

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

Notice of Decision

Decision Date: December 21, 2017

NY State of Health Account ID:

Appeal Identification Number: AP000000022827





On December 4, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's October 1, 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.



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

Decision

Decision Date: December 21, 2017

NY State of Health Account ID:

Appeal Identification Number: AP000000022827



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 November 1, 2017?

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

Did NY State of Health properly determine that you were ineligible for Medicaid.

Procedural History

On December 29, 2016, NY State of Health (NYSOH) issued a notice of eligibility determination stating that you were eligible to enroll in the Essential Plan, effective February 1, 2017.

Also on December 29, 2016, NYSOH issued a notice of enrollment confirming your enrollment in an Essential Plan.

On September 26, 2017, NYSOH received your updated application for health insurance. That day, a preliminary eligibility determination was prepared with regard to that application, stating that you were eligible to enroll in a qualified health plan at full cost.

Also on September 26, 2017, you spoke to NYSOH's Account Review Unit and requested an appeal of that preliminary eligibility determination insofar as you were not eligible for financial assistance with health insurance.

On September 27, 2017, NYSOH issued a disenrollment notice stating that your enrollment in your Essential Plan would end as of October 31, 2017. This was because you were no longer eligible to enroll in the Essential Plan.

On October 1, 2017, NYSOH issued an eligibility determination notice based on the information contained in the September 26, 2017 application, stating you were eligible to purchase a qualified health plan at full cost beginning November 1, 2017. It stated that you do not qualify for an advance payments of the premium tax credit (APTC) because your application states you are married but not filing taxes jointly with your spouse. It also stated that you do not qualify for cost-sharing reductions because you are not eligible for advance premium tax credits. You also were not eligible for Medicaid or the Essential Plan because your income was over the allowable income limits for those programs.

On October 4, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible for the Essential Plan for a limited time. This was because you had been granted Aid to Continue until a decision was made on your appeal.

On December 4, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was left open for fourteen days to allow you time to submit supporting documents. Specifically, the Hearing Officer requested your September 2017 paystubs or your last paystub before you went out of work and your first paystub after you returned to work, as well as your most recent paystub.

On December 8, 2017, the NYOSH Appeals Unit received via fax your check detail history from July 1, 2017 through August 31, 2017, as well as four of your paystubs from check date October 20, 2017, November 3, 2017, November 17, 2017, and December 1, 2017. These documents were collectively marked as Appellant's Exhibit #1 and incorporated into the record. As December 19, 2017, no additional documents were received. The record is now closed.

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 separately. You will not claim any dependents on that income tax return.

- 2) You testified that you have children, however, they are all grown and none of them reside with you.
- 3) You testified that you are currently married and that you do not plan to legally separate from or divorce your spouse.
- 4) You testified that you last lived with your spouse over one year ago.
- 5) You are seeking insurance for yourself. You testified that you are seeking to be found eligible for financial assistance with health insurance.
- 6) The application that was submitted on September 26, 2017 listed annual expected income of \$24,336.00, consisting of wages you earn from your employment. You testified that your annual expected income for 2017 is around that figure.
- 7) You explained that you were out of work for seven weeks, which may have affected your annual expected income. You were not sure specifically the dates you were out of work, however, you believe this was in August 2017 and September 2017.
- 8) You testified that you have had one employer throughout 2017. You are paid on a biweekly basis.
- 9) Your application indicates, and you confirmed, that you reside in Queens County.
- 10) Your application states, and you confirmed, that you are not claiming any deductions on your 2017 tax return.
- 11) You testified that you have bills which include \$600.00 per month in rent, bus fare, medications, and your phone bill, which you would like considered when determining your eligibility for financial assistance.
- 12) During the hearing, the Hearing Officer requested that you submit all of your paystubs from September 2017 or if you did not receive any pay checks in September 2017, your last pay stub prior to going out of work and your first pay stub after you returned to work, as well as your most recent paystub.
- 13)On December 8, 2017, you submitted a check history from July 1, 2017 to August 31, 2017 which shows that you were paid on July 14, 2017 a gross pay amount of \$1,104.00, on July 28, 2017 a gross pay amount of \$1,248.00, on August 11, 2017 a gross pay amount of \$960.00, and on August 25, 2017 a gross pay amount of \$480.00. This does not include your year to date gross pay for those dates. You also submitted four of

your paystubs; the first is for pay date October 20, 2017 for a gross pay amount of \$738.00; the second is for pay date November 3, 2017 for a gross pay amount of \$732.00; the third is for pay date November 17, 2017 for a gross pay amount of \$1,056.00; the fourth is for pay date December 1, 2017 for a gross pay amount of \$768.00 and a gross year to date pay amount of \$20,466.00.

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 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 noncitizen 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.).

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.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)).

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).

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 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.

Medical expenses and dental expenses may be itemized on a Form 1040 Schedule A; however, these expenses are not used to compute adjusted gross income (26 USC § 213(a); Internal Revenue Service (IRS) Publication 502 (2016)).

Household Composition

For purposes of advance premium tax credit (APTC) and cost-sharing reductions (CSR), 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).

"Family size" means the number of persons counted as members of an individual's household. The household of a taxpayer who expects to file a return, and does not expect to be claimed as a tax dependent by anyone else, consists of the taxpayer plus all people the taxpayer expects to claim as tax dependents (42 CFR § 435.603(f)(1)).

