



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

Notice of Decision

Decision Date: December 20, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000022427



Dear [REDACTED]

On December 11, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 15, 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
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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Decision Date: December 20, 2017

NY State of Health Account ID: [REDACTED]
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Issues

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

Did NY State of Health properly determine that you were not eligible for advance payments of the premium tax credit or cost-sharing reductions, effective October 1, 2017?

Did NY State of Health properly determine that you were ineligible for the Essential Plan, October 1, 2017?

Procedural History

On September 14, 2017, NY State of Health (NYSOH) received your application for health insurance. That day, a preliminary eligibility determination was prepared, stating that you were eligible to enroll in a qualified health plan.

Also on September 14, 2017, you spoke with NYSOH's Account Review Unit and requested an appeal of that preliminary eligibility determination insofar as you were not found eligible for the Essential Plan.

On September 15, 2017, NYSOH issued an eligibility determination notice based on the information contained in the September 14, 2017 application, stating you were eligible to purchase a qualified health plan at full cost beginning October 1, 2017. It stated that you do not qualify for advance payments of the premium tax credit (APTC) because your application states that you are married but not filing taxes jointly. It also stated that you do not qualify for cost-sharing reductions because you are not eligible for APTC. This notice also stated that you were not

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eligible for the Essential Plan because your income was over the allowable income limit for that program.

On December 11, 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 testified that you will be filing your 2017 income tax return with a tax filing status of married filing jointly. You will claim your two children as dependents on that income tax return.
- 2) You testified that you are currently married and that you do not plan to legally separate from or divorce your spouse.
- 3) You testified that your children reside with your spouse, however, they spend weekends with you.
- 4) You testified that you last lived with your spouse over two years ago.
- 5) Your application states, and you confirmed, that you live in Orange County.
- 6) The application that was submitted on September 14, 2017 listed annual household income of \$41,600.00 consisting of \$800.00 per week you earn from employment. You testified that this amount was correct.
- 7) Your application states, and you confirmed, that you will not be taking any deductions on your 2017 tax return.
- 8) You testified that on September 14, 2017 you updated your application with an NYSOH representative over the phone. You further testified that you explained your current marital status to the representative, and advised the NYSOH representative that you and your spouse would file your 2017 tax return as married filing jointly.
- 9) The application that was submitted on your behalf on September 14, 2017 indicated a tax filing status of married filing single and that you would claim your two children as dependents.
- 10) During the hearing, you gave permission for the Hearing Officer to listen to recordings of phone calls you had with NYSOH.

11) On September 14, 2017, you placed a phone call to NYSOH. A review of the recording of that phone call reveals that you were calling to renew your coverage. The NYSOH representative asked you how many people were in your household. You advised the representative that there were three people in your household. The NYSOH representative inquired as to what your marital status was. You explained that you were still married, but lived separately from your spouse. The NYSOH representative inquired as to what your tax filing status for 2017 would be. You informed the representative that you would file as married filing jointly with your spouse for 2017. The NYSOH representative informed you that in order to submit an application with a tax filing status of married filing jointly, you would need to add your spouse's information to your account. You indicated that you did not wish to add your spouse's information to your account. The NYSOH representative informed you that you had previously submitted an application with a tax filing status of married filing single and stated that if you left your tax filing status as married filing single, you would not have to add your spouse to your account. You agreed with this. You completed your application with the NYSOH representative and were found eligible to purchase a qualified health plan at full cost. You disagreed with this determination and the NYSOH representative transferred you to the NYSOH Account Review Unit.

12) On September 14, 2017, you spoke with an NYSOH Account Review Unit representative. The NYSOH Account Review Unit representative inquired as to your marital status. You explained that you and your spouse are still legally married, but live separately. The NYSOH Account Review Unit representative inquired as to your tax filing status for 2017. You stated that you would file your tax return as married filing single. The NYSOH Account Review Unit representative then went through the remainder of your application with you to ensure that all the information was correct and submitted a new application on your behalf. The NYSOH Account Review Unit representative then informed you that you had been found eligible to purchase a qualified health plan at full cost. You then requested to file an appeal.

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

Applicable Law and Regulations

Advance Payments of the Premium Tax Credit

APTC is 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

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the applicable 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 in order 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;
 - 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).

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

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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 \$20,160.00 for a three-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 <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

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)).

