



STATE OF NEW YORK
DEPARTMENT OF HEALTH
PO Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: December 01, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000021526

[REDACTED]

On October 25, 2017, you appeared by telephone with the aid of a Spanish language interpreter at a hearing on your appeal of NY State of Health's August 17, 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
PO 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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Decision

Decision Date: December 01, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000021526



Issues

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

Did NY State of Health properly determine you were eligible to purchase a qualified health plan at full cost and ineligible for financial assistance, effective October 1, 2017?

Procedural History

On August 16, 2017, NY State of Health (NYSOH) received your updated application for financial assistance. That day a preliminary eligibility determination was prepared finding you eligible to purchase a full cost qualified health plan (QHP), effective October 1, 2017.

Also on August 16, 2017, you spoke to NYSOH's Account Review Unit and requested an appeal of that eligibility determination insofar as you were not eligible for financial assistance.

On August 17, 2017, an eligibility determination was issued stating you were eligible to purchase a qualified health plan at full cost, effective October 1, 2017. The notice indicated that you were not eligible for Medicaid or the Essential Plan, because you did not meet the income limit or eligibility standards for those programs. The notice further stated that you were not eligible to receive tax credits, because you either indicated you would not file a federal tax return, or that you were married and would file taxes separately from your spouse, or that you received advance payments of the premium tax credit (APTC) in a prior year and it could not be confirmed whether you filed a federal tax return for that year.

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On October 25, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open to allow you to submit supporting documentation. On November 3, 2017 documentation was posted to your NYSOH account and the record closed thereafter.

Findings of Fact

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

- 1) You updated your application several times in 2016 and early 2017 listing your annual expected income between \$16,800.00 and \$21,007.85 including a \$1,200.00 monthly deduction for rent. Following each application, you were determined conditionally eligible to enroll in the Essential Plan, which you did. You were subsequently disenrolled from the Essential Plan several times due to your failure to submit documentation verifying your attested income.
- 2) On July 15, 2017, an updated application was submitted on your behalf removing the monthly rent deduction listed in the previous applications. The application indicated your annual income for 2017 was \$35,407.85.
- 3) All your applications list your marital status as separated and indicate you would file your tax return with a tax filing status of single and you will claim no dependents. You testified that information is accurate.
- 4) NYSOH determined you ineligible for financial assistance following your July 15, 2017 application.
- 5) You updated your application several more times in August 2017. Each application listed your annual expected income as \$35,407.85 and indicated your marital status was separated and you would file your 2017 tax return with a tax filing status of single and you would claim no dependents.
- 6) According to the August 17, 2017 eligibility determination notice, you were ineligible for the Essential Plan and Medicaid based on your income and you were ineligible to receive APTC, because you either indicated you would not file a federal tax return, or that you were married and would file taxes separately from your spouse, or that you received APTC in a prior year and it could not be confirmed whether you filed a federal tax return for that year.

- 7) There is no evidence in your account that you have received APTC in a previous year.
- 8) You appealed insofar as you were not eligible to receive financial assistance.
- 9) You testified that you are currently married, but you are in the process of divorcing your spouse.
- 10) You testified that you have filed a divorce petition, but you have not obtained a decree of separation.
- 11) You testified the divorce will likely not be finalized until [REDACTED] or [REDACTED].
- 12) You submitted a pro se application for dissolution of marriage with a request for judicial intervention filed [REDACTED].
- 13) Your application indicates you live in [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)).

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

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(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), IRS Rev. Proc. 2016-24).

In an analysis of APTC eligibility, the determination is based on the FPL for the first day of the open enrollment period of the benefit year for which coverage is requested (45 CFR §§ 155.300(a), 155.305(f)(1)(i)). On the date of your application, that was the 2016 FPL, which is \$11,880.00 for a one-person household (81 Federal Register 4036.).

For annual household income in the range of at least 250% but less than 300% of the 2016 FPL, the expected contribution is between 8.21% and 9.69% of the household income (26 CFR § 1.36B-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2016-24).

