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

Notice of Decision

Decision Date: November 27, 2017

NY State of Health Number: [redacted]
Appeal Identification Number: AP000000021897

[redacted]

Dear [redacted],

On November 2, 2017, you appeared by telephone, with the assistance of [redacted], at a hearing on your appeal of NY State of Health's August 29, 2017 eligibility determination and September 23, 2017 plan enrollment notices.

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 at the top of this notice.

Legal Authority

We are sending you this notice in accordance with Code of Federal Regulation 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).

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STATE OF NEW YORK
DEPARTMENT OF HEALTH
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Decision

Decision Date: November 27, 2017

NY State of Health Number: [redacted]
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[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 your children were eligible to enroll in Child Health Plus (CHP) with a $60.00 per month premium each as of October 1, 2017?

Procedural History

On August 28, 2017, you updated your children's application for health insurance. That day, NYSOH issued a preliminary eligibility determination stating that your children were eligible to enroll in CHP with a $45.00 monthly premium each, effective October 1, 2017.

Also on August 28, 2017, you spoke to NYSOH's Account Review Unit and appealed that determination insofar as your children's CHP premium increased.

On August 29, 2017, NYSOH issued an eligibility determination notice, consistent with your preliminary eligibility determination, stating that your children were eligible to enroll in CHP with a $45.00 monthly premium, effective October 1, 2017. The notice further stated that they were not eligible for Medicaid because your income of $87,500.00 was over the allowable limit for that program.

On September 23, 2017, NYSOH issued a plan enrollment notice, based on a system update, confirming your children's enrollment in a CHP plan with a premium of $60.00 per month each, effective October 1, 2017.

On September 30, 2017, NYSOH issued an eligibility determination notice stating that your children were eligible to enroll in CHP for a limited time, effective October 1, 2017. The notice stated that your children have been granted Aid to Continue until a decision is made on your appeal.

On November 2, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. Your request to amend the appeal to include an appeal of the September 23, 2017 eligibility determination notice was granted and testimony was received. The record was developed during the hearing and held open to November 17, 2017, to allow you to submit supporting documents.

On November 12, 2017, you submitted five current weekly paystubs, dated October 5, 2017 through November 9, 2017. These documents were made part of the record as "Appellant's Exhibit A." No further documentation was received and the record closed on November 17, 2017.

Findings of Fact

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

1) According to your NYSOH account and your testimony, you expect to file your 2017 tax return with a tax filing status of married filing jointly. You will claim your two children as dependents on that tax return.

2) The application that was submitted on August 28, 2017 listed annual household income of $87,500.00 in earnings from your employment. Your spouse is unemployed and has no income. You testified that this amount was correct.

3) At the time of your August 28, 2017 application, your children were [redacted]

4) Your application states that you will not be taking any deductions on your 2017 tax return. However, you testified that you have a 401k deduction that was not considered in your total gross annual household income.

5) You provided documentation that, in 2017, you are expected to have pre-tax Medical and pre-tax Dental, as well as 401k deductions that total $6,690.64.

6) According to your NYSOH account and your testimony, your family lives in [redacted], New York.

7) You testified that you have bills, including rent, that you think should be deducted from your household income.

8) You testified that you would like your children's premiums returned to $9.00 per month each because your income has not changed and you do not understand why the premiums increased.

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

Applicable Law and Regulations

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 finds 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.

401K Deduction/Medical Dental Pre-Tax Deduction

"Adjusted gross income" is the gross income of the taxpayer minus the deductions permitted (26 USC § 62). Subject to some limitations, deductions that are attributable to a Pre-Tax Medical and Dental plan or a 401(k) could be deducted from a taxpayer's adjusted gross income (26 USC § 62 (a)(2)(A); (7)).

Child Health Plus

Child Health Plus (CHP) is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (*see* New York Public Health Law (NY PHL) § 2510 et seq. and 42 USC § 1397aa). Eligibility rules are set out in NY PHL § 2511(2), as well as in the NYS Department of Health 2008-2012 Contract and Plan Manual.