Household Composition

For purposes of APTC and cost-sharing reductions, the household size equals the number of individuals for whom the taxpayer is allowed a deduction under 26 USC § 151 for the taxable year, which typically includes: (1) the taxpayer, (2) his or her spouse, and (3) any claimed dependents (26 USC § 36B(d)(1)).

With regard to the Essential Plan, the household size is determined using the above methodology for individuals who file a tax return. (New York's Basic Health Plan Blueprint, p. 19-20, as approved January 2017; see <https://www.medicaid.gov/basic-health-program/basic-health-program.html>).

Legal Analysis

The first issue is whether NYSOH properly determined that you were not eligible for APTC and cost-sharing reductions, effective October 1, 2017.

In the eligibility determination notice issued on August 15, 2017, NYSOH denied an APTC to you because you indicated that you were married but did not plan to file a joint federal income tax return.

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To qualify for APTC, a person who is married must either file taxes jointly with his or her spouse or qualify as “not married” at the close of the tax year.

There is an exception, as noted above, that allows a tax filer to be treated as “not married” at the close of a taxable year, making the tax filer eligible for APTC.

According to the information in the record and your testimony at the hearing, you are still married to your spouse and have not obtained a decree of divorce or of separate maintenance.

You testified that you plan to file a joint federal income tax return with your spouse for the 2017 tax year.

The record reflects that on September 14, 2017, although you initially indicated to the NYSOH representative that you would file your 2017 tax return with a tax filing status of married filing jointly, when the NYSOH representative explained that you would need to add your spouse to your account, you declined to do so, and elected instead to submit an application with a tax filing status of married filing single. Furthermore, after being transferred to the NYSOH Account Review Unit, you clearly stated that your tax filing status for 2017 would be married filing single.

Therefore, based on the information you provided at the time of your September 14, 2017 application, NYSOH was correct when it found that you were not eligible for APTC due to your tax filing status.

Cost-sharing reductions are available only to those who meet the requirements for APTC. Since you did not qualify for APTC, NYSOH correctly found that you were not eligible for cost-sharing reductions.

The second issue is whether NYSOH properly found you ineligible for the Essential Plan, effective October 1, 2017.

The application that was submitted on September 14, 2017 listed an annual household income of \$41,600.00 and the eligibility determination relied upon that information.

The application that was submitted on September 14, 2017 listed a tax filing status of married filing single and that you would claim your two children as dependents on that return. Therefore, based on that application, you were in a three-person household.

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

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date of your application, the relevant FPL was \$20,160.00 for a three-person household. Since an annual household income of \$41,600.00 is 206.35% of the 2016 FPL, NYSOH properly found you to be ineligible for the Essential Plan.

Since NYSOH correctly determined that you are not eligible for APTC or cost-sharing reductions, or the Essential Plan the September 15, 2017 notice of eligibility determination is AFFIRMED.

The record reflects that you have already updated your application to reflect a tax filing status of married filing jointly and to include your spouse's information in your application.

This decision has no effect on subsequent eligibility determinations.

Decision

The September 15, 2017 eligibility determination is AFFIRMED.

Effective Date of this Decision: December 20, 2017

How this Decision Affects Your Eligibility

NYSOH properly found you eligible to purchase a qualified health plan at full cost through NYSOH, effective October 1, 2017.

NYSOH properly found you ineligible for a APTC based on the September 14, 2017 application because you indicated that you were married but not filing your 2017 federal income tax return jointly.

NYSOH properly found you ineligible for cost-sharing reductions because you were not eligible for an advance premium tax credit.

NYSOH properly found you ineligible for the Essential Plan based on the September 14, 2017 application.

This decision has no effect on subsequent eligibility determinations.

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 September 15, 2017 eligibility determination is AFFIRMED.

NYSOH properly found you eligible to purchase a qualified health plan at full cost through NYSOH, effective October 1, 2017.

NYSOH properly found you ineligible for a APTC based on the September 14, 2017 application because you indicated that you were married but not filing your 2017 federal income tax return jointly.

NYSOH properly found you ineligible for cost-sharing reductions because you were not eligible for an advance premium tax credit.

NYSOH properly found you ineligible for the Essential Plan based on the September 14, 2017 application.

This decision has no effect on subsequent eligibility determinations.

Legal Authority

We are issuing this determination 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)

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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 sre wo, fre 1-855-355-5777. ye b&tumi 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.

שׂוֹדִישׁ (Yiddish)

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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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