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

Determination of Marital Status

The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death. An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

Certain married individuals shall not be considered as married, if—

- (1) the married individual files a separate return and maintains as his home a household which constitutes more than one-half of the taxable year the principal place of abode of a child (within the meaning of section 152(f)(1)) with respect to whom such individual is entitled to a deduction for the taxable year under section 151 (or would be so entitled but for section 152(e)),
- (2) such individual furnishes over one-half of the cost of maintaining such household during the taxable year, and
- (3) during the last 6 months of the taxable year, such individual's spouse is not a member of such household

(26 USC § 7703).

Essential Plan Eligibility

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

Medicaid

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

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

Legal Analysis

The issue is whether NYSOH properly determined you were eligible to purchase a qualified health plan at full cost and ineligible for financial assistance, effective October 1, 2017.

You updated your application several times in August 2017. Each application listed your annual expected income for 2017 as \$35,407.85. Additionally, each application indicated you were separated and would file your 2017 tax return with

a tax filing status of single and claim no dependents. You testified that information was accurate.

On August 17, 2017, NYSOH issued an eligibility determination notice stating you were eligible to purchase a qualified health plan at full cost, effective October 1, 2017. The notice indicated that you were not eligible for Medicaid or the Essential Plan, because you did not meet the income limit or eligibility standards for those programs.

The evidence establishes you are in a one-person tax household, because you will file your 2017 tax return with a tax filing status of single and you will claim no dependents.

Based on the information in your August 2017 applications listing your annual income as \$35,407.85, you were not eligible for the Essential Plan, because that income amount is 298.04% of the 2016 FPL, which is over the 200% limit to qualify for the Essential Plan.

Similarly, the \$35,407.85 income amount listed in your applications is 293.59% of the 2017 FPL. Since this is over the 138% limit to qualify for Medicaid, you are ineligible for Medicaid based on the income information in your applications.

The August 17, 2017 eligibility determination notice also found you ineligible to receive APTC, because you either indicated you would not file a federal tax return, or that you were married and would file taxes separately from your spouse, or that you received APTC in a prior year and it could not be confirmed whether you filed a federal tax return for that year. You appealed that determination insofar as you were not eligible for financial assistance.

There is no evidence in your account that you have received APTC in a previous year and each application filed indicates you will file a tax return; however, you testified, and your applications indicate, that you are currently married, but you will file your 2017 tax return with a tax filing status of single.

You testified that you are currently married, but you are in the process of divorcing your spouse. You testified that you have filed a divorce petition, but you have not obtained a decree of separation. You submitted corroborating evidence in the form of a pro se application for dissolution of marriage with a request for judicial intervention filed [REDACTED].

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

An individual will be treated as not married at the close of the taxable year if the individual is legally separated from his/her spouse under a decree of divorce or of separate maintenance, or meets all of the following criteria: files a separate

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return from his/her spouse and maintains his or her household as the primary home for a qualifying child; pays more than one half of the cost of keeping up his or her home for the tax year; and does not have his or her spouse as a member of the household during the last six months of the tax year.

Although you testified, and provided corroborating documentation, that you have filed for divorce from your spouse, the evidence establishes that that divorce is not yet finalized and you have not obtained a decree of separation. Thus, you are not legally separated from your spouse. Furthermore, you do not maintain a separate household for a “qualifying child.” Thus, the evidence establishes that you are currently married and you will not file a joint tax return with your spouse. As such, according to the regulations, you are not eligible to receive APTC at this time.

Since the August 17, 2017 eligibility determination notice stated you were eligible to enroll in a full cost qualified health plan and ineligible for the Essential Plan, Medicaid, or to receive APTC, that determination was correct and is AFFIRMED.

Decision

The August 17, 2017 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: December 01, 2017

How this Decision Affects Your Eligibility

This decision does not change your eligibility.

You remain eligible to purchase a qualified health plan at full cost.

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.

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

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

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

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

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

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
NY State of Health Appeals
PO Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The August 17, 2017 eligibility determination notice is **AFFIRMED**.

This decision does not change your eligibility.

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You remain eligible to purchase a qualified health plan at full cost.

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)

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

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।

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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 srε wo, frε 1-855-355-5777. ye&εtumi 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.