A child who meets the eligibility requirements for CHP may be eligible to receive a subsidy payment if the child resides in a household with a household income at

or below 400% of the federal poverty level (FPL) (NY PHL § 2511(2)(a)(iii)). To be eligible to enroll in CHP with subsidy payments, a child must not be “eligible for medical assistance”; that is, must not be eligible for Medicaid (NY PHL § 2511(2)(b)).

The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in a CHP plan depends upon the child’s family household income (NY PHL § 2510(9)(d)). No payments are required for eligible children whose family household income is less than 160% of the FPL (NY PHL § 2510(9)(d)(1)). If the family household income is 160% or higher, premiums range from $9.00 per month to $60.00 per month (NY PHL § 2510(9)(d)).

The CHP premium is $9.00 per month for a child whose family household income is between 160% and 222% of the FPL, but no more than $27.00 per month per family (NY PHL § 2510(9)(d)(ii)).

The CHP premium is $15.00 per month for a child whose family household income is between 223% and 250% of the FPL, but no more than $54.00 per month per family (NY PHL § 2510(9)(d)(iii)).

The CHP premium is $30.00 per month for a child whose family household income is between 251% and 300% of the FPL, but no more than $90.00 per month per family (NY PHL § 2510(9)(d)(iv)).

The CHP premium is $45.00 per month for a child whose family household income is between 301% and 350% of the FPL, but no more than $135.00 per month per family (NY PHL § 2510(9)(d)(v)).

The CHP premium is $60.00 per month for a child whose family household income is between 351% and 400% of the FPL, but no more than $180.00 per child (NY PHL § 2510(9)(d)(vi)).

In an analysis of Child Health Plus 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 was $24,600.00 for a four-person household (82 Federal Register 8831).

Legal Analysis

The issue under review is whether NYSOH properly determined that your children were eligible to enroll in Child Health Plus with a $60.00 per month premium each as of October 1, 2017.

According to the record, you expect to file a joint federal income tax return for the 2017 tax year and claim your two children as dependents. Therefore, for purposes of this analysis, your children are in a four-person household.

In your August 28, 2017 application, you attested to an expected household income of $87,500.00. During the hearing, you testified that the amount you provided in your application was correct. However, you asked that your current expenses, including rent, and a 401K payroll deduction be considered when calculating your annual household income.

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 APTC purposes.

However, non-taxable expenses, such as Pre-Tax Medical and Dental expense and 401k expense can be excluded from your income in determining your modified adjusted gross income. Based on the calculations above, which exclude from your income your Pre-Tax Medical and Dental expense and 401k expense, your 2017 expected taxable gross income could be lower.

However, for purposes of this analysis, your annual expected gross household income for 2017 that will be considered is $87,500.00, the income attested to in your August 28, 2017 application.

The application also stated that your children were [redacted]. NYSOH relied upon this information.

A child is eligible to enroll in Child Health Plus if they meet the non-financial requirements, are not eligible for Medicaid, and have a household income below 400% of the FPL. Households with an income between 351% and 400% of the FPL are responsible for a $60.00 per month Child Health Plus premium payment per child.

On the date of your application, the relevant FPL was $24,600.00 for a four-person household. Since $87,500.00 is 355.69% of the 2017 FPL, NYSOH properly found your children to be eligible for Child Health Plus with a $60.00 per month premium payment, based on the information you attested to in your application.

As such, the August 29, 2017 eligibility determination notice stating that your children were eligible to enroll in CHP with a $45.00 monthly premium, effective October 1, 2017, is rendered MOOT by the Decision.

The September 23, 2017 plan enrollment notice stating that your children were eligible to enroll in CHP with a $60.00 monthly premium, effective October 1, 2017, was correct and must be AFFIRMED.

However, since the record now contains a more accurate representation of your children's 2017 expected gross annual adjusted household income, your case is RETURNED to NYSOH to verify your income, taking into consideration your expected 2017 deductions of $6,690.64, and redetermine your children's eligibility for financial assistance in 2017, based on a four-person household with a modified adjusted gross annual income as determined by NYSOH, and to notify you accordingly.

