



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

Notice of Decision

Decision Date: March 22, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000025857

[REDACTED]

Dear [REDACTED]

On February 23, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's December 14, 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
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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DEPARTMENT OF HEALTH
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Decision

Decision Date: March 22, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000025857

[REDACTED]

Issue

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

Did NY State of Health (NYSOH) properly determine you were eligible to purchase a full cost qualified health plan and ineligible to receive advance payments of the premium tax credit, effective January 1, 2018?

Procedural History

On December 13, 2017, NYSOH received several updated applications for financial assistance with health insurance submitted on your behalf.

On December 14, 2017, NYSOH issued an eligibility determination notice stating you were eligible to purchase a qualified health plan at full cost, effective January 1, 2018. The notice indicated you were not eligible for Medicaid, the Essential, or to receive advance payments of the premium tax credit (APTC), because your household income was over the allowable income limit to qualify for those programs.

On December 15, 2017, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination insofar as you were not eligible for APTC.

On February 23, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open to March 9, 2018 to allow you to submit supporting documentation. As of March 9, 2018, the Appeals Unit had received no documentation and none was

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viewable in your NYSOH account. Therefore, the record closed that day and this decision is based on the record as developed at the time of the hearing.

Findings of Fact

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

- 1) You are seeking insurance for yourself only.
- 2) You were enrolled in a qualified health plan with APTC, effective January 1, 2017, following a November 16, 2016 application listing your annual expected household income as \$34,450.01.
- 3) On July 13, 2017, your application was updated. That application indicated you were married and that you would file your 2017 tax return with a tax filing status of married filing jointly with your spouse. That application indicated that your spouse had no expected income for 2017. You testified the income information in that application for your spouse was not accurate, because he earned income in 2017. You testified that you do not know where that information came from.
- 4) Based on the information in your July 13, 2017 application, NYSOH determined you remained eligible to receive APTC.
- 5) On December 7, 2017, you submitted an updated application. That application indicated you would file your 2018 tax return with a tax filing status of married filing jointly and you would claim no dependents. That application listed household income of \$89,700.01 consisting of \$40,300.01 you would earn in 2018 and \$49,400.00 your spouse would earn.
- 6) Following your December 7, 2017 application, NYSOH determined you were eligible to purchase a full cost qualified health plan, effective January 1, 2018, and ineligible for financial assistance.
- 7) On December 13, 2017, you submitted five updated applications.
- 8) Three of the applications submitted on December 13, 2017 indicated you would file your 2018 tax return with a tax filing status of married filing separately from your spouse.
- 9) The final application submitted on December 13, 2017 indicated you would file your 2018 tax return with a tax filing status of married filing jointly with your spouse and you would claim no dependents. That application listed household income of \$75,936.00 consisting of

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\$30,336.00 you would earn annually and \$45,600.00 your spouse would earn.

- 10) Based on the information in the final application submitted on December 13, 2017, NYSOH determined you eligible to purchase a full cost qualified health plan, effective January 1, 2018, and ineligible to receive APTC, because your annual household income was over the allowable limit.
- 11) You appealed that eligibility insofar as you were not eligible for APTC.
- 12) All applications received by NYSOH indicate your spouse is not applying for health insurance through NYSOH.
- 13) You testified that you are not sure whether the income information listed in your December 13, 2017 application is accurate. You testified that your income is variable and the \$30,336.00 listed in your application was calculated based on the net income from your most recent paystubs. You testified that you expect to earn approximately the same amount of income in 2018 as you did in 2017, because you have the same job. You testified that your 2017 W2 form indicates that you earned \$39,433.50 in 2017.
- 14) You testified that you have not yet decided what tax status you will use on your 2017 or 2018 tax returns. You testified that you only changed your tax status to married filing jointly with your spouse, because a NYSOH representative told you that you had to, if you wanted to qualify for APTC.
- 15) You testified that you have basically the same income as you did the prior year, so you do not understand why you no longer qualify for APTC.
- 16) You testified that you do not think your spouse's income should be included in your household income calculation, because your accounts are not combined and you do not have access to your spouse's income.
- 17) You testified that you cannot afford to pay the full premium for a qualified health plan, because you have various other personal expenses that you are responsible for. You testified that you think your personal expenses should be considered when determining your eligibility for financial assistance with health insurance.
- 18) The final application submitted on December 13, 2017 indicates you will not take any deductions on your 2018 tax return.
- 19) You testified that you do intend to take a student loan interest deduction, but you were unsure of the amount of that deduction. You were advised to

update your application with accurate deduction information when you determine the amount of the deduction you will claim.

- 20) Your application indicates that you live in Kings County.
- 21) You testified that you wanted to submit documentation to show your expenses and to support your contention that your spouse's income should not be included in your household income calculation. The record was held open until March 9, 2018 to allow you to submit supporting documentation. No documentation was received by the deadline and the record closed thereafter.

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

Applicable Law and Regulations

Modified Adjusted Gross Income

NYSOH bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code (45 CFR § 155.300(a)). The term "modified adjusted gross income" means adjusted gross income increased by (1) any income that was excluded under 26 USC § 911 for United States citizens or residents living abroad, (2) tax-exempt interest received or accrued, and (3) Social Security benefits that were excluded from gross income under 26 USC § 86 (see 26 USC § 36B(d)(2)(B), 26 CFR § 1.36B-1(e)(2)).

