



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: AP000000019733

[REDACTED]

Dear [REDACTED]

On September 19, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's June 13, 2017 eligibility determination.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the NY State of Health Account ID at the top of this notice.

Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

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

Decision

Decision Date: October 5, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000019733

[REDACTED]

Issue

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

Did NY State of Health properly determine you were eligible to receive up to \$156.00 per month in advance payments of the premium tax credit, and ineligible for the Essential Plan, effective July 1, 2017?

Procedural History

On June 2, 2017, NYSOH issued a notice of eligibility determination, based on your June 1, 2017 updated application, stating you were eligible to enroll in the Essential Plan with a \$20.00 monthly premium, for a limited time, effective July 1, 2017. The notice directed you to submit proof of your income by August 30, 2017 to confirm your eligibility or you might lose your insurance or receive less help paying for your coverage.

Also on June 2, 2017, NYOSH issued an enrollment notice confirming you were enrolled in an Essential Plan, effective July 1, 2017.

On June 12, 2017, NYSOH systematically redetermined your eligibility.

On June 13, 2017, NYSOH issued an eligibility determination notice stating you were eligible to receive up to \$156.00 per month in advance payments of the premium tax credit (APTC), effective July 1, 2017.

Also on June 13, 2017, NYSOH issued a cancellation notice stating your Essential Plan enrollment was terminated, effective July 1, 2017, because you were no longer eligible to enroll in the plan.

On June 14, 2017, you spoke to NYSOH's Account Review Unit and appealed the determination insofar as you were not eligible for the Essential Plan.

On June 16, 2017, NYSOH issued an eligibility determination notice stating you had been granted aid to continue in your Essential Plan pending the decision in your appeal. You were reenrolled in an Essential Plan, effective July 1, 2017.

On September 19, 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 are applying for health insurance for yourself.
- 2) On December 9, 2016, NYSOH received an updated application for financial assistance submitted on your behalf. That application listed your household income as \$29,468.60 consisting of various amounts of additional income for you and your spouse including taxable interest, IRA distributions, capital gains, and dividends totaling \$24,800.00. The application also indicated your spouse received \$198.80 in monthly Social Security benefits and \$174.00 monthly in pension payments. Finally, the application indicated you would earn \$6,395.00 in business income. The application also indicated you would take \$6,200.00 in various deductions.
- 3) According to your account, NYSOH was unable to verify the income information in your application and you were determined conditionally eligible to enroll in the Essential Plan pending receipt of documentation to confirm your household income.
- 4) On April 16, 2017, you uploaded a copy of an unsigned form 1040 from the 2016 joint tax return of you and your spouse. According to your account, this document was not verified by NYSOH at that time.
- 5) On May 31, 2017, NYSOH systematically updated your application increasing the amount of business income to \$10,000.00 and increasing the amount of your spouse's social security benefits to \$204.00 for a total household income of \$33,136.00. You were determined conditionally eligible to receive up to \$277.00 in APTC, effective July 1, 2017.

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- 6) On June 1, 2017, an updated application for financial assistance was submitted on your behalf. In that application, all the amounts of additional income, benefit payments, and deductions remained the same as the May 31, 2017 application, but the amount of your business income was reduced from \$10,000.00 to \$7,500.00 for a total household income of \$30,636.00. Based on that application, NYSOH found you conditionally eligible to enroll in the Essential Plan with a \$20.00 monthly premium.
- 7) According to your account, on June 12, 2017 NYSOH verified the 2016 form 1040 that had been uploaded to your account on April 16, 2017, and NYSOH updated your application by increasing the amount of your business income to \$19,248.00, the amount listed at line 17 for [REDACTED] for a total household income of \$42,384.00. Based on that application, NYSOH determined you eligible to receive up to \$156.00 in APTC, effective July 1, 2017.
- 8) The adjusted gross income on the 2016 tax return was \$64,765.00.
- 9) You appealed that eligibility determination insofar as you were no longer eligible for the Essential Plan.
- 10) You were granted aid to continue in your Essential Plan pending the decision in your appeal.
- 11) You testified that you are contesting the amount of business income NYSOH is using to determine your eligibility for financial assistance.
- 12) You testified you own a [REDACTED] business. You testified you will make significantly less from that business in 2017 than you did in 2016. You testified that you only had one contract this year and that you only received three payments from that contract. You testified that your work pursuant to that contract has been completed and you do not anticipate earning anymore from the business this year.
- 13) On September 17, 2017, NYSOH received updated income documentation consisting of a letter from you explaining that you will earn significantly less in business income in 2017 than you anticipated. You provided a spreadsheet listing the total amount of income you received from the business in 2017 (\$13,500.00) and the total amount of business expenses (\$9,950.00) for a net business income of \$3,550.00. You also indicated in your letter that you have been forced to draw down your assets due to the decrease in income from your business, so you anticipate earning approximately \$2,000.00 to \$3,000.00 less in interest income in 2017 than you did in 2016.

