



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

## Notice of Decision

Decision Date: May 31, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000029965



Dear [REDACTED],

On May 7, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health January 16, 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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## Decision

Decision Date: May 31, 2018

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000029965



## Issues

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

Did the NY State of Health (NYSOH) properly determine that you were not eligible to receive advance payments of the premium tax credit and cost sharing reductions?

Did NYSOH properly determine that you were not eligible for the Essential Plan?

Did NYSOH properly determine that you were not eligible for Medicaid?

## Procedural History

On January 15, 2018, you applied for health insurance and financial assistance through NYSOH.

On January 16, 2018, NYSOH issued an eligibility determination notice, based on your January 15, 2018 application, stating that you were eligible for a qualified health plan at full cost, effective February 1, 2018. That notice stated that you were not eligible for a tax credit and cost-sharing reductions because there was information missing about your taxes. That notice further stated that this could be because you indicated you were married and will file taxes separately from your spouse. That notice also stated that you were not eligible for the Essential Plan and Medicaid because your annual household income was over the allowable income limits for those programs. That notice further states that your

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information was not sent to the local department of social services because a review of Medicaid eligibility on a different basis was not requested.

Also on January 16, 2018, NYSOH issued a notice of enrollment, confirming your enrollment in a bronze-level qualified health plan beginning February 1, 2018.

On March 9, 2018, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination notice insofar as you were not eligible for financial assistance.

On May 7, 2018, you had a telephone hearing with a Hearing Officer from the NYSOH 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) Your January 15, 2018 application attested to the fact that you expect to file your taxes for 2018 with a tax filing status of married filing single and that you will claim no dependents on that tax return. You testified that this information was correct.
- 2) You uploaded a copy of your 2017 tax return filed on [REDACTED]. This return showed a tax filing status of married filing separate and Social Security benefits in the amount of \$27,252.00.
- 3) You are seeking insurance for yourself.
- 4) You testified that you are married, do not reside with your spouse, and do not have any children.
- 5) You also testified that you are not legally separated nor do you intend to be separated by the end of this tax filing year.
- 6) You testified that you do not have a decree of separate maintenance, nor do you intend to have one by the end of this tax filing year.
- 7) The application that was submitted on January 15, 2018 listed an annual household income of \$27,792.00, consisting of \$2,316.00 you receive from Social Security Disability. You testified that this amount was incorrect.
- 8) You testified that your expected annual household income is \$27,252.00 as shown on your 2017 tax return.

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- 9) Your application states that your monthly income is \$2,316.00, however you testified that the correct amount is \$2,261.00 per month before taxes.
- 10) Your application states and you confirmed that you will not be taking any deductions on your 2018 tax return.
- 11) You testified that you are not receiving Medicare and you do not know if you will be receiving Medicare in 2018.
- 12) You testified that you have been certified disabled since [REDACTED].
- 13) On your January 15, 2018 application, you indicated that you are certified as disabled or chronically ill.
- 14) You testified that you believe that your income should be calculated based on your taxable income of \$11,582.00 as shown on your 2017 tax return.
- 15) You testified that as a disabled person receiving only \$11,582.00 in taxable income, you should qualify for more help with the cost of health insurance.
- 16) You testified and your account confirms that you have not been referred to your Local Department of Social Services/New York City Human Resources Administration.
- 17) You reside in Queens County.

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

## **Applicable Law and Regulations**

### Advance Payments of the Premium Tax Credit

APTC is available to a person who is eligible to enroll in a qualified health plan (QHP) and (1) expects to have a household income between 138% and 400% of the applicable poverty level (FPL) (2) expects to file a tax return and claim a personal exemption deduction for a person who meets the eligibility requirements to enroll in a QHP, and (3) is not otherwise eligible for minimum essential coverage except through the individual market (see 45 CFR § 155.305(f), 42 CFR § 435.119(b), 42 CFR § 435.911(b)(1), 42 CFR § 435.603(d)(4)).

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

However, an individual will be treated as not married at the close of the taxable year if the individual

- 1) Is legally separated from his/her spouse under a decree of divorce or of separate maintenance, or
- 2) Meets all of the following criteria:
  - a. files a separate return from his/her spouse and maintains his/her household as the primary home for a qualifying child;
  - b. pays more than one half of the cost of keeping up his/her home for the tax year; and
  - c. does not have his/her spouse as a member of the household during the last 6 months of the tax year (26 USC § 7703).

### Cost-Sharing Reductions

Cost-sharing reductions 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) 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 \$12,060.00 for a one-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

An individual is eligible for enrollment in Medicaid through NYSOH (called MAGI-based Medicaid) when he or she meets certain nonfinancial criteria and has a household income that is at or below the applicable Medicaid income standard (45 CFR § 155.305(c); N.Y. Soc. Serv. Law § 366(1)(b)).

In general, to qualify for MAGI-based Medicaid through NYSOH, you must also be one of the following:

- An adult aged 19-64 who is not eligible for Medicare Part A or Part B,
- A pregnant woman or infant,
- A child aged 1-18, or
- A parent or caretaker relative

(45 CFR § 155.305(c); N.Y. Soc. Serv. Law § 366(1)(b)).

In an analysis of Medicaid eligibility, the determination is based on the FPL “for the applicable budget period used to determine an individual's eligibility” (42 CFR § 435.4). On the date of your application, that was the 2017 FPL, which is \$12,060.00 for a one-person household (82 Fed. Reg. 8831).

Financial eligibility for Medicaid for applicants who are not currently receiving Medicaid benefits is based on current monthly household income and family size (42 CFR § 435.603(h)(1); State Plan Amendment (SPA) 13-0055-MM3, as approved March 19, 2014).