Decision

The August 29, 2017 eligibility determination is rendered MOOT by this Decision.

The September 23, 2017 plan enrollment notice is AFFIRMED.

However, your case is RETURNED to NYSOH to verify your income, taking into consideration your expected 2017 deductions of $6,690.64, and redetermine your children's eligibility for financial assistance in 2017, based on a four-person household with a modified adjusted gross annual income as redetermined by NYSOH, and to notify you accordingly.

Effective Date of this Decision: November 27, 2017

How this Decision Affects Your Eligibility

This is not a final determination of your children's eligibility. While your children's eligibility for financial assistance was based on your attestation of income and, therefore, was correct as stated in the September 23, 2017 eligibility determination notice, your case is being sent back to NYSOH to redetermine your children's eligibility for financial assistance based on the factors noted above. NYSOH will notify you once your children's eligibility has been redetermined.

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.

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).

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.

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

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Summary

The August 29, 2017 eligibility determination is rendered MOOT by this Decision.

The September 23, 2017 plan enrollment notice is AFFIRMED.

However, your case is RETURNED to NYSOH to verify your income, taking into consideration your expected 2017 deductions of $6,690.64, and redetermine your children's eligibility for financial assistance in 2017, based on a four-person household with a modified adjusted gross annual income as redetermined by NYSOH, and to notify you accordingly.

This is not a final determination of your children's eligibility. While your children's eligibility for financial assistance was based on your attestation of income and, therefore, was correct as stated in the September 23, 2017 eligibility determination notice, your case is being sent back to NYSOH to redetermine your children's eligibility for financial assistance based on the factors noted above. NYSOH will notify you once your children's eligibility has been redetermined.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

[redacted]

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).

Getting Help in a Language Other than English

This is an important document. If you need help to understand it, please call 1-855-355-5777. We can give you an interpreter for free in the language you speak.

Español (Spanish)

Este es un documento importante. Si necesita ayuda para entenderlo, llame al 1-855-355-5777. Le proporcionaremos un intérprete sin ningún costo.

中文 (Traditional Chinese)

這是重要的文件。 如果您需要獲得關於瞭解文件內容方面的協助，請致電 1-855-355-5777。我們可以為您免費提供您所使用語言的翻譯人員。

Kreyòl Ayisyen (Haitian Creole)

Sa a se yon dokiman ki enpòtan. Si ou bezwen èd pou konprann li, tanpri rele nimewo 1-855-355-5777. Nou kapab ba ou yon entèprèt gratis nan lang ou pale a.

中文 (Simplified Chinese)

这是一份重要的文件。如果您需要帮助理解此文件，请打电话至 1-855-355-5777。我们可以为您免费提供相应语种的口译服务。

Italiano (Italian)

Questo è un documento importante. Per qualsiasi chiarimento può chiamare il numero 1-855-355-5777. Possiamo metterle a disposizione un interprete nella sua lingua.

한국어 (Korean)

중요한 서류입니다. 이해하는 데 도움이 필요하시면 1-855-355-5777 번으로 연락해 주십시오. 귀하의 언어에 대한 무료 통역 서비스가 제공됩니다.

Русский (Russian)

Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 1-855-355-5777. Мы можем бесплатно предоставить Вам переводчика Вашего языка.

العربية (Arabic)

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

বাংলা (Bengali)

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 महत्त्वपूर्ण कागजात हो। यसलाई बुझ्न तपाईलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईले बोल्ने भाषामा तपाईलाई नि:शुल्क 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 yɛ tow krataa a ho hia. Sɛ wo hia ɛho nkyerɛkyerɛmu a, yɛ srɛ wo, frɛ 1-855-355-5777. yƐbƐtumi ama wo obi a ɔkyerƐ kasa a woka no ase ama wo kwa a wontua hwee.

اردو (Urdu)

یہ ایک اہم دستاویز ہے۔ اگر آپ کو اسے سمجھنے کے لیے مدد کی ضرورت ہے تو براہ کرم1-855-355-5777 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.

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