



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

## Notice of Decision

Decision Date: April 16, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000027261

[REDACTED]

On March 12, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's January 17, 2018 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.

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STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
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## Decision

Decision Date: April 16, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000027261

[REDACTED]

## Issues

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

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

Did NY State of Health properly determine you were not eligible for the Essential Plan?

Did NY State of Health properly you were not eligible for Medicaid?

## Procedural History

On January 16, 2018, NYSOH received your updated application for financial assistance with health insurance. That day, a preliminary eligibility determination was prepared finding you eligible to purchase a full cost qualified health plan, effective February 1, 2018.

Also on January 16, 2018, you spoke to NYSOH's Account Review Unit and appealed that preliminary eligibility determination insofar as you were no longer eligible for Medicaid.

On January 17, 2018, NYSOH issued an eligibility determination notice stating you were eligible to purchase a qualified health plan at full cost, effective February 1, 2018. The notice indicated you were not eligible for Medicaid, the Essential Plan, or to receive advanced payments of the premium tax credit

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(APTC), because your annual household income was over the allowable income limits for those programs.

On February 6, 2018, NYSOH issued a notice stating you were eligible for Medicaid, for a limited time, effective February 1, 2018, because you had been granted Aid to Continue pending the decision in your appeal. You were reenrolled into a Medicaid Managed Care plan, effective February 1, 2018.

On March 12, 2018, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and closed thereafter.

## **Findings of Fact**

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

- 1) You are seeking insurance for yourself.
- 2) 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.
- 3) The updated application submitted on January 16, 2018 listed annual household income of \$83,168.00, consisting of \$1,184.00 your spouse earned weekly through his employment and \$1,800.00 in monthly Social Security benefit payments your spouse receives. You testified the information was accurate of your spouse's gross income.
- 4) The application indicated you had no expected income for 2018. You testified that information was accurate.
- 5) You testified, and your application indicates, you will not take any deductions on your 2018 tax return.
- 6) You testified, and your application indicates, you reside in [REDACTED].
- 7) NYSOH determined you ineligible for financial assistance with health insurance based on the household income attested to in your application exceeding the income limit for all financial assistance programs.
- 8) You testified that you are appealing insofar as you are no longer eligible for Medicaid.
- 9) On or about March 9, 2018, NYSOH received documentation submitted on your behalf purporting to be proof of your "monthly household expenses"

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including copies of various utility bills, a lease agreement, and a renter's insurance policy renewal certificate.

- 10) You testified that your personal expenses should be considered when determining your eligibility for financial assistance with health insurance.
- 11) You testified that NYSOH should base its eligibility determination on net income rather than gross, because the net income is what you actually live on.
- 12) You testified that for the month of January 2018, your spouse received his regular weekly Wednesday pay check in the gross amount of \$1,184.00 as well as his monthly Social Security benefit payment of \$1,900.00.
- 13) You testified that since your spouse is employed full time, his Social Security benefit payments are taxed at a rate of 85%. You testified that he receives the full amount of the benefit payment monthly, but at the end of the year when you do your taxes, your tax liability is increased because of the tax rate for those benefits. You testified that after the annual tax liability is deducted, his net monthly benefit is only \$290.00.
- 14) You testified that your spouse has also received a bonus from his employer in December for the past three years. You testified that the bonus is not guaranteed, but you hope to receive at least the same in 2018 as he did in 2017. You testified that in 2017 your spouse received an annual bonus of \$13,93.04. You testified that the gross amount of that bonus was closer to \$25,000.00.

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

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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.*).

### Advance Payments of 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 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).

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).

### Essential Plan

NYSOH must generally determine an applicant eligible for the Essential Plan, a basic health plan, if the person is (1) a resident of New York State, (2) expects to have a household income between 138% and 200% of the applicable FPL or, in the case of an individual who is a lawfully present non-citizen who is ineligible for Medicaid or Child Health Plus as a result of their immigration status, has a household income that is between 0% and 200% of the FPL, (3) is not otherwise eligible for minimum essential coverage except through the individual market, (4) is 64 years old or younger, (5) is a citizen or a lawfully present non-citizen, and (6) is not incarcerated (see 42 CFR § 600.305, 42 CFR § 435.603(d)(4), 45 CFR § 155.305(e), NY Social Services Law § 369-gg(3), 42 USC § 18051).

In an analysis of Essential Plan eligibility, the determination is based on the FPL in effect on the first day of the benefit year for which coverage is requested (45 CFR § 155.300(a)). On the date of your application that was the 2017 FPL, which is \$16,240.00 for a two-person household (82 Fed. Reg. 8831).

