



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

Notice of Decision

Decision Date: January 4, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000023696

[REDACTED]

On December 21, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's October 4, 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

Decision Date: January 4, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000023696

[REDACTED]

Issue

The issue presented for review by the Appeals Unit of NY State of Health is:

Did NY State of Health properly determine that you were eligible to receive up to \$238.00 per month in advance payments of the premium tax credit and cost-sharing reductions, effective November 1, 2017?

Procedural History

On October 3, 2017, you submitted an application for financial assistance.

On October 4, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible to receive up to \$238.00 in advance payments of the premium tax credit (APTC) and eligible to receive cost-sharing reductions if you enrolled in a silver level qualified health plan, effective November 1, 2017. That notice also stated that you were not eligible for the Essential Plan because your income was over the allowable income limit for that program.

On October 25, 2017, you spoke to NYSOH's Account Review Unit and appealed insofar as you were not found eligible for the Essential Plan.

On December 21, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. During the hearing, your spouse acted as your Authorized Representative. The record was developed during the hearing and closed at the end of the hearing.

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Findings of Fact

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

- 1) Your spouse testified that you expect to file your 2017 taxes with a tax filing status of married filing jointly. You will not claim any dependents on that tax return.
- 2) You are seeking insurance for yourself.
- 3) The application that was submitted on October 3, 2017 listed annual household income of \$35,980.00, consisting of \$24,000.00 you earn from your employment and \$31,272.00 your spouse receives in Social Security Benefits and \$2,688.00 from a pension, less \$2,827.00 in capital losses, \$43.00 for the deductible part of the self-employment tax, and \$19,110.00 in self-employment insurance deductions. You testified that this amount was correct.
- 4) Your spouse testified that your income for 2017 consists of \$24,000.00 you earn from your employment with [REDACTED] and \$600.00 you earn from your employment with [REDACTED].
- 5) Your spouse testified that your income for 2018 will likely change because you will no longer be employed with [REDACTED] and your position with [REDACTED] may not have funding for the fall semester.
- 6) Your spouse testified that his income for 2017 consisted of \$224.00 per month he received from a pension and gross monthly Social Security Benefits of \$2,606.00.
- 7) You submitted a copy of your 2016 tax return which shows capital loss of \$2,827.00, deductions for the deductible part of the self-employment tax, and \$19,110.00 in itemized deductions consisting of \$5,981.00 in medical and dental expenses, \$1,221.00 in taxes, and \$11,908.00 in gifts to charity. No deduction for self-employment health insurance is listed in this tax return.
- 8) Your spouse testified that you will be claiming capital losses on your 2017 which are similar to those claimed on your 2016 tax return. Your spouse further testified that he is not sure if you will claim a deduction for the deductible part of the self-employment tax. Your spouse went on to testify that he does not believe you will be claiming the self-employed health insurance deduction.

9) Your spouse testified that you will be claiming similar itemized deductions in 2017 to those claimed in 2016 including approximately \$7,700.00 for medical expenses.

10) Your application states that you live in New York County.

11) Your spouse testified that you have bills including rent \$2,800.00 per month in rent that you would like considered when 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 qualified health plan (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 NY State of Health 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), 26 CFR § 1.36B-3T(g)(1), IRS Rev. Proc.2016-24).

In an analysis of APTC eligibility, the determination is based on the FPL for the first day of the open enrollment period of the benefit year for which coverage is

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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 Fed. Reg. 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-3T(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 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 application) with their actual income (stated on their federal income tax return). Those who take less tax credit in advance than they 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 \$16,020.00 for a two-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)).

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.

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)).

State, local, and foreign real property taxes, state and local personal property taxes, state and local, and foreign, income and excess profit taxes may be itemized on Form 1040 Schedule A; however, these expenses are not used to compute adjusted gross income (26 USC §164(a)).

Charitable contributions may be itemized on Form 1040 Schedule A; however, these expenses are not used to compute adjusted gross income (26 USC §170(a); IRS Publication 526 (2016)).

Legal Analysis

The first issue is whether NYSOH properly determined that you were eligible for an APTC of up to \$238.00 per month and cost-sharing reductions, effective November 1, 2017.

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

The application that was submitted on October 3, 2017 listed an annual household income for 2017 of \$57,960.00, consisting of \$24,000.00 you earn from employment, \$33,960.00 your spouse receives in Social Security Benefits and pension benefits. The application also stated that you would have \$2,827.00 in capital losses, and deduct \$43.00 for the deductible part of the self-employment tax and \$19,110.00 for the self-employed health insurance deduction. Based on the information provided, NYSOH calculated your annual household income to be \$35,980.00.

However, the record reflects that the \$19,110.00 in self-employed health insurance deductions was actually for itemized deductions. According to your tax return, these were deductions for medical and dental expenses, taxes you paid, and gifts to charity.

NYSOH bases its eligibility determinations on modified adjusted gross income (MAGI) as defined in the federal tax code.

Although deductions for medical and dental expenses, taxes you paid, and gifts to charity may be itemized on Form 1040 Schedule A, Internal Revenue Service rules do not allow these itemized deductions to be deducted from the calculation of your adjusted gross income. Therefore, they cannot be deducted when NYSOH computes modified adjusted gross income for the purpose of determining your eligibility for financial assistance.

Therefore, the income amount that was relied on in the October 4, 2017 eligibility determination notice is not supported by the record and the eligibility determination notice is **RESCINDED**.

Your Authorized Representative asked that your current expenses, which include rent of \$2,800.00 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 financial assistance.

Your case is RETURNED to NYSOH to redetermine your eligibility as of October 3, 2017, based on a two-person household residing in New York County, with an expected annual household income of \$55,690.00 (\$24,000.00 in [REDACTED] income, \$600.00 in [REDACTED] income, \$2,688.00 your spouse receives from a pension, \$31,272.00 your spouse receives in Social Security Benefits, less \$2,827.00 in capital losses, and \$43.00 in self-employment tax deductions).

During the hearing, your Authorized Representative testified that your annual expected income for 2018 has changed. You must report any changes in income to NYSOH.

Decision

The October 4, 2017 eligibility determination notice is RESCINDED.

Your case is RETURNED to NYSOH to redetermine your eligibility as of October 3, 2017, based on a two-person household residing in New York County, with an expected annual household income of \$55,690.00.

Effective Date of this Decision: January 4, 2018

How this Decision Affects Your Eligibility

This is not a final determination of your eligibility.

Your case is being sent back to redetermine your eligibility as of October 3, 2017.

If there are changes to your household income for 2018, you must report these to NYSOH.

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.

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).

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):

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- 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 4, 2017 eligibility determination notice is **RESCINDED**.

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Your case is RETURNED to NYSOH to redetermine your eligibility as of October 3, 2017, based on a two-person household residing in New York County, with an expected annual household income of \$55,690.00.

This is not a final determination of your eligibility.

Your case is being sent back to redetermine your eligibility as of October 3, 2017.

If there are changes to your household income for 2018, you must report these to NYSOH.

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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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।

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 bɛtumi 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.

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