If an individual does not fall into one of these categories, he or she may still be eligible for non-MAGI-based Medicaid coverage through their Local Department of Social Services or the New York City Human Resources Administration (see N.Y. Soc. Serv. Law § 366(1)(c)).

NYSOH is required to refer an individual who is not eligible for MAGI-based Medicaid because they are in receipt of Medicare, certified disabled, or over the age of 65 to the Local Department of Social Services or the Human Resources Administration.

### Modified Adjusted Gross Income

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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 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, and deductions attributable to royalties (26 USC § 62(a)).

## **Legal Analysis**

The first issue is whether NYSOH properly determined that you were not eligible to receive advance payments of the premium tax credit and cost-sharing reductions.

In the eligibility determination notice issued on January 16, 2018, NYSOH determined that you were ineligible for advance payments of the premium tax credit because you indicated that you were married but did not plan to file a joint federal income tax return.

To qualify for advance premium tax credits, a person who is married must either file taxes jointly with his or her spouse or qualify as “not married” at the close of the tax year.

According to the information in the record and your testimony at the hearing, you are still married and do not reside with your spouse. You testified that you filed your 2017 taxes as married filing separately and intend to file your 2018 taxes as married filing single.

There is an exception to the married filing jointly rule, that allows a tax filer to be treated as “not married” at the close of a taxable year, making the tax filer eligible for advance premium tax credits. However, the record does not support a finding that you meet the necessary requirements for that exception.

Therefore, NYSOH was correct when it found that you were not eligible for advance premium tax credits due to your tax filing status.

Cost-sharing reductions are available to a person who meets the requirements to receive APTC. Since you are not eligible to receive APTC due to your tax filing



status, NYSOH correctly determined that you are ineligible for cost-sharing reductions.

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

The application that was submitted on January 15, 2018 listed an annual household income of \$27,792.00 and the eligibility determination relied upon that information.

You testified that you believed that your income should be calculated based on your taxable income of \$11,582.00 as shown on your 2017 tax return. However, NYSOH bases its eligibility determinations on modified adjusted gross income. The term “modified adjusted gross income” means adjusted gross income increased in part by Social Security benefits that were excluded from gross income. Therefore, your income for the purposes of determining your eligibility for financial assistance through NYSOH consists of the total amount of Social Security benefits you expect to receive, regardless if those benefits are counted as taxable income when you file your tax return.

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

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 \$12,060.00 for a one-person household. Since an annual household income of \$27,792.00 is 231.94% of the 2017 FPL, NYSOH correctly found you to be ineligible for the Essential Plan.

During the hearing, you testified that the amount you provided in your application was incorrect. You testified that the correct amount was \$27,252.00 as stated on your 2017 tax return. Since an annual household income of \$27,252.00 is 225.97% of the 2017 FPL, we decline to return your case to NYSOH for a redetermination on this basis.

The third issue under review is whether NYSOH properly determined that you were not 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 \$12,060.00 for a one-person household. Since \$27,792.00 is 231.94% of the 2017 FPL, NYSOH properly found you to be ineligible for Medicaid on an expected annual income

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basis, using the information provided in your application. This analysis would remain unchanged had it been based on an annual household income of \$27,252.00 which is 225.97% of the 2017 FPL.

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

Your application states that you received \$2,316.00 per month in Social Security Disability benefits, however you testified that you received \$2,261.00 before taxes every month for 2018, including the month of January 2018.

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 \$1,387.00 per month. Since you received at least \$2,261.00 in January 2018, you do not qualify for Medicaid based on monthly income as of the date of your application.

Since the January 16, 2018 eligibility determination notice properly stated that, based on the information you provided, you were eligible for a qualified health plan at full cost, ineligible for APTC, ineligible for cost-sharing reductions, ineligible for the Essential Plan and ineligible for Medicaid, it is correct and is **AFFIRMED**.

Individuals who are not eligible for MAGI-based Medicaid may still be eligible for non-MAGI-based Medicaid coverage through their Local Department of Social Services or the New York City Human Resources Administration.

During the hearing, you testified that you have been certified disabled since [REDACTED]. You testified and your account confirms that you indicated that you are certified as disabled or chronically ill and receive Social Security Disability benefits; however, you have not been referred to LDSS/HRA.

Since the record reflects that you are certified as disabled and NYSOH has not referred your case to LDSS/HRA, your case is **RETURNED** to NYSOH to refer your case to LDSS/HRA for a determination of your eligibility for Medicaid on a non-MAGI basis.

## **Decision**

The January 16, 2018, eligibility determination notice is **AFFIRMED**.

Your case is **RETURNED** to NYSOH to refer your case to LDSS/HRA for a determination of your eligibility for Medicaid on a non-MAGI basis.

**Effective Date of this Decision:** May 31, 2018

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

You remain eligible to purchase a qualified health plan at full cost, effective February 1, 2018.

## **If You Disagree with this Decision (Appeal Rights)**

This Decision is final unless you submit an appeal request to U.S. Department of Health and Human Services 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 after the date 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 U.S. Department of Health and Human Services. This must be done within 30 days of the date of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

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

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## **Summary**

The January 16, 2018, eligibility determination notice is AFFIRMED.

You remain eligible to purchase a qualified health plan at full cost, effective February 1, 2018.

Your case is RETURNED to NYSOH to refer your case to LDSS/HRA for a determination of your eligibility for Medicaid on a non-MAGI basis.

## **Legal Authority**

We are sending you this notice in accordance with 45 CFR § 155.545(a).

**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 1-855-355-5777번으로 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 srε wo, frε 1-855-355-5777. ye&εtumi 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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