"Adjusted gross income" means, in the case of an individual taxpayer, gross federal taxable income minus certain specific deductions, such as expenses reimbursed by an employer, losses from sale or exchange of property, losses from premature withdrawal of 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.*).

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)).

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).

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 requested (45 CFR §§ 155.300(a), 155.305(f)(1)(i)). 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).

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).

Additionally, a tax filer who is married must generally file a joint return with his or her spouse to qualify for APTC (45 CFR § 155.305(f), 45 CFR § 155.310(d); 26 CFR § 1.36B-2).

Determination of Marital Status

The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death. An individual

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legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

Certain married individuals shall not be considered as married, if—

- (1) the married individual files a separate return and maintains as his home a household which constitutes more than one-half of the taxable year the principal place of abode of a child (within the meaning of section 152(f)(1)) with respect to whom such individual is entitled to a deduction for the taxable year under section 151 (or would be so entitled but for section 152(e)),
- (2) such individual furnishes over one-half of the cost of maintaining such household during the taxable year, and
- (3) during the last 6 months of the taxable year, such individual's spouse is not a member of such household.

26 USC § 7703

Legal Analysis

The issue under review is whether NYSOH properly determined you were eligible to purchase a full cost qualified health plan and ineligible to receive APTC, effective January 1, 2018.

Several updated applications for financial assistance were submitted on December 13, 2017. The final application submitted that day, upon which the eligibility determination at issue was based, indicated you would file your 2018 tax return with a tax filing status of married filing jointly with your spouse and listed annual expected household income of \$75,936.00, including income your spouse would earn.

Although you testified that your spouse's income should not be included in your household income calculation and that you are not sure what your tax filing status for 2018 will be, your account confirms that you attested, in the final application submitted on December 13, 2017, that you expected to file your 2018 tax return with a tax filing status of married filing jointly with your spouse.

Eligibility for the purposes of APTC and cost-sharing reductions is based on income as well as household size. Pursuant to the above cited regulations, 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 the taxpayer, his or her spouse, and any claimed dependents. Since your application indicated that you and your spouse will file your 2018 tax return

with a tax filing status of married filing jointly and will claim no dependents, you are considered to be in a two-person tax household.

It is noted that eligibility for financial assistance through NYSOH is based on the income of the tax household, regardless of whether all members of the household are applying for health coverage. Since, pursuant to the regulations, you are considered to be in a two-person household with your spouse, based on the information in your application, your spouse's income was properly included in your household income calculation.

It is further noted that pursuant to the above cited regulations, a tax filer who is married must generally file a joint return with his or her spouse to qualify for APTC. An individual will be treated as not married at the close of the taxable year if the individual is legally separated from his/her spouse under a decree of divorce or of separate maintenance, or meets all of the following criteria: files a separate return from his/her spouse and maintains his or her household as the primary home for a qualifying child; pays more than one half of the cost of keeping up his or her home for the tax year; and does not have his or her spouse as a member of the household during the last six months of the tax year.

There is no evidence in the record to support a finding that you could be considered "not married" and, thus, excused from the requirement to file a joint tax return with your spouse to qualify for APTC.

Based on the information in your application, NYSOH determined you were eligible to purchase a full cost qualified health plan, effective January 1, 2018, because your annual household income was over the allowable income limit to qualify you for APTC. You appealed that determination insofar as you were not eligible for APTC.

You testified that you cannot afford the premium for a full cost qualified health plan, because you have various personal expenses you are responsible for which should be considered when determining your eligibility for financial assistance with health insurance. However, since eligibility for financial assistance through NYSOH is based on an individual's modified adjusted gross household income as defined in the federal tax code, and 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 considered when NYSOH computes your modified adjusted gross income for APTC purposes. Thus, NYSOH properly based its eligibility determination on the \$75,936.00 annual household income amount attested to in your application.

Pursuant to the regulations, APTC are generally available to applicants eligible to enroll in a QHP who (1) expect to have a household income between 138% and 400% of the applicable FPL, (2) expect to file a tax return and claim a personal

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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.

In an analysis of APTC eligibility, the determination is based on the Federal Poverty Line (FPL) for the first day of the open enrollment period of the benefit year for which coverage is requested. On the date of your application, that was the 2017 FPL, which is \$16,240.00 for a two-person household. The annual household income amount of \$75,936.00 attested to in the final application submitted on December 13, 2017, is 467.59% of the applicable FPL. Since this is over the 400% threshold, you were not eligible to receive APTC to help pay for the cost of health coverage, based on the information in your application.

Therefore, the December 14, 2017 eligibility determination notice stating you were eligible to purchase a full cost qualified health plan, effective January 1, 2018, and ineligible to receive APTC, was correct and is AFFIRMED.

Decision

The December 14, 2017 eligibility determination notice is AFFIRMED.

Effective Date of this Decision: March 22, 2018

How this Decision Affects Your Eligibility

This decision does not change your eligibility.

You remain eligible to purchase a full cost qualified health plan.

You are not eligible for APTC based on the information in the final application submitted on December 13, 2017.

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.

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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 December 14, 2017 eligibility determination notice is **AFFIRMED**.

This decision does not change your eligibility.

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You remain eligible to purchase a full cost qualified health plan.

You are not eligible for APTC based on the information in the final application submitted on December 13, 2017.

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&etumi ama wo obi a okyerε 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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