



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

Notice of Decision

Decision Date: January 4, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000021648

[REDACTED]

[REDACTED],

On November 30, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's August 16, 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
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(b).

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

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DEPARTMENT OF HEALTH
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Decision

Decision Date: January 4, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000021648



Issues

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

Did NY State of Health (NYSOH) properly determine you were eligible to receive up to \$256.00 per month in advance payments of the premium tax credit (APTC), effective September 1, 2017?

Did NYSOH properly determine you were eligible for cost-sharing reductions (CSR)?

Did NYSOH properly determine you were not eligible for the Essential Plan?

Procedural History

On August 15, 2017, NYSOH received an updated application for financial assistance with health insurance submitted on your behalf.

On August 16, 2017, NYSOH issued a notice of eligibility determination stating you were eligible to receive up to \$265.00 in APTC and, if you enrolled in a silver-level qualified health plan (QHP), eligible to receive CSR, both effective September 1, 2017. That notice indicated you were not eligible for the Essential Plan, because your household income was over the allowable income limit for that program.

On August 21, 2017, you spoke to NYSOH's Account Review Unit and appealed the eligibility determination insofar as you were not eligible for more financial assistance.

On August 25, 2017, NYSOH issued an eligibility determination notice stating you were eligible for the Essential Plan with a \$20.00 monthly premium, for a limited time, effective September 1, 2017, until a decision was made on your appeal. You subsequently reenrolled into an Essential Plan, effective September 1, 2017.

On November 30, 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 until December 21, 2017 to allow you to submit supporting documents.

As of December 21, 2017, the Appeals Unit had not received any documents from you and none were viewable in your NYSOH account. Therefore, the record was closed that same day and this decision is based on the record as developed at the time of the hearing.

Findings of Fact

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

- 1) You were initially determined conditionally eligible for the Essential Plan, effective August 1, 2016, pending receipt of documentation confirming your income. You were subsequently disenrolled from your Essential Plan on multiple occasions based on income information received from state and federal data sources, because the numerous document requests were not satisfied.
- 2) The only documentation of your income was received by NYSOH in July 2017 containing the following information:
 - a. Biweekly paystub with check date of June 1, 2017 in the gross amount of \$1,142.69.
 - b. Biweekly paystub with check date of June 15, 2017 in the gross amount of \$1,093.94 with year to date gross income of \$15,735.37.
- 3) According to your account, you updated your application on July 31, 2017 listing your annual income as \$23,400.00 which included a student loan interest deduction in the amount of \$600.00.
- 4) According to your account, NYSOH was unable to verify the income information in your application and you were determined conditionally

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eligible for the Essential Plan, effective September 1, 2017, with income documentation requested to confirm your eligibility.

- 5) According to your account, on August 15, 2017, NYSOH recalculated your annual income based on the average gross biweekly pay in the paystubs you submitted and increased your annual household income to \$28,346.19, including the \$600.00 annual student loan interest deduction listed in your prior application.
- 6) You testified that the income calculation made by NYSOH may not be accurate, because your paycheck varies with the amount of hours that you work so the paystubs previously submitted might not be representative of your average income for the year.
- 7) You were directed to submit updated paystubs so the Appeals Unit could recalculate your income based on your year to date amount. As of the date of this decision, no updated income documentation has been received by NYSOH.
- 8) Your eligibility was redetermined based on the recalculated income amount and you were found eligible to receive APTC of up to \$256.00 per month, effective September 1, 2017.
- 9) You appealed that determination.
- 10) You testified you are seeking eligibility for an increased amount of tax credits or to enroll in the Essential Plan. You testified you are not seeking eligibility for Medicaid.
- 11) You were granted aid to continue in your Essential Plan pending the decision in your appeal and you were reenrolled in a plan, effective September 1, 2017.
- 12) You testified, and your applications indicate, you will file your 2017 tax return with a tax filing status of single and you will claim no dependents.
- 13) You testified, and your applications indicate, you will take a \$600 student loan interest deduction on your 2017 tax return.
- 14) Your applications indicate you live in Albany County.
- 15) You testified you have extensive personal expenses that should be considered by NYSOH in determining your eligibility for financial assistance.

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 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 NYSOH 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), IRS Revenue Procedure (RP) 2016-24).

