



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

Notice of Decision

Decision Date: November 13, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000020794

[REDACTED]

On October 5, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's July 18, 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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DEPARTMENT OF HEALTH
P.O. Box 11729
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Decision

Decision Date: November 13, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000020794

[REDACTED]

Issue

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

Did NY State of Health (NYSOH) properly determine that you were not eligible to receive financial assistance with the cost of health insurance, as of July 17, 2017?

Procedural History

On June 23, 2017, you submitted an updated application for financial assistance.

On June 24, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible for the Essential Plan with a \$20.00 monthly premium for a limited time, effective August 1, 2017. The notice directed you to submit documentation of your income by September 21, 2017, to confirm your eligibility.

Also on June 24, 2017, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in an Essential Plan, beginning August 1, 2017.

On July 13, 2017, you uploaded documentation to your NYSOH account.

On July 17, 2017, NYSOH redetermined your eligibility.

On July 18, 2017, NYSOH issued a notice of eligibility determination stating that you were newly eligible to purchase a qualified health plan at full cost through NYSOH, effective September 1, 2017. The notice stated that you were not eligible to receive a tax credit toward your premium for one of the following

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reasons: you told NYSOH you did not plan to file a federal tax return; OR you are married and plan to file taxes separately from your spouse; OR you received a tax credit in a prior year and NYSOH could not determine whether you filed a tax return for that year. The notice further stated that you were not eligible for Medicaid or the Essential Plan because your income was over the allowable income limit for those programs.

On July 24, 2017, you spoke to NYSOH's Account Review Unit and appealed, insofar as you were not eligible for the Essential Plan. You also requested Aid to Continue, pending the outcome of your hearing.

On July 29, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible to enroll in the Essential Plan for a limited time, effective September 1, 2017. This was because your request for Aid to Continue had been granted, pending the outcome of your appeal.

Also on July 29, 2017, NYSOH issued a notice of enrollment confirmation, confirming your enrollment in an Essential Plan, beginning September 1, 2017. This was also because your request for Aid to Continue was granted, pending the outcome of your appeal.

On October 5, 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 through October 25, 2017, to allow you to submit supporting documents.

On October 24, 2017, you uploaded documentation to your NYSOH account. The record is now closed.

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 single. Your NYSOH account states that you will not claim any dependents on that tax return.
- 2) You testified that you are still "technically" married, but have been living apart from your spouse since November of 2013, and are in the middle of a divorce proceeding.
- 3) You testified that you last filed a joint tax return with your spouse in approximately 2012.

- 4) You testified that there is a court order that required you to vacate the marital residence, and that you have also been ordered to pay temporary maintenance and to pay child support.
- 5) You testified that your spouse has temporary custody of your children, and that you have visitation.
- 6) You testified that you are required to pay a combined total of \$7,000.00 per month in maintenance and child support. You testified that this money is coming out of a savings account.
- 7) You testified that the payments are collected in “chunks,” and that a payment was made in February of \$61,000.00 that included both maintenance and child support.
- 8) You testified that your gross income for 2017 will be about \$40,000.00, which consists of dividends and capital gains that you receive from funds that you manage on behalf of your father.
- 9) Your NYSOH account reflects that NYSOH calculated your expected income to be \$63,886.00 for 2017. You testified that you do not understand how they arrived at that figure, except that you believe they may have misread your 2016 tax return.
- 10) Your NYSOH account reflects that you uploaded a copy of your 2016 federal income tax return to your NYSOH account on July 13, 2017, which indicates the following:
 - a. Your adjusted gross income for 2016 was \$8,235.00;
 - b. Your total income was \$46,035.00, consisting of \$31,865.00 in ordinary dividends, and \$14,101.00 in capital gains;
 - c. You took a deduction for alimony paid, in the amount of \$37,800.00;

[REDACTED]
- 11) NYSOH utilized this documentation when it ran your eligibility on July 17, 2017. Your NYSOH account reflects that NYSOH calculated your income to be \$101,686.00, minus \$37,800.00 in deductions, for a total of \$63,886.00.
- 12) You testified that you believe the maintenance amount you will pay for 2017 will be the same as it was in 2016: \$37,800.00
- 13) Your application states that you live in [REDACTED].

14) After the hearing, you uploaded the following documentation to your NYSOH account:

- a. Seven of nine pages of a copy of an Internal Revenue Service "Tax Return Transcript" for 2016, which indicates that you filed your 2016 federal income taxes as single, and that your adjusted gross income was \$8,235.00, after the deduction of \$37,800.00 for alimony paid (Document [REDACTED]);
- b. Pages 15 and 16 of what appears to be a temporary order of maintenance and child support, dated May 12, 2015, stating that you were ordered to pay temporary spousal maintenance in the amount of \$3,169.00 per month beginning May 15, 2015
[REDACTED]

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)).

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

However, an individual will be treated as not married at the close of the taxable year if the individual

- 1) Is legally separated from his/her spouse under a decree of divorce or of separate maintenance, or
- 2) Meets all of the following criteria:
 - a. files a separate return from his/her spouse and maintains his/her household as the primary home for a qualifying child;

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- b. pays more than one half of the cost of keeping up his/her home for the tax year; and
- c. does not have his/her spouse as a member of the household during the last 6 months of the tax year

(26 USC § 7703).

