



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

Notice of Decision

Decision Date: May 29, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000030032



Dear [REDACTED]

On May 9, 2018, you appeared by telephone at a hearing on your appeal of NY State of Health's March 9, 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.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

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Decision Date: May 29, 2018

NY State of Health Account ID: [REDACTED]
Appeal Identification Number: AP000000030032



Issues

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

Did NY State of Health (NYSOH) properly determine that you were eligible to receive up to \$340.00 per month in advance payments of the premium tax credit, effective April 1, 2018?

Did NY State of Health properly determine that you were eligible for cost-sharing reductions?

Did NY State of Health properly determine that you were ineligible for the Essential Plan?

Did NY State of Health properly determine that you were ineligible for Medicaid?

Procedural History

On December 12, 2017, you applied for health insurance and financial assistance through NYSOH.

On December 13, 2017, NYSOH issued a notice of eligibility determination stating that you were eligible to enroll in the Essential Plan for a limited time, effective January 1, 2018. This notice directed you to produce proof of your income by March 12, 2018 in order to confirm your eligibility for financial assistance.

Also on December 13, 2017, NYSOH issued a notice of enrollment confirmation stating that you were enrolled in an Essential Plan with a plan enrollment start date of January 1, 2018.

On March 6, 2018, you faxed income documentation to NYSOH.

On March 8, 2018, NYSOH verified the income documentation you submitted, recalculated your annual expected income based on that documentation, and submitted an updated application on your behalf.

On March 9, 2018, NYSOH issued a notice of eligibility determination stating that you were eligible to receive up to \$340.00 per month in advance payments of the premium tax credit (APTC) as well as cost-sharing reductions if you enrolled in a silver level qualified health plan, both effective April 1, 2018. That notice also stated that you were not eligible for the Essential Plan because your annual household income was over the allowable income limit for that program.

Also on March 9, 2018, NYSOH issued a disenrollment notice stating that your enrollment in your Essential Plan would end on April 1, 2018. This was because you were no longer eligible to enroll in the Essential Plan.

On March 12, 2018, you spoke to NYSOH's Account Review Unit and appealed that eligibility determination notice insofar as you were not eligible for the Essential Plan.

On March 16, 2018, NYSOH issued a notice stating that you were eligible for the Essential Plan for a limited time, effective April 1, 2018. This was because you had been granted Aid to Continue pending the outcome of your appeal.

Also on March 16, 2018, NYSOH issued an enrollment confirmation notice stating that you were enrolled in an Essential Plan, effective April 1, 2018.

On May 9, 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 until May 23, 2018, to allow you time to submit supporting documents.

On May 9, 2018, NYSOH received your supporting documents by fax consisting of four paystubs. The documents were incorporated into the record as Appellant's [REDACTED]

On May 22, 2018, NYSOH received additional supporting documents by fax consisting of two additional paystubs. These documents were incorporated into the record as Appellant's [REDACTED] and the record was closed.

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 single. You will claim one dependent, your son, on that tax return.
- 2) You are seeking insurance for yourself. You testified that you are seeking to be found eligible for the Essential Plan.
- 3) The application that was submitted on December 12, 2017 listed annual household income of \$28,000.00, consisting of wages you earn from your employment.
- 4) On March 6, 2018, you faxed four weekly paystubs to NYSOH. The first is for pay date February 9, 2018 for a gross pay amount of \$748.00; the second is for February 16, 2018 for a gross pay amount of \$640.00; the third is for pay date February 23, 2018 for a gross pay amount of \$640.00; the fourth is for pay date March 2, 2018 for a gross pay amount of \$640.00.
- 5) On March 8, 2018, NYSOH verified the income documentation you submitted and determined your annual expected income to be \$34,684.00.
- 6) You testified that the paystubs you submitted do not accurately reflect your average earnings as one of those paystubs showed overtime and you normally do not have overtime.
- 7) You testified that you are paid weekly and earn \$16.00 per hour and work forty hours per week.
- 8) You testified that your dependent son does not file a tax return as he has no income. You testified that he last worked a couple of years ago and is not receiving unemployment insurance benefits.
- 9) You submitted six additional paystubs; the first is for pay date April 13, 2018 for a gross pay amount of \$636.00; the second is for pay date April 20, 2018 for a gross pay amount of \$620.00; the third is for pay date April 27, 2018 for a gross pay amount of \$640.00; the fourth is for pay date May 4, 2018 for a gross pay amount of \$640.00; the fifth is for pay date May 11, 2018 for a gross pay amount of \$640.00; the sixth is for pay date May 18, 2018 for a gross pay amount of \$632.00.
- 10) Your application states, and you confirmed, that you will not be taking any deductions on your 2018 tax return.

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11) Your application states, and you confirmed, that you live in Suffolk County.

12) You testified that you have bills including rent, that you think should be deducted from your household income.

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

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).