In the case of a married couple living together, each spouse is included in the Medicaid household of the other spouse, regardless of whether they expect to file a joint tax return (42 CFR § 435.603 (f)(4)).

In general, household income means the aggregate modified adjusted gross income of every person who is included in the taxpayer's family and is required to file a federal tax return (26 CFR § 1.36B-1(e)).

Legal Analysis

The first issue is whether NYSOH properly determined that you are not eligible for APTC and cost-sharing reductions.

In the eligibility determination notice issued on October 1, 2017, NYSOH denied you APTC because you indicated that you were married but did not plan to file a joint federal income tax return.

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.

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. Also, you confirmed that you do not plan to file a joint federal income tax return with your spouse for the 2017 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. However, the record does not support a finding that you meet the necessary requirements for that exception.

Therefore, 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.

The application that was submitted on September 26, 2017 listed an annual household income of \$24,336.00.

During the hearing, you testified that the amount you provided in your application was approximately correct. However, you asked that your current expenses, which include rent, phone bill, bus fare, medications, and other living expenses, 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. Furthermore, although medical and dental expenses may be itemized on Form 1040 Schedule A, Internal Revenue Service rules do not allow these expenses to be deducted when NYSOH computes your modified adjusted gross income. Therefore, NYSOH correctly determined your household income to be \$24,336.00.

You expect to file your 2017 tax return as married filing single, you will not claim any dependents on your 2017 income tax return, and your spouse lives separately from you. Therefore, you are in a one-person household for purposes of determining your eligibility for financial assistance.

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 \$24,336.00 is 204.85% of the 2016 FPL, NYSOH properly found you to be ineligible for the Essential Plan.

The third issue is whether NYSOH properly determined that you were 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 \$12,060.00 for

a one-person household. Since \$24,336.00 is 201.79% of the 2017 FPL, NYSOH properly found you to be ineligible for Medicaid on an expected annual income basis, using the information provided in your application.

However, financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size.

You testified that you were out of work for seven weeks sometime in August 2017 and September 2017.

The Hearing Officer requested that you submit all your paystubs from September 2017 or your last paystub before you went out of work and your first paystub when you returned to work.

You submitted a paystub for pay date October 20, 2017, however, you submitted no prior paystubs. You did submit a detail of check history from July 1, 2017 to August 31, 2017 which shows that you were paid on August 25, 2017. However, this list does not include your gross year to date pay totals, so it cannot be ascertained whether August 25, 2017 was your last pay check prior to going out of work.

Therefore, based on the information you submitted, it cannot be determined whether you would qualify for Medicaid on the basis of monthly income as of the date of your September 26, 2017 application.

Since the October 1, 2017 eligibility determination properly stated that, based on the information you provided, you were ineligible for APTC and cost-sharing reductions, ineligible for the Essential Plan and ineligible for Medicaid, it is correct and is AFFIRMED.

During the hearing, you credibly testified that you were out of work for seven weeks in 2017, which may have resulted in a change to your annual expected income. Following the hearing you submitted a pay stub that shows you're your gross year to date pay as of December 1, 2017 was \$20,466.00.

Therefore, your case is RETURNED to NYSOH to redetermine your eligibility for financial assistance based on a household of one residing in Queens County with an annual expected income of \$22,462.68 (\$20,466.00 divided by 41 weeks, for a weekly average of \$499.17, multiplied by 45 weeks worked in 2017).

Decision

The October 1, 2017 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your eligibility for financial assistance based on a household of one residing in Queens County with an annual expected income of \$22,462.68.

Effective Date of this Decision: December 21, 2017

How this Decision Affects Your Eligibility

You remain ineligible for APTC because you are married but not filing your 2017 federal income tax return jointly.

You remain ineligible for cost-sharing reductions because you are not eligible for an advance premium tax credit.

NYSOH properly determined that you were ineligible for the Essential Plan and Medicaid based on the information in your September 26, 2017 application.

Your case is being sent back to redetermine your eligibility based on information you provided during your hearing.

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.

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

Summary

The October 1, 2017 eligibility determination notice is AFFIRMED.

You remain ineligible for APTC because you are married but not filing your 2017 federal income tax return jointly.

You remain ineligible for cost-sharing reductions because you are not eligible for an advance premium tax credit.

NYSOH properly determined that you were ineligible for the Essential Plan and Medicaid based on the information in your September 26, 2017 application.

Your case is being sent back to redetermine your eligibility based on information you provided during your hearing.

Your case is RETURNED to NYSOH to redetermine your eligibility for financial assistance based on a household of one residing in Queens County with an annual expected income of \$22,462.68.

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.

<u>한국어 (Korean)</u>

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.

(Arabic)العربية

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

বাংলা (Bengali)

এটি এক গুরুত্বপূর্ণ নিখি। 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।

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।

<u>日本語 (Japanese)</u>

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 तपाईंलाई मद्दत चाहिन्छ भने, कृपया 1-855-355-5777 मा फोन गर्नुहोस्। हामीले तपाईंले बोल्ने भाषामा तपाईंलाई नि:शूल्क दोभाषे उपलब्ध गराउन सक्छों।

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. yebetumi ama wo obi a okyere 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 کرم5777-355-855-1 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.