



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

Notice of Decision

Decision Date: March 20, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000026028

[REDACTED]

Dear [REDACTED]

On February 28, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's November 23, 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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STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
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Decision

Decision Date: March 20, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000026028

[REDACTED]

Issue

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

Did NY State of Health properly determine you and your spouse were eligible for a full cost qualified health plan, effective January 1, 2018?

Procedural History

On December 9, 2016, NY State of Health (NYSOH) issued a notice of eligibility determination stating you and your spouse were both eligible for Medicaid, effective December 1, 2016. You enrolled in a Medicaid Managed Care plan, effective January 1, 2017.

On September 21, 2017, NYSOH issued a renewal notice stating it as time to renew your and your spouse's coverage. The notice stated that based on the information received from federal and state data sources a decision could not be made about whether or not you and your spouse qualified for financial assistance. The notice directed you to update your application by November 15, 2017.

On October 30, 2017, NYSOH received your and your spouse' updated application for financial assistance.

On October 31, 2017, NYSOH issued a notice of eligibility determination notice stating you and your spouse were conditionally eligible for Medicaid, effective December 1, 2017. The notice requested you provide proof of your income by November 14, 2017.

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On October 30, 2017, NYSOH received your filed 2016 Tax Return (see Document [REDACTED])

On November 1, 2017, NYSOH issued a notice stating the documentation it reviewed does not confirm the information in your application. The notice requested additional proof of income by November 29, 2017.

On November 22, 2017, a NYSOH representative submitted an application for financial assistance on your behalf.

On November 23, 2017, NYSOH issued an eligibility determination notice stating you and your spouse were newly eligible to purchase a qualified health plan at full cost, effective January 1, 2018. The notice stated you and your spouse were ineligible for advance payments of the premium tax credit, cost-sharing reductions, Essential Plan, and Medicaid because your household income was above the allowable income limits for these programs.

On November 23, 2017, NYSOH issued a disenrollment notice confirming your disenrollment from your Medicaid Managed Care plan, effective December 31, 2017.

On December 19, 2017, you spoke to NYSOH's Account Review Unit and appealed the November 23, 2017 eligibility determination notice insofar as you and your spouse were not eligible for an increased amount of financial assistance.

On February 28, 2018, 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 tax return for 2018 with a tax filing status of married filing jointly. You will claim no dependents on that tax return.
- 2) You are seeking health insurance for yourself and your spouse in 2018.
- 3) According to your NYSOH account, you and your spouse have not been enrolled in a health plan through NYSOH as of January 1, 2018.

- 4) The application that was submitted on November 22, 2017, listed an annual household income of \$88,242.00, consisting of \$72,092.00 your spouse receives from his personal business, and \$6,250.00 you receive from your personal business. Additional amounts were included such as \$40.00 in taxable interest, and \$11,155.00 in rental, royalties, partnerships, S-Corps and trusts. It then deducted \$1,295.00 in Self-Employment tax.
- 5) You testified the gross amount of income you anticipate on receiving in 2018, may be a little less than your 2016 tax return but is reflective of your current business income. You explained an annual income of \$88,242.00 is not reflective of income you receive after taking into account your deductions.
- 6) Your spouse's 2016 Schedule C shows his gross income from his business was \$72,092.00 on line 7, and after deducting expenses came to a net profit of \$13,956.00 on line 31 (see Document [REDACTED], p. 27).
- 7) Your 2016 Schedule C shows your gross income for your business was \$6,250.00 on line 1, and after total expenses came to a net profit of \$4,365.00 (see Document [REDACTED], p. 29).
- 8) Your 2016 Individual Income Tax Return states your adjusted gross income on line 37 is \$28,221.00 (see Document [REDACTED], p. 20).
- 9) On November 22, 2017 when submitting your application, a NYSOH representative removed your applicable business deductions from your application.
- 10) Your application states that you and your spouse live in Dutchess County, NY.

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 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

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in a qualified health plan, and (3) is not otherwise eligible for minimum essential coverage except through the individual market (see 45 CFR § 155.305(f), 26 CFR § 1.36B-2, 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 2018 is set by federal law at 2.01% to 9.56% of household income (26 USC § 36B(b)(3)(A), 26 CFR § 1.36B-3, IRS Rev. Proc. 2017-36).

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).

Cost-Sharing Reductions

Cost-sharing reductions are available to a person who (1) is eligible to enroll in a qualified health plan 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 qualified health plan (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 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)

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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 2017 FPL, which is \$16,240.00 for a two-person household (82 Fed. Reg. 8831).

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/downloads/ny-blueprint.pdf>).

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 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 \$16,240.00 for a two-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

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).

