



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

### Notice of Decision

Decision Date: August 21, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000018711

[REDACTED]

Dear [REDACTED],

On August 3, 2017, your spouse appeared by telephone at a hearing on your appeal of NY State of Health's April 28, 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: August 21, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000018711



## Issues

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

Did NY State of Health properly determine that your spouse was eligible to receive up to \$208.00 per month in advance payments of the premium tax credit, effective June 1, 2017?

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

Did NY State of Health properly determine that your spouse was not eligible for the Essential Plan?

## Procedural History

On April 28, 2017, NY State of Health (NYSOH) issued an eligibility determination notice stating that your spouse was eligible to receive up to \$208.00 in advance payments of the premium tax credit (APTC) and to receive cost-sharing reductions if she enrolled in a silver-level qualified health plan, effective June 1, 2017. That notice also stated that your spouse was not eligible for the Essential Plan because her household income was over the allowable income limits for that program.

On May 4, 2017, your spouse spoke to NYSOH's Account Review Unit and appealed her eligibility for financial assistance insofar as she was not eligible for the Essential Plan.

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).

On August 3, 2017, your spouse appeared at a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open to August 18, 2017, to allow your spouse the opportunity to submit supporting documents.

On August 7, 2017, your spouse submitted a copy of your and her 2016 income tax return, your 2016 W-2 wage statement, and your Social Security Benefit Statement for 2017. These documents were made part of the record as "Appellant's Exhibit A." The record closed that day.

## **Findings of Fact**

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

- 1) According to your NYSOH account and your spouse's testimony, you and your spouse expect to file your joint 2017 income taxes with a tax filing status of married filing jointly.
- 2) The application that was submitted on April 27, 2017 and August 2, 2017, states that you and your spouse expect to claim your two adult children as your dependents on your 2017 income tax return. Your spouse testified that this was incorrect and that you and your spouse will claim no dependents on your 2017 income tax return.
- 3) You are seeking financial assistance and insurance for your spouse.
- 4) The application that was submitted on April 27, 2017 and August 2, 2017, listed annual household income of \$55,582.40, consisting of \$700.00 you expect to earn from your employment and \$26,472.00 you expect to receive in Social Security benefits along with \$14,205.20 each of your two adult children expect to receive in earned income from the military. Your spouse testified that this amount was incorrect because your two adult children do not reside in your home, nor will they be included on your and your spouse's 2017 income tax return.
- 5) On August 7, 2017, your spouse submitted your and your spouse's 2016 personal income tax return, which shows that you and your spouse file married filing jointly and did not claim your adult children as dependents (see Appellant's Exhibit A, p. 2).
- 6) According to your NYSOH account, and the documentation submitted on August 7, 2017, your and your spouse's adjusted gross household income for 2016 was \$33,926.00 consisting of \$3,925.00 you received in earned income, \$3,529.00 in an IRA distribution and \$26,472.00 you received in Social Security benefits (*id*).

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- 7) Your spouse testified that she has no income because she is not working, and you are the sole supporter in your and your spouse's household.
- 8) According to your NYSOH account and your spouse's testimony, you and your spouse will not be taking any deductions on your 2017 tax return.
- 9) According to your NYSOH account and your testimony, you and your spouse live in Dutchess County, New York.

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

## **Applicable Law and Regulations**

### Household Composition

For purposes of advance premium tax credit (APTC) and cost-sharing reductions (CSR), the household size equals the number of individuals for whom the taxpayer is allowed a deduction under 26 USC § 151 for the taxable year, which typically includes: (1) the taxpayer, (2) his or her spouse, and (3) any claimed dependents (26 USC § 36B(d)(1)).

### 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 \$24,300.00 for a four-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 in 2017 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 \$24,300.00 for a four-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)).

#### End of Tax Year Reconciliation

At the end of a tax year, a person who elects to take the APTC to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to NYSOH and their actual gross income for that year. A person who received less tax credit than her maximum entitlement, based on gross income, may receive an income tax refund, or owe less in taxes. A person who received more tax credit than his maximum entitlement, based on gross income, will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

## **Legal Analysis**

The first issue under review is whether NYSOH properly determined that your spouse was eligible for an APTC of up to \$208.00 per month.

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).

The application that was submitted on April 27, 2017 listed a household gross income of \$55,582.00 and a household size of four people. The eligibility determination relied upon that information.

Your spouse resides in Dutchess County, where the second lowest cost silver plan available for an individual through NYSOH costs \$553.26 per month.