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

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

A person who has a household income that is at or below 150% of the FPL has a \$0.00 premium contribution (New York's Basic Health Plan Blueprint, p. 21, as approved January 2016; see www.medicaid.gov/basic-health-program/downloads/ny-blueprint.pdf).

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)).

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)).

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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).

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 under review is whether NYSOH properly determined that you were not eligible to receive any financial assistance with the cost of health insurance.

An individual may be eligible to receive some level of financial assistance with health insurance through NYSOH if their modified adjusted gross income is at or below 400% of the FPL, and if they meet the non-financial requirements for eligibility. “Modified adjusted gross income” means your adjusted gross income as stated on your federal income tax return, increased by certain specific amounts, as outline above.

You submitted a copy of your 2016 federal income tax return to NYSOH on July 13, 2017, and submitted an official IRS tax transcript for this return after your hearing [REDACTED]. These documents show that your adjusted gross income was \$8,235.00 for 2016. There is no indication in your tax return, nor in your testimony, that there were any income

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exclusions that would need to be added back in to calculate your modified adjusted gross income.

NYSOH accepted this document as proof of your income, however, utilizing a method that cannot be deciphered, determined that your modified adjusted gross income was \$63,886.00. This was incorrect. Since you testified that you expect your income for 2017 to be approximately the same as it was for 2016, and since your adjusted gross income for 2016 was \$8,235.00, then that is the figure that should have been used to determine your eligibility for financial assistance.

It is noted that NYSOH also denied you assistance in the form of a tax credit for one of three reasons having to do with your tax filing. It appears that this was because you are still married, but are not filing a joint income tax return. However, the Appeals Unit is not addressing the merits of this determination, as your income is not high enough to qualify you for a tax credit, and your non-financial eligibility for a tax credit is therefore irrelevant at this time.

Therefore, the July 18, 2017 eligibility determination notice is **RESCINDED**.

Your case is **RETURNED** to NYSOH to redetermine your eligibility for financial assistance based on a household of one with an expected annual income of \$8,235.00, residing in Queens County, subject to verification and information received by NYSOH from any state and federal data sources.

NYSOH is directed to notify you in writing of your new eligibility.

Decision

The July 18, 2017 eligibility determination notice is **RESCINDED**.

Your case is **RETURNED** to NYSOH to redetermine your eligibility for financial assistance, based on a household of one with an expected annual income of \$8,235.00, residing in Queens County, subject to information received from state and federal data sources.

NYSOH is directed to notify you in writing of your new eligibility.

Effective Date of this Decision: November 13, 2017

How this Decision Affects Your Eligibility

NYSOH improperly determined that you were not eligible for financial assistance with health insurance based on your expected annual income.

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Your case is being sent back to NYSOH to redetermine your eligibility for financial assistance based on a household of one with an expected annual income of \$8,235.00 residing in [REDACTED]

Your new eligibility will be subject to verification and any information NYSOH receives from state and federal data sources.

NYSOH will notify you in writing of your new eligibility.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to the Federal Marketplace or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the Federal Marketplace. This must be done within 30 days of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:
Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd.
London, KY 40750-0061
- By fax: 1-877-369-0129

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

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If You Have Questions about this Decision (Customer Service Resources):

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Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The July 18, 2017 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to redetermine your eligibility for financial assistance, based on a household of one with an expected annual income of \$8,235.00, residing in Queens County, subject to verification and information received from state and federal data sources.

NYSOH improperly determined that you were not eligible for financial assistance with health insurance based on your expected annual income.

Your new eligibility will be subject to any information NYSOH receives from state and federal data sources.

NYSOH will notify you in writing of your new eligibility.

Legal Authority

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

A Copy of this Decision Has Been Provided To:



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)

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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)

এটি এক গুরুত্বপূর্ণ নথি। এটি বুঝতে আপনার যদি সাহায্যের প্রয়োজন হয় তাহলে, অনুগ্রহ করে 1-855-355-5777 নম্বরে কল করুন। আপনি যে ভাষায় কথা বলেন বিনামূল্যে আমরা আপনাকে একজন দোভাষী দিতে পারি।

Français (French)

Ceci est un document important. Si vous avez besoin d'aide pour en comprendre le contenu, appelez le 1-855-355-5777. Nous pouvons mettre gratuitement à votre disposition un interprète dans votre langue.

हिंदी (Hindi)

यह एक महत्वपूर्ण दस्तावेज़ है। अगर आपको इसे समझने में सहायता चाहिए, तो कृपया 1-855-355-5777 पर कॉल करें। हम आपकी भाषा बोलने वाला एक दुभाषिया निःशुल्क उपलब्ध करवा सकते हैं।

日本語 (Japanese)

これは重要な書類です。理解するために支援が必要な場合は、1-855-355-5777 にお電話ください。通訳を無料で提供いたします。

नेपाली (Nepali)

यो एउटा महत्त्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई 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 εho nkyerεkyerεmu a, ye srε wo, frε 1-855-355-5777. yεbεtumi ama wo obi a okyerε 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.