017.
- 10) You appealed the April 11, 2017 eligibility determination insofar as you were not eligible to receive financial assistance with health insurance.
- 11) You were granted "Aid to Continue" in your Essential Plan pending the decision in your appeal and you were reenrolled in your Essential Plan, effective May 1, 2017.
- 12) You testified that you have been divorced since 2016. You submitted a copy of your divorce decree entered on
- 13) You testified you earn \$500.00 a week in gross income. You testified that the income amount listed in your February 21, 2017 application was your net income, because you do not actually receive the gross amount. You further testified that you pay child support and you have various personal expenses such as rent and groceries and you think those expenses

should be considered when determining your eligibility for financial assistance with health insurance.

- 14) You submitted a copy of your 2016 W-2 form. It indicates that of the \$26,000.00 gross amount you earned that year, \$2,650.00 was taken out pre-tax for a "SIMPLE" IRA account. This amount was not included in box one of your W-2 form.
- 15) You testified, and your application indicates, you will not take any deductions on your 2017 tax return.
- 16) You testified, and your application indicates, you reside in Suffolk County.

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

Applicable Law and Regulations

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.

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 noncitizen 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 \$11,880.00 for a one-person household (81 Fed. Reg. 4036).

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)).

Medicaid

Medicaid can be provided through NYSOH to adults who: (1) are age 19 or older and under age 65, (2) are not pregnant, (3) are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act, (4) are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part, and (5) have a household modified adjusted gross income (MAGI) that is at or below 138% of the FPL for the applicable family size (42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)), NY Social Services Law § 366(1)(b)).

In an analysis of Medicaid eligibility, the determination is based on the FPL "for the applicable budget period used to determine an individual's eligibility" (42 CFR § 435.4). On the date of your application, that was the 2017 FPL, which is \$12,060.00 for a one-person household (82 Fed. Reg. 8831).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

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)).

The maximum amount of APTC that can be authorized equals:

 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 \$11,880.00 for a one-person household (81 Federal Register 4036).

For annual household income in the range of at least 300% but less than 400% of the 2016 FPL, the expected contribution is 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).

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

Legal Analysis

The first issue under review is whether NYSOH properly determined you were not eligible for the Essential Plan.

You submitted an updated application on February 21, 2017. According to your account NYSOH was unable to verify the income information listed in that application and proof of your income was requested. On April 3, 2017, NYSOH received your updated weekly paystubs, each indicating that you earned \$500.00 gross weekly. According to your account, NYSOH validated your paystubs and increased your annual income to \$26,000.00 based on the income amount in those paystubs.

You testified you earn \$500.00 a week in gross income. However, you further testified that NYSOH should use your net income rather than your gross income when calculating your eligibility for financial assistance, because you do not actually receive the gross income amount. Pursuant to the above cited regulations, NYSOH bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code. 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.

Additionally, you testified that your personal expenses such as rent and groceries render paying for health insurance impossible and, therefore, such expenses should be considered in the calculation of your eligibility. However, since the Internal Revenue Service rules do not allow living expenses such as rent, utilities, cable, and phone to be deducted from the calculation of your adjusted gross income, they cannot be deducted when the NYSOH computes your modified adjusted gross income for eligibility purposes.

However, your W-2 form indicates that \$2,650.00 (\$50.00 x 53 Friday paydays in 2016), constituting your contribution to a SIMPLE IRA account, was excluded from your pay pre-tax. It is therefore not included in your adjusted gross income for federal tax purposes, and therefore it would not have been included in NYSOH's calculation of your annual earnings. Your most recent pay stubs also indicate that you are still having \$50.00 per week taken out of your paychecks toward your SIMPLE IRA. Since there are 52 Fridays in 2017, the total withheld for 2017 is expected to be \$2,600.00.

Therefore, NYSOH incorrectly determined your household income to be \$26,000.00 based on the amount of your gross weekly income established by the paystubs you submitted in April 2017. It should have calculated your expected earnings for 2017 to be \$26,000.00 less \$2,600.00, or \$23,400.