A household gross income of \$55,582.00 is 228.73% of the 2016 FPL for a four-person household. At 228.73% of the FPL, the expected contribution to the cost of the health insurance premium in 2017 is 7.45% of income, or \$345.07 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 an individual in your spouse's county (\$553.26 per month) minus your spouse's expected contribution (\$345.07 per month), which equals \$208.19 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined your spouse to be eligible for up to \$208.00 per month in APTC, based on the information you provided in your application.

The second issue under review is whether your spouse was properly found eligible for cost-sharing reductions.

Cost-sharing reductions are available to a person who has a household gross income no greater than 250% of the FPL. Since a household gross income of \$55,582.00 is 228.73% of the applicable FPL, NYSOH correctly found your spouse to be eligible for cost sharing reductions, based on the information you provided in your application.

The third issue under review is whether NYSOH properly determined that your spouse was not eligible for the Essential Plan.

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household 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 \$24,300.00 for a four-person household. Since an annual household income of \$55,582.00 is 228.73% of the 2016 FPL, NYSOH properly found your spouse to be ineligible for the Essential Plan, based on the information you provided in your application.

Therefore, the April 28, 2017 eligibility determination notice stating that your spouse was eligible to receive up to \$208.00 per month in APTC and eligible for cost-sharing reductions, and not eligible for the Essential Plan, was correct when made and is **AFFIRMED**.



However, your spouse credibly testified, and submitted documentation, that your two adult children do not reside with you and will not be included in your and your spouse's 2017 income tax return. Household income consists of the aggregate modified adjusted gross income of every person in the household who is required to file a federal tax return.

Here, your spouse's aggregate modified adjusted gross household income consists of your own income, including your Social Security income and your IRA distribution, plus your spouse's income, because you reside with your spouse and expect to file your 2017 income taxes as married filing jointly and will claim no dependents on that tax return. Therefore, it is concluded that you are in a two-person household. As such, your two adult children's military income should not be included in your spouse's aggregate modified adjusted gross household income.

You and your spouse submitted your joint 2016 personal income tax return showing that you filed your tax return using the tax filing status of married filing jointly and claimed no dependents on that return. It also showed \$33,926.00 in modified adjusted gross household income, consisting of \$3,925.00 in earned income, \$3,529.00 in an IRA distribution, and \$26,472.00 in Social Security benefits.

Since the record now contains a more accurate representation of your household size and your 2017 expected adjusted gross annual household income of \$33,926.00, your spouse's case is RETURNED to NYSOH to redetermine your spouse's eligibility for financial assistance in 2017 based on a two-person household and a modified adjusted gross household income of \$33,926.00 per year, for an individual residing in Dutchess County.

Lastly, at the end of a tax year, a person who elects to take APTC to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to NYSOH and their actual gross income for that year, which may result in a tax credit or reduction in tax liability if the full amount of APTC to which that person is entitled is not taken throughout the year. Conversely, if a person received more APTC than their maximum entitlement, based on gross income, they might owe the excess as an additional income tax liability.

## **Decision**

The April 28, 2017 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your spouse's eligibility for financial assistance in 2017 based on a two-person household and an annual

modified adjusted gross household income of \$33,926.00, for an individual residing in Dutchess County.

NYSOH will notify you and your spouse once her eligibility for financial assistance has been redetermined and instruct you as to what further action may be required on your and your spouse's part, if applicable.

**Effective Date of this Decision:** August 21, 2017

### **How this Decision Affects Your Eligibility**

This is not a final determination of your spouse's eligibility. Your case is being sent back to NYSOH to re-determine your spouse's eligibility for financial assistance in 2017 based on the information stated above. NYSOH will notify you once this has been done.

At present, your spouse has coverage with Fidelis Care Medicaid Managed Care, effective June 1, 2017, as Aid to Continue throughout the appeal process.

### **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

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).

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 28, 2017 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your spouse's eligibility for financial assistance in 2017 based on a two-person household and an annual modified adjusted gross household income of \$33,926.00, for an individual residing in Dutchess County.

NYSOH will notify you and your spouse once her eligibility for financial assistance has been redetermined and instruct you as to what further action may be required on your and your spouse's part, if applicable.

This is not a final determination of your spouse's eligibility. Your case is being sent back to NYSOH to redetermine your spouse's eligibility for financial assistance in 2017 based on the information stated above. NYSOH will notify you once this has been done.

At present, your spouse has coverage with Fidelis Care Medicaid Managed Care, effective June 1, 2017, as Aid to Continue throughout the appeal process.

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).

## **Legal Authority**

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

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**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 مجانًا.

### 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. y&b&tumi 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.

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).