- 14) According to your account, NYSOH has not verified the updated income information and has not redetermined your eligibility based on that documentation.
- 15) Your applications indicate you will file your 2017 tax return with tax filing status of single and you will claim no dependents on that tax return. You testified that information is accurate.
- 16) Your applications indicate you reside in Westchester County.
- 17) You testified you are seeking eligibility to enroll in the Essential Plan or for an increased amount of APTC. You testified you are not seeking review of your eligibility for Medicaid.

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

For annual household income in the range of at least 150% but less than 200% of the 2016 FPL, the expected contribution is between 4.08% and 6.43% 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).

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 two-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)).

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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 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 you were eligible to receive up to \$156.00 per month in APTC, and ineligible for the Essential Plan, effective July 1, 2017.

On June 1, 2017, an updated application for financial assistance was submitted on your behalf. That application listed additional unearned income in the amount of \$24,000.00, the same as the amounts listed in your previous December 9, 2016 application. The application also indicated your spouse received \$204.00 in monthly Social Security benefits and \$174.00 monthly in pension payments, and that you would take \$6,200.00 in various deductions. The June 1, 2017 application indicated that you had earned business income of \$7,500.00 for a total household income of \$30,636.00. Based on that application, NYSOH found you conditionally eligible to enroll in the Essential Plan with a \$20.00 monthly premium.

According to your account, on June 12, 2017 NYSOH verified the form 1040 from the 2016 tax return of you and your spouse, uploaded to your account on April 16, 2017, and updated your application by increasing the amount of your business income to \$19,248.00, the amount listed at line 17 for [REDACTED], for a total household income of \$42,384.00. Based on that application, NYSOH determined you eligible to receive up to \$156.00 in APTC, effective July 1, 2017. You appealed that determination insofar as you were not eligible for the Essential Plan or an increased amount of APTC.

You testified you own a [REDACTED] business. You testified you will make significantly less from that business in 2017 than you did in 2016. You testified that you only had one contract this year and that you only received three payments from that contract. You testified that your work pursuant to that contract has been completed and you do not anticipate earning anymore from that contract this year.

On September 17, 2017, NYSOH received updated income documentation consisting of a letter from you explaining that you will earn significantly less in business income in 2017 than you anticipated. You provided a spreadsheet listing the total amount of income you received from the business in 2017 (\$13,500.00) and the total amount of business expenses (\$9,950.00) for a net business income of \$3,550.00. You also indicated in your letter that you have been forced to draw down your assets due to the decrease in income from your business so you anticipate earning approximately \$2,000.00 to \$3,000.00 less in interest income in 2017 than you did in 2016.

According to your account, NYSOH has not verified the updated income documentation and has not redetermined your eligibility based on that documentation.

Based on the now developed record, it is concluded that there is sufficient documentation establishing that your business income has decreased, thereby decreasing your household income for 2017 and entitling you to an eligibility determination based upon the updated household income amount.

It is concluded that the record establishes that you will only earn \$3,550.00 in business income in 2017. It is further concluded that, based on your June 1, 2017 application and NYSOH's subsequent June 12, 2017 application update, that the \$23,136.00 of attested unearned income (including \$6,200.00 in deductions) appears uncontested. It is noted that although you allege in your letter uploaded on September 17, 2017 that you may earn approximately \$2,000.00 to \$3,000.00 less in interest income in 2017, there is insufficient evidence of this. Therefore, based on the competent evidence of record, it is concluded your household income for 2017 is \$26,686.00, including \$29,336.00 in unearned income, \$3,550.00 in business income, and \$6,200.00 in deductions.

Thus, the June 13, 2017 eligibility determination finding you eligible to receive up to \$156.00 in APTC, effective July 1, 2017, is RESCINDED as it was based on income information no longer supported by the record.

Your case is RETURNED to NYSOH to redetermine your eligibility for health insurance, as of September 17, 2017, the date you submitted updated income information, utilizing an annual household income of \$26,686.00 and a two-person household, based on the now developed record.

Decision

The June 13, 2017, 2017 eligibility determination is RESCINDED.

Your case is RETURNED to NYSOH to redetermine your eligibility for health insurance, as of September 17, 2017, the date you submitted updated income information, utilizing an annual household income of \$26,686.00 and a two-person household, based on the now developed record.

Effective Date of this Decision: October 5, 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 the updated annual income amount of \$26,686.00.

You will receive an updated eligibility determination notice from NYSOH.

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

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).

- 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 June 13, 2017, 2017 eligibility determination is RESCINDED.

Your case is RETURNED to NYSOH to redetermine your eligibility for health insurance, as of September 17, 2017, the date you submitted updated income information, utilizing an annual household income of \$26,686.00 and a two-person household, based on the now developed record.

This is not a final determination of your eligibility; you will receive an updated eligibility determination notice from NYSOH.

Legal Authority

We are sending you this notice in accordance with 45 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).

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.

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 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.

Twí (Twi)

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye sre wo, fre 1-855-355-5777. ye&etumi 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.

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.