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.*).

Subject to some limitations, deductions that are attributable to a trade or business may be deductions from a taxpayer’s adjusted gross income (26 USC § 62 (a)(1)).

Legal Analysis

The issue presented for review is whether NYSOH properly determined you and your spouse were eligible for a full cost qualified health plan, effective January 1, 2018.

You are in a two-person household. You expect to file your 2018 income tax return as married filing jointly and will claim no dependents on that tax return.

The application that was submitted on November 22, 2017 listed an annual household income of \$88,242.00, consisting of \$72,092.00 your spouse receives from his personal business, and \$6,250.00 you receive from your personal business. Additional amounts were included such as \$40.00 in taxable interest, and \$11,155.00 in rental, royalties, partnerships, S-Corps and trusts. It then deducted \$1,295.00 in Self-Employment tax. The determination relied on this information.

You testified the gross amount of income you anticipate on receiving in 2018 may be a little less than your 2016 tax return but is reflective of your current business income. You explained an annual income of \$88,242.00 is not reflective of income you receive after taking into account your deductions.

The NYSOH representative that submitted the application on your behalf did not include your applicable business deductions found on your Schedule C and with

the above deductions and additional income resulted in an annual household income of \$88,242.00.

However, NYSOH bases its eligibility determinations on modified adjusted gross income, which is adjusted gross income increased by any income that was excluded for United States citizens or residents living abroad, tax-exempt interest received or accrued, and Social Security benefits that were excluded from gross income. Adjusted gross income means gross federal taxable income minus certain specific deductions. Additionally, deductions that are attributable to a trade or business may be deductions which will be subtracted from a taxpayer's adjusted gross income for the year.

Your 2016 tax return, which the NYSOH representative allegedly relied on when entering the income amounts, shows that in 2016 you had additional deductions on your Schedule C which were not included. Your spouse's 2016 Schedule C shows his gross income from his business was \$72,092.00 on line 7, and after deducting expenses resulted in a net profit of \$13,956.00 on line 31 (see, Document [REDACTED], pg. 27). Your 2016 Schedule C shows your gross income for your business was \$6,250.00 on line 1, and after total expenses came to a net profit of \$4,365.00 (see, Document [REDACTED], pg. 29).

The total of both of your net profits would equal \$18,321.00 with \$40.00 taxable interest, and \$11,155.00 rental real estate, would be a gross income of \$29,516.00. After expenses of \$1,295.00 for self-employment taxes would be your adjusted gross income as stated on your line 37 in your 2016 tax return. Therefore, in total your 2016 Individual Income Tax Return states your adjusted gross income on line 37 is \$28,221.00 (see Document [REDACTED], p. 20).

Therefore, the November 22, 2017 application was submitted with an inaccurate calculation of your household's income in that it did not take into account the appropriate business deductions. As a result, the November 23, 2017 eligibility determination notice is no longer supported by the record based on your testimony and supporting documentation.

Now that there is a more accurate representation of your household's income, your case is RETURNED to NYSOH to redetermine your and your spouse's eligibility for health insurance for 2018, as of January 1, 2018, based on a two-person household and an annual household income of \$28,221.00, for a couple residing in Dutchess County. You may choose to enroll as of this date or within 60 days of this decision.

Decision

The November 23, 2017 eligibility determination notice is therefore no longer supported by the record based on your testimony and supporting documentation and is RESCINDED.

Your case is RETURNED to NYSOH to redetermine your and your spouse's eligibility for health insurance for 2018 based on a two-person household and an annual household income of \$28,221.00 residing in Dutchess County. The effective date of this determination will be January 1, 2018. You may choose to enroll as of this date or within 60 days of this decision.

Effective Date of this Decision: March 20, 2018

How this Decision Affects Your Eligibility

This decision is not a final determination of your and your spouse's eligibility for financial assistance effective January 1, 2018.

Your case is being sent back to NYSOH to redetermine your and your spouse's eligibility and notify you once this has been completed.

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 case 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 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

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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 November 23, 2017 eligibility determination notice is therefore no longer supported by the record based on your testimony and supporting documentation and is RESCINDED.

Your case is RETURNED to NYSOH to redetermine your and your spouse's eligibility for health insurance for 2018 based on a two-person household and an annual household income of \$28,221.00 residing in Dutchess County. The

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effective date of this determination will be January 1, 2018. You may choose to enroll as of this date or within 60 days of this decision.

This decision is not a final determination of your and your spouse's eligibility for financial assistance effective January 1, 2018.

Your case is being sent back to NYSOH to redetermine your and your spouse's eligibility and notify you once this has been completed.

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 مجانًا.

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.