



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

Notice of Decision

Decision Date: August 24, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000018609

[REDACTED]

Dear [REDACTED],

On August 22, 2017 you appeared by telephone at a hearing on your appeal of NY State of Health's April 6, 2017 renewal 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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DEPARTMENT OF HEALTH
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Decision

Decision Date: August 24, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000018609

[REDACTED]

Issues

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

Did NY State of Health properly determine that you and your spouse were eligible to receive up to \$643.74 per month in advance payments of the premium tax credit, effective June 1, 2017?

Did NY State of Health properly determine that you and your spouse were eligible for cost-sharing reductions?

Did NY State of Health properly determine that you and your spouse were ineligible for the Essential Plan?

Procedural History

On April 6, 2017, NYSOH issued a renewal notice stating that you and your spouse were eligible to receive up to \$643.74 per month in advance payments of the premium tax credit (APTC) and cost-sharing reductions if you enrolled in a silver level qualified health plan, effective June 1, 2017.

On May 2, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you and your spouse were not found eligible for the Essential Plan.

On May 16, 2017, you submitted an application for financial assistance.

On May 17, 2017, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible to receive up to \$643.00 in APTC for a limited

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time and eligible to receive cost-sharing reductions if you enrolled in a silver level qualified health plan for a limited time, effective July 1, 2017. That notice also stated that you and your spouse were not eligible for the Essential Plan because your income was over the allowable income limit for that program. The notice further directed you to submit documentation of your household's income by August 14, 2017 in order to confirm your household's eligibility for financial assistance.

On May 19, 2017, NYSOH issued a notice of eligibility determination stating that you and your spouse were eligible for the Essential Plan for a limited time, effective June 1, 2017. This was because you and your spouse had been granted Aid to Continue until a decision was made on your appeal.

On August 22, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

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 one dependent on that tax return.
- 2) The April 6, 2017 renewal notice states that federal and state data sources show that your household income was between \$27,821.00 and \$80,640.00.
- 3) The application that was submitted on May 18, 2017 listed annual household income of \$44,800.00, consisting of \$44,800.00 your spouse earns from his employment. You testified that this amount was correct.
- 4) You testified that neither you nor your child have any income.
- 5) Your application states that you will not be taking any deductions on your 2017 tax return.
- 6) You testified that your spouse is paid the same amount weekly and you confirmed that he receives gross pay of \$1,012.00 per week and a net pay of \$686.43 per week.
- 7) On May 22, 2017 you uploaded four of your spouse's paystubs to your NYSOH account. The first is for pay date April 23, 2017, the second is for pay date April 30, 2017, the third is for pay date May 7, 2017, and the

fourth is for pay date May 14, 2017. These paystubs all indicate a gross pay amount of \$1,012.00.

- 8) On June 7, 2017 you uploaded a copy of your rental agreement which shows that your monthly rent is \$1,525.96.
- 9) Your application states that you live in [REDACTED].
- 10) You testified that your spouse's income may decrease, but this has not yet occurred, and you do not know when this will occur.
- 11) You testified that you and your spouse are seeking to be found eligible for the Essential Plan.

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)).

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 \$20,160.00 for a three-person household (81 Federal Register 4036).

For annual household income in the range of at least 200% but less than 250% of the 2016 FPL, the expected contribution is between 6.43% and 8.21% 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 (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).

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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 \$20,160.00 for a three-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 funds from tax 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 is whether NYSOH properly determined that you and your spouse were eligible for an APTC of up to \$643.74 per month.

On April 4, 2017, NYSOH issued a renewal notice stating that you and your spouse were eligible for up to \$643.74 and cost-sharing reductions.

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The record is devoid of any information regarding the annual household income that was used in order to arrive at this determination.

However, the application that was submitted on May 16, 2017 listed an annual household income of \$44,800.00.

You provided a copy of your current lease, which indicates that your month rent is \$1,525.96.

However, 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 APTC purposes.

You expect to file your 2017 income taxes as married filing jointly and will claim one dependent on that tax return. Therefore, you and your spouse are in a three-person household.

