



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

## Notice of Decision

Decision Date: December 13, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: APM29054383

[REDACTED]

Dear [REDACTED],

On December 12, 2017, you appeared by telephone at a hearing on your appeal of NY State of Health's November 29, 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).

This page intentionally left blank.



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

## Decision

Decision Date: December 13, 2017

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: APM29054383

[REDACTED]

## Issue

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

Did NYSOH properly determine that your children were eligible to enroll in a full cost Child Health Plus plan, effective January 1, 2018?

## Procedural History

According to your NYSOH account, your children were enrolled in a Child Health Plus (CHP) plan with a \$9.00 monthly premium each, effective January 1, 2016.

On October 28, 2017, NYSOH issued a renewal notice, by which you were informed that your children were determined to be automatically eligible for CHP at full cost and were enrolled in a similar CHP plan, effective January 1, 2018.

On November 16, 2017, you submitted an updated application for financial assistance for your family.

On November 17, 2017, NYSOH issued an eligibility determination notice stating in relevant part that your three children were eligible for CHP with a \$30.00 monthly premium each for a limited period of time, effective January 1, 2018. The notice requested proof of household income for your children by January 15, 2018.

Also on November 17, 2017, you uploaded to your NYSOH account a copy of your 2016 federal income tax return and submitted an updated application for financial assistance for your family.

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).

On November 18, 2017, NYSOH issued an eligibility determination notice stating in part that your three children were eligible for CHP with a \$30.00 monthly premium each for a limited period of time, effective January 1, 2018. The notice requested proof of household income for your children by January 15, 2018.

Also on November 18, 2017, NYSOH issued a plan enrollment notice confirming your children's enrollment in a CHP plan with a \$30.00 monthly premium each as of January 1, 2018.

On November 20, 2017, NYSOH reviewed your 2016 income tax return and increased your household income to \$145,758.00, which was the adjusted gross income listed on line 37 of that tax return, and an application for financial assistance was submitted on your behalf.

Between November 21, 2017 and November 28, 2017, NYSOH recalculated your household income and redetermined your children's eligibility for CHP and CHP subsidy several times, with varying premiums.

On November 27, 2017, you uploaded to your NYSOH account additional income information and submitted an updated application for financial assistance for your family.

On November 28, 2017 that additional income information was reviewed and NYSOH increased your household income to \$216,088.00 and an application for financial assistance was submitted on your behalf.

On November 29, 2017, NYSOH issued an eligibility determination stating that your children were eligible for full cost CHP, effective January 1, 2018.

Also on November 29, 2017, NYSOH issued a plan enrollment notice confirming your children's enrollment in a CHP plan with a \$319.85 monthly premium each as of January 1, 2018.

On November 30, 2017, you spoke to NYSOH's Account Review Unit and appealed the determination that your children were found eligible for a full cost CHP plan and not eligible for CHP premium subsidy.

On December 12, 2017, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and held open to allow you to submit supporting documents.

That same day, NYSOH Appeals Unit received via secure facsimile your 3-page submission consisting of two direct deposit transaction receipts for earning payments from your new employment. Those documents have been made part of the record collectively as Appellant's Exhibit # 1. The record was closed at that time.

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).

## Findings of Fact

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

- 1) You testified that you expect to file your 2018 taxes with a tax filing status of married filing jointly. You will claim three dependents on that tax return.
- 2) You are seeking health insurance with financial assistance for your three children.
- 3) You testified that the 2016 income tax return that you submitted is not an accurate reflection of your expected income for 2018.
- 4) You testified that in 2016, you took a one-time hardship withdrawal of your entire 401K IRA in the amount of \$59,076.00 and paid a penalty of \$5,908.00 for that early withdrawal.
- 5) You testified that you now have no 401K IRA savings.
- 6) You testified that your business, [REDACTED], is not doing well and you will not receive the \$15,000.00 in earnings from that business as is listed on the 2016 income tax return.
- 7) You testified that you started new employment with [REDACTED] in October 2017. You testified that you are paid a base salary of approximately \$1,600.00 a month and, in 2018, will earn \$20,000.00 in base salary and \$30,000.00 in commissions. You submitted two direct deposit receipts dated November 20, 2017 and December 5, 2017 totaling \$1,792.80 reflecting your base salary earnings. You testified that you have not yet received any commission earnings because you just started working for the company.
- 8) You testified that the following amounts listed on your 2016 income tax return are accurate and are amounts of income you expect to receive in 2018;
  - a. \$2,500.00 for taxable interest
  - b. \$3,526.00 for tax exempt interest
  - c. \$2,124.00 for qualified dividends
  - d. \$69,523.00 for rental real estate, royalties, partnerships, S corporations, trusts, etc.
- 9) You testified that you will have a deduction of \$3,000.00 for capital loss carryover.

10) On November 28, 2017, NYSOH reviewed the income documentation you had submitted on November 27, 2017, which included a copy of your 2016 income tax return and your statement listing your explanation of the income amounts and deductions listed on that return. The record reflects that NYSOH used the following income amounts in calculating your household income:

- a. \$15,000.00 in income from [REDACTED]
- b. \$ 1,600.00 from [REDACTED]
- c. \$ 2,500.00 from tax exempt interest
- d. \$ 2,124.00 from ordinary dividends
- e. \$69,523.00 business income
- f. \$ 2,124.00 from qualified dividends
- g. \$59,076.00 IRA Distributions
- h. \$69,523.00 [REDACTED], royalties, partnerships, S-Corps, trusts
- i. \$ 535.00 Other Income: Medical
- j. \$ 3,000.00 Capital Loss

11) According to your NYSOH account, the November 29, 2017 eligibility determination stated that your children were eligible for CHP at full cost because the income in your application was over \$115,120.00 which is the allowable income limit for the program.

12) Your application states that your family lives in [REDACTED] New York.

13) You testified that you do not believe that the \$59,076.00 that is listed in your 2016 income tax return should be used in calculating your children's eligibility for CHP premium assistance because it was a one-time emergency IRA withdrawal and will not happen again because you have no more 401K IRA savings.

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)).

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).

“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.

### Child Health Plus

Child Health Plus is a sliding-scale-premium program for children who are in a household that is over income for regular Medicaid (see New York Public Health Law (NY PHL) § 2510 et seq. and 42 USC § 1397aa). Eligibility rules are set out in NY PHL § 2511(2), as well as in