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 2018 FPL, which is \$16,460.00 for a two-person household (83 Fed. Reg. 2642).

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).

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## Legal Analysis

The first 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 February 1, 2018.

The updated application submitted on January 16, 2018 listed an annual household income of \$83,168.00, consisting of \$1,184.00 your spouse earned weekly through his employment and \$1,800.00 in monthly Social Security benefit payments your spouse receives. You testified, and your application indicated, that you, [REDACTED] have no expected income for 2018. You testified that the income information in your application was accurate of your gross household income and the eligibility determination at issue relied upon that information.

At the hearing, you contended that NYSOH should base its eligibility determinations on your net household income rather than gross, because the net income is what you actually live on. Furthermore, you testified that the Social Security benefits your spouse receives are taxed at the end of the year at a rate of 85%, because he is still employed full time. You testified that it was improper for NYSOH to include the gross amount of those benefit payments in your household income calculation.

However, pursuant to the above cited regulations, NYSOH bases its eligibility determinations on modified adjusted gross income as defined in the federal tax code. 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. Therefore, in accordance with the regulations, NYSOH properly based its determination of your eligibility on the gross household income amount attested to in your application.

It is also noted that your testimony regarding your rate of taxation is unsupported by evidence or the law; the highest marginal tax rate for 2017 was 39.6%, and, for a married couple filing jointly, that higher rate is only applied to that part of household income that is over \$470,700.00 (26 USC § 1).

You also testified that you cannot afford the premium for a full cost qualified health plan because you have various personal expenses you are responsible for and 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

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income for APTC purposes. Thus, NYSOH properly based its eligibility determination on the \$83,168.00 annual gross household income amount attested to in your application.

The evidence establishes you are in a two-person household, because you expect to file your 2018 income tax return as married filing jointly and you will claim no dependents on that tax return.

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 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 level (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 \$83,168.00 attested to in your application is 512.12% 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.

Moreover, it is noted that you testified your spouse has received an annual bonus through his employment for the past three years. Although you testified that the bonus was not guaranteed, in 2017 his gross bonus was approximately \$25,000.00; this amount was not reflected in your application for financial assistance. Based on this testimony, it is possible that your gross household income for 2018 is substantially more than the \$83,168.00 attested to in your application. Therefore, the evidence adds weight to the finding that you are not eligible to receive APTC in 2018.

The second issue is whether you were properly determined ineligible for the Essential Plan.

The Essential Plan is generally provided through NYSOH to individuals who meet the non-financial requirements and have a household modified adjusted gross income that is between 138% and 200% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$16,240.00 for a two-person household. Since an annual household income of \$83,168.00 is 512.12% of the 2017 FPL, NYSOH correctly found you ineligible for the Essential Plan.

The third issue under review is whether NYSOH properly determined you were eligible for Medicaid.

Medicaid can be provided through NYSOH to adults between the ages of 19 and 65 who meet the non-financial requirements and have a household modified adjusted gross income that is at or below 138% of the FPL for the applicable family size. On the date of your application, the relevant FPL was \$16,460.00 for a two-person household. Since \$83,168.00 is 505.27% of the 2018 FPL, NYSOH properly found you 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 for the month of January 2018, your spouse received his regular weekly Wednesday pay check in the gross amount of \$1,184.00 as well as his monthly Social Security benefit payment of \$1,900.00. Based on the fact there were five Wednesdays in January 2018, it is concluded that your spouse received \$5,920.00 in gross income from his employment that month as well as his monthly Social Security benefit payment, for a total monthly household income of \$7,820.00.

To be eligible for Medicaid, you would need to meet the non-financial criteria and have an income no greater than 138% of the FPL, which is \$1,893.00.00 per month. Since the evidence establishes your monthly household income for January 2018 was \$7,820.00, over the allowable monthly income limit, you do not qualify for Medicaid based on monthly income as of the date of your application.

Since the January 17, 2018 eligibility determination notice properly stated that, based on the information you provided, you were eligible to purchase a qualified health plan at full cost and ineligible for APTC, the Essential Plan, and Medicaid, effective February 1, 2018, it is correct and is AFFIRMED.

## **Decision**

The January 17, 2018 eligibility determination notice is AFFIRMED.

**Effective Date of this Decision:** April 16, 2018

## **How this Decision Affects Your Eligibility**

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

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).

You are ineligible for financial assistance with your health insurance based on the income information attested to in your application.

## **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 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

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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 January 17, 2018 eligibility determination notice is AFFIRMED.

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

You are ineligible for financial assistance with your health insurance based on the income information attested to in your application.

### **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)**

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### **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 איך געבן א דאלמעטשער פריי פון אפצאל אין די שפראך וואס איר רעדט.