You reside in [REDACTED], where the second lowest cost silver plan available for a couple through NYSOH costs \$912.91 per month.

An annual income of \$44,800.00 is 222.22% of the 2016 FPL for a three-person household. At 222.22% of the FPL, the expected contribution to the cost of the health insurance premium is 7.22% of income, or \$269.59 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 (\$912.91 per month) minus your expected contribution (\$269.59 per month), which equals \$643.32 per month. Therefore, rounding to the nearest dollar, NYSOH should have determined you and your spouse to be eligible for up to \$643.00 per month in APTC, effective June 1, 2017.

The second issue is whether you and your spouse were properly found eligible 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 \$44,800.00 is 222.22% of the applicable FPL, NYSOH correctly found you and your spouse to be eligible for cost sharing reductions.

The third issue under review is whether NYSOH properly determined that you and your spouse were ineligible for the Essential Plan.

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. On the date of your application, the relevant FPL was \$20,160.00 for a three-person household. Since an annual household income of \$44,800.00 is 222.22% of the

2016 FPL, NYSOH properly found you and your spouse to be ineligible for the Essential Plan.

The April 4, 2017 renewal notice is MODIFIED to reflect that you and your spouse were eligible for up to \$643.00 in APTC, effective June 1, 2017, and AFFIRMED insofar as it found you and your spouse eligible for cost-sharing reductions and ineligible for the Essential Plan.

Although you testified that your spouse's annual expected income is currently \$44,800.00; during the hearing, you confirmed that your spouse earns \$1,012.00 per week gross. You also submitted four weekly paystubs which show gross weekly earnings of \$1,012.00. Therefore, your annual expected household income is actually \$52,624.00 (\$1,012.00 per week multiplied by 52 weeks).

Therefore, your case is returned to NYSOH to recalculate your and your spouse's eligibility based on a household of three people, residing in [REDACTED], with an annual expected income of \$52,624.00.

Decision

The April 4, 2017 renewal notice is MODIFIED to reflect that you and your spouse were eligible for up to \$643.00 in APTC, effective June 1, 2017, and AFFIRMED insofar as it found you and your spouse eligible for cost-sharing reductions and ineligible for the Essential Plan.

Your case is RETURNED to NYSOH to recalculate your and your spouse's eligibility based on a household of three people, residing in [REDACTED], with an annual expected income of \$52,624.00.

Effective Date of this Decision: August 24, 2017

How this Decision Affects Your Eligibility

You and your spouse are eligible for up to \$643.00 per month in APTC, effective June 1, 2017.

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

You and your spouse are ineligible for the Essential Plan.

During the hearing, you provided additional information regarding your household income. Therefore, your case is being sent back to NYSOH to redetermine your

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and your spouse's eligibility based on a household of three, residing in [REDACTED], with an annual expected income of \$52,624.00.

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

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- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The April 4, 2017 renewal notice is MODIFIED to reflect that you and your spouse were eligible for up to \$643.00 in APTC, effective June 1, 2017, and AFFIRMED insofar as it found you and your spouse eligible for cost-sharing reductions and ineligible for the Essential Plan.

You and your spouse are eligible for up to \$643.00 per month in APTC, effective June 1, 2017.

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

You and your spouse are ineligible for the Essential Plan.

During the hearing, you provided additional information regarding your household income. Therefore, your case is being sent back to NYSOH to redetermine your and your spouse's eligibility based on a household of three, residing in [REDACTED], with an annual expected income of \$52,624.00

Your case is RETURNED to NYSOH to recalculate your and your spouse's eligibility based on a household of three, residing in [REDACTED], with an annual expected income of \$52,624.00.

Legal Authority

We are sending you this notice in accordance with 45 CFR § 155.545.

A Copy of this Decision Has Been Provided To:



Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

中文 (Traditional Chinese)

這是重要的文件。如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您免费提供相应语种的口译服务。

Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

العربية (Arabic)

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

বাংলা (Bengali)

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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.

שׂוֹדֵשׁ (Yiddish)

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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.

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