In an analysis of APTC eligibility, the determination is based on the applicable 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 200% but less than 250% of the 2016 FPL, the expected contribution is between 6.43% and 8.21% of the household income (26 CFR § 1.36B-3, IRS RP 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

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application) with their actual income (stated on federal income tax return). Those who take less tax credit in advance than they can 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).

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 Federal Register 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)).

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)

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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 (*id.*).

Legal Analysis

The first issue is whether NYSOH properly determined you were eligible to receive up to \$256.00 per month in APTC, effective September 1, 2017.

The application that was submitted on August 15, 2017 listed an annual household income of \$28,346.19 and the eligibility determination relied upon that information.

Although you testified that the income amount listed in that application may not be accurate, it appears the income amount was the result of a recalculation of your income by NYSOH based on the average gross biweekly income in the paystubs you submitted. You testified that your income fluctuates with the amount of hours that you work so the paystubs submitted may not be representative of your average annual income. You were given the opportunity to submit updated income documentation and have your annual income calculated based on your most current year to date income information; however, you failed to submit any such documentation. Therefore, the only reliable evidence of your income are the paystubs submitted in July 2017. It is concluded that NYSOH's calculation of your annual income based on the gross biweekly income listed in those paystubs was accurate. Thus, this review will be based on that income amount.

It is further noted that you testified to having various personal expenses that rendered paying premiums for a qualified health plan impossible. However, since the Internal Revenue Service rules do not allow living expenses such as rent, utilities, cable and phone to be deducted from the calculation of your adjusted gross income, they cannot be deducted when the NYSOH computes your modified adjusted gross income for eligibility purposes. Therefore, NYSOH correctly determined your eligibility on the annual gross income of \$28,346.19.

The evidence establishes that you are in a one-person household, because you expect to file your 2017 income taxes as single and you will claim no dependents.

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You reside in Albany County, where the second lowest cost silver plan available for an individual through NYSOH costs \$440.36 per month.

An annual income of \$28,346.19 is 238.6% of the 2016 FPL for a one-person household. At 238.6% of the FPL, the expected contribution to the cost of the health insurance premium is 7.8% of income, or \$184.25 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 county (\$440.36 per month) minus your expected contribution (\$184.25 per month), which equals \$256.11 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined you eligible for up to \$256.00 per month in APTC.

The second issue is whether you were properly found eligible for CSR.

CSR are available to a person who has a household income no greater than 250% of the applicable FPL. Since a household income of \$28,346.19 is 238.6% of the applicable FPL, NYSOH correctly found you eligible for CSR.

The third issue under review is whether NYSOH properly determined you were ineligible for the Essential Plan, effective September 1, 2017.

The Essential Plan is provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$11,880.00 for a one-person household. Since an annual household income of \$28,346.19 is 238.6% of the 2016 FPL, over the 200% limit, NYSOH properly found you eligible for the Essential Plan, based on the income documentation you provided.

Since the August 16, 2017 eligibility determination properly stated that, based on the documentation you provided, you were eligible for up to \$256.00 per month in APTC, eligible for CSR, and ineligible for the Essential Plan, it is correct and is AFFIRMED.

Decision

The August 16, 2017 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: January 4, 2018

How this Decision Affects Your Eligibility

You remain eligible for up to \$256.00 in APTC.

You are eligible for cost-sharing reductions.

You are ineligible for the Essential Plan.

If You Disagree with this Decision (Appeal Rights)

If applicable, if you think a portion of your appeal should not be dismissed, you can ask us to vacate, or cancel, this dismissal. You must ask us in writing within 30 days after the date on this notice, showing good cause as to why the dismissal should be vacated. NYSOH's Appeals Unit will review your request. If your request is approved, another hearing will be scheduled for you. If your request is denied, NYSOH will tell you in writing. If you do not respond to the dismissed portion of your appeal within 30 days, your appeal will remain dismissed, and NYSOH will take no further action on your appeal.

Insofar as your appeal was decided, the 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

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- 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 16, 2017 eligibility determination notice is **AFFIRMED**.

You remain eligible for up to \$256.00 in APTC.

You are eligible for cost-sharing reductions.

You are ineligible for the Essential Plan.

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، 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।

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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.

Twí (Twi)

Krataa yi ye tow krataa a ho hia. Se wo hia eho nkyerekyeremu a, ye srɛ wo, frɛ 1-855-355-5777. ye&ɛtumi ama wo obi a okyerɛ 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.