For annual household income in the range of at least 200% but less than 250% of the 2017 FPL, the expected contribution is between 6.34% and 8.10% of the household income (26 CFR § 1.36B-3(g)(1), 45 CFR § 155.300(a), IRS Rev. Proc. 2017-36).

People who use the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on NYSOH application) with their actual income (stated on their federal income tax return). Those who take less tax credit in advance than they claim on the tax return may get the rest of it as an income tax refund or have their tax bill reduced. Those who take more tax credit in advance than they can claim on their tax return will owe the difference as additional income taxes (26 CFR § 1.36B-4).

Cost-Sharing Reductions

Cost-sharing reductions 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 \$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)).

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.*).

Legal Analysis

The first issue is whether NYSOH properly determined that you were eligible for up to \$340.00 per month in APTC.

You expect to file your 2018 income tax return as single and will claim one dependent on that tax return. Therefore, you are in a two-person household.

The application that was submitted on December 12, 2017 listed an annual household income of \$28,000.00. As a result of that application, NYSOH requested that you submit additional documentation of your household income.

On March 6, 2018, you submitted four consecutive weekly paystubs which showed combined gross income of \$2,668.00. Based on this documentation, NYSOH calculated your annual expected income to be \$34,684.00 (\$2,668.00 divided by four weeks for a weekly average of \$667.00 multiplied by four weeks).

Although you testified that these paystubs did not reflect your usual earnings as one of the paystubs included overtime and you do not usually work overtime, there is no documentation in your account or information in your application to alert NYSOH of this. Therefore, NYSOH properly calculated your annual expected income based on the documentation you submitted.

During the hearing, you asked that your current expenses, which include rent and other living expenses, be considered when calculating your annual household income.

Since the Internal Revenue Service rules do not allow living expenses such as rent, utilities, cable, and phone to be deducted from the calculation of your adjusted gross income, they cannot be deducted when NYSOH computes your modified adjusted gross income for the purpose of determining your eligibility for financial assistance. Therefore, NYSOH correctly determined your household income to be \$34,684.00.

You reside in Suffolk County, where the second lowest cost silver plan available for an individual through NYSOH costs \$536.95 per month.

An annual income of \$34,684.00 is 213.57% of the 2017 FPL for a two-person household. At 213.57% of the FPL, the expected contribution to the cost of the health insurance premium is 6.82% of income, or \$197.05 per month.

The maximum amount of APTC that can be approved equals the cost of the second lowest cost silver plan available through NYSOH for an individual in your county (\$536.95 per month) minus your expected contribution (\$197.05 per month), which equals \$339.90 per month. Therefore, rounding to the nearest dollar, NYSOH correctly determined you to be eligible for up to \$340.000 per month in APTC.

The second issue is whether you were properly determined eligible for cost-sharing reductions. Cost-sharing reductions are available to a person who has a household income no greater than 250% of the FPL. Since a household income of \$34,684.00 is 213.57% of the applicable FPL, NYSOH correctly found you to be eligible for cost sharing reductions.

The third issue under review is whether NYSOH properly determined you were 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 \$34,684.00 is 213.57%

of the 2017 FPL, NYSOH correctly found you to be ineligible for the Essential Plan.

Since the March 9, 2018 eligibility determination notice properly stated that, based on the information you provided, you were eligible for up to \$340.00 per month in APTC, eligible for cost-sharing reductions, and ineligible for the Essential Plan, it is correct and is AFFIRMED.

Following the hearing you submitted additional income documentation which shows that your annual expected income is \$33,176.00 (four most recent paystub combined gross of \$2,552.00 yields a weekly average of \$638.00 multiplied by 52 weeks).

Therefore, your case is RETURNED to NYSOH to redetermine your eligibility for financial assistance based on a household of two residing in Suffolk County with an annual expected income of \$33,176.00.

Decision

The March 9, 2018 eligibility determination notice is AFFIRMED.

Your case is RETURNED to NYSOH to redetermine your eligibility for financial assistance based on a household of two residing in Suffolk County with an annual expected income of \$33,176.00.

Effective Date of this Decision: May 29, 2018

How this Decision Affects Your Eligibility

NYSOH properly determined that you were eligible for up to \$340.00 per month in APTC based on the income documentation you submitted on March 6, 2018.

This is not a final determination of your eligibility for financial assistance.

Your case is being sent back to NYSOH to redetermine your eligibility for financial assistance based on your testimony and the income documentation you submitted.

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

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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 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

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- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The March 9, 2018 eligibility determination notice is **AFFIRMED**.

NYSOH properly determined that you were eligible for up to \$340.00 per month in APTC based on the income documentation you submitted on March 6, 2018.

Your case is **RETURNED** to NYSOH to redetermine your eligibility for financial assistance based on a household of two residing in Suffolk County with an annual expected income of \$33,176.00.

This is not a final determination of your eligibility for financial assistance.

Your case is being sent back to NYSOH to redetermine your eligibility for financial assistance based on your testimony and the income documentation you submitted.

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.