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income that is between 138% and 200% of the FPL for the applicable family size. You testified, and your February 21, 2017 application indicated, you will file your 2017 tax return with a tax filing status of single. Although you testified you were not

sure if you will claim your child as a dependent on your 2017 tax return, your application indicated that you will claim no dependents and NYSOH properly determined your eligibility based on a one-person household.

Because NYSOH used the incorrect amount as your annual expected earnings for 2017, the April 11, 2017 eligibility determination was incorrect and must be RESCINDED.

The second issue is whether NYSOH properly determined you were ineligible for Medicaid.

Medicaid can be provided through NYSOH to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$12,060.00 for a one-person household. Since \$23,400.00 is 195.69% of the 2017 FPL, NYSOH properly found you ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

However, financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size.

The record establishes you earn \$450.00 in gross income weekly, after the \$50.00 weekly deduction is considered. Because there were four Fridays in April 2017, you would have earned \$1,800.00 for the month of April 2017.

To be eligible for Medicaid, you would need to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$1,387.00 per month. As the record establishes you earned \$1,800.00 in April 2017, over the allowable monthly income limit, you were not eligible for Medicaid based on monthly income as of the date of your application.

The third issue under review is whether NYSOH properly determined you were not eligible to receive APTC.

The eligibility determination notice issued by NYSOH on April 11, 2017, indicated you were not eligible to receive APTC, because you indicated you would not file a federal tax return, or you were married and filing your taxes separately from your spouse, or you received APTC in a prior year in which you did not file a federal tax return.

There is no evidence in your account that you have ever received APTC or that you ever indicated you would not file a tax return in 2017. However, your February 21, 2017 application indicated that your marital status was "separated" and that you would file your 2017 tax return with a tax filing status of single.

According to the above regulations, a tax filer who is married must generally file a joint return with his or her spouse to qualify for APTC.

An individual will be treated as not married at the close of the taxable year if the individual is legally separated from his/her spouse under a decree of divorce or of separate maintenance, or meets all of the following criteria: files a separate return from his/her spouse and maintains his or her household as the primary home for a qualifying child; pays more than one half of the cost of keeping up his or her home for the tax year; and does not have his or her spouse as a member of the household during the last six months of the tax year.

You submitted a copy of your divorce judgment entered on Accordingly, the record now establishes that you are not married. Thus, you are entitled to a redetermination of your eligibility to receive APTC based on a marital and tax filing status of single.

Therefore, the April 11, 2017 eligibility determination notice stating you are not eligible to receive APTC, because you were married and filing your taxes separately from your spouse, is not supported by the record and must be RESCINDED.

Your case is RETURNED to NYSOH to redetermine your eligibility to receive financial assistance based on an annual income of \$23,400.00, a household size of one, and a marital and tax filing status of single.

Decision

The April 11, 2017 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to redetermine your eligibility to receive APTC based on an annual income of \$23,400.00, a household size of one, and a marital and tax filing status of single.

Effective Date of this Decision: October 3, 2017

How this Decision Affects Your Eligibility

This is not a final determination of your eligibility.

Your case is being sent back to NYSOH to redetermine your eligibility based on a marital and tax filing status of single.

You will receive a notice from NYSOH containing your updated eligibility determination.

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 11, 2017 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to redetermine your eligibility to receive APTC based on an annual income of \$23,400.00, a household size of one, and a marital and tax filing status of single.

This is not a final determination of your eligibility.

You will receive a notice from NYSOH containing your updated eligibility determination.

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.

(Arabic)العربية

هذه وثيقة مهمة. إذا كنت بحاجة إلى مساعدة لفهم محتواها، يُرجى الاتصال بالرقم 5777-355-855-1. يُمكننا توفير مترجم فوري لك باللغة التي تتحدثها مجانًا.

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 बुझ 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 yε tow krataa a ho hia. Sε wo hia εho nkyerεkyerεmu a, yε srε wo, frε 1-855-355-5777. yεbεtumi ama wo obi a okyerε 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 کرم5777-355-855-1 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.

