



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

Notice of Decision

Decision Date: December 08, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000022669

[REDACTED]

[REDACTED]

On November 30, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's September 30, 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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Decision

Decision Date: December 08, 2017

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000022669



Issues

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

Did NY State of Health (NYSOH) properly determine that your spouse was not eligible to receive advance payments of the premium tax credit (APTC), as of September 21, 2017?

Did NYSOH properly determine that your spouse was not eligible for the Essential Plan?

Did NYSOH properly determine that your spouse was not eligible for Medicaid?

Procedural History

On September 21, 2017, you updated your NYSOH application for financial assistance with your health insurance. That day, a preliminary eligibility determination was prepared, stating that your spouse was eligible to purchase a qualified health plan (QHP) at full cost through NYSOH, effective November 1, 2017.

Also on September 21, 2017, you spoke to NYSOH's Account Review Unit and appealed, insofar as your spouse was not eligible for financial assistance. You also requested Aid to Continue, pending the outcome of your appeal.

On September 30, 2017, NYSOH issued a notice of eligibility determination, based on the September 21, 2017 application, stating that your spouse was

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eligible to purchase a full cost QHP through NYSOH, effective November 1, 2017. That notice also stated that your spouse was not eligible for APTC, the Essential Plan, or Medicaid because your household income was over the allowable income limits for those programs.

On September 29, 2017, NYSOH issued a notice of enrollment confirmation, confirming your spouse's enrollment in a Medicaid Managed Care plan, beginning November 1, 2017. This was because your request for Aid to Continue was granted, pending the outcome of your appeal.

On October 1, 2017, NYSOH issued a notice of eligibility determination, stating that your spouse was eligible for Medicaid, effective November 1, 2017. This was also because your request for Aid to Continue was granted, pending the outcome of your appeal.

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 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 expect to file your 2017 taxes with a tax filing status of married filing jointly. You will claim no dependents on that tax return.
- 2) You are seeking insurance for your spouse.
- 3) The application that was submitted on September 21, 2017, listed annual household income of \$118,000.00, consisting of \$28,680.00 in Social Security Retirement benefits, and \$90,000.00 in pension income.
- 4) You testified that this income is partially correct, but you are not sure if it is entirely accurate.
- 5) You testified that you are retired and that you take distributions from your 401K, which are taxed at twenty percent.
- 6) You testified that you receive \$3,200.00 per month in distributions, after taxes.
- 7) You testified that you also took an extra \$10,000.00 in distributions to pay your property taxes in 2017, and another \$45,000.00 to [REDACTED].

- 8) You testified that you receive \$2,390.00 per month in Social Security Retirement.
- 9) You testified that you paid \$33,000.00 in alimony payments in 2017.
- 10) You testified that you expect your income to be different in 2018 because your house is for sale, and if you sell it, you do not expect to be taking any distributions from your 401K. You also testified that you do not expect to take any distributions to [REDACTED] in 2018.
- 11) Your September 21, 2017 application indicated that your spouse does not have any income, and you testified that this is correct
- 12) Your application states that 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

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 \$16,020.00 for a two-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 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).

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 \$16,020.00 for a two-person household (81 Federal Register 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)).

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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 \$16,240.00 for a two-person household (82 Federal Register 8831, 8832).

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 (*id.*). Such deductions also include as an amount equal to the alimony or separate maintenance payments paid during a taxable year (26 USCS § 215(a)).

Legal Analysis

The first issue under review is whether NYSOH properly determined that your spouse was not eligible to receive APTC, as of your September 21, 2017 application.

The application that was submitted on September 21, 2017 listed an annual household income of \$118,000.00 and the eligibility determination relied upon that information.

You testified that you receive \$2,390.00 per month in Social Security Retirement benefits. You testified that you receive \$3,200.00 in 401K distributions per month, after taxes, which, you testified, are twenty percent. This equals a gross monthly 401K distribution of \$4,000.00. You testified that you also took a \$10,000.00 distribution to pay your property taxes for 2017, and a \$45,000.00 distribution so

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that you could [REDACTED]. Lastly, you testified that you paid \$33,000.00 in alimony in 2017.

Therefore, your adjusted gross income for 2017 was \$28,680.00 in Social Security Retirement plus \$103,000.00 in combined gross 401K deductions, minus \$33,000.00 in alimony payments, for a total of \$98,680.00.

You are in a two-person household. You expect to file your 2017 income taxes as married filing jointly and will claim no dependents on that tax return.

An annual income of \$98,680.00 is 615.98% of the 2016 FPL for a two-person household. Since APTC can only be provided to an individual with an expected gross annual income of up to 400% of the 2016 FPL, NYSOH properly determined that your spouse was not eligible for APTC as of your September 21, 2017 application.

The second issue under review is whether NYSOH properly determined that your spouse was not eligible for the Essential Plan, as of your September 21, 2017 application.

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 \$16,020.00 for a two-person household. Since an annual household income of \$98,680.00 is 615.98% of the 2016 FPL, NYSOH properly found your spouse to be ineligible for the Essential Plan.

The third issue under review is whether NYSOH properly determined that your spouse was ineligible for Medicaid.

Medicaid can be provided through NYSOH to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$16,240.00 for a two-person household. Since \$98,680.00 is 607.64% of the 2017 FPL, NYSOH properly found your spouse to be ineligible for Medicaid on an expected annual income basis.

Because the September 30, 2017 eligibility determination properly stated that your spouse was eligible to purchase a QHP at full cost, ineligible for APTC, ineligible for the Essential Plan, and ineligible for Medicaid, it is correct and is **AFFIRMED**.

PLEASE NOTE: This decision relates to your spouse's eligibility for financial assistance in 2017 ONLY. If you wish to find out whether your spouse qualifies

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for financial assistance for 2018, you must update your NYSOH account during open enrollment, which runs from November 1, 2017 through January 31, 2018.

Decision

The September 30, 2017 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: December 08, 2017

How this Decision Affects Your Eligibility

Your spouse is eligible to purchase a QHP at full cost for 2017.

Your spouse is ineligible for APTC.

Your spouse is ineligible for the Essential Plan.

Your spouse is ineligible for Medicaid.

PLEASE NOTE: This decision relates to your spouse's eligibility for financial assistance in 2017 ONLY. If you wish to apply for financial assistance for your spouse for 2018, you must update your NYSOH account during open enrollment, which runs from November 1, 2017 through January 31, 2018.

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

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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
PO Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The September 30, 2017 eligibility determination notice is **AFFIRMED**.

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Your spouse is eligible to purchase a QHP at full cost for 2017.

Your spouse is ineligible for APTC.

Your spouse is ineligible for the Essential Plan.

Your spouse is ineligible for Medicaid.

PLEASE NOTE: This decision relates to your spouse's eligibility for financial assistance in 2017 ONLY. If you wish to apply for financial assistance for your spouse for 2018, you must update your NYSOH account during open enrollment, which runs from November 1, 2017 through January 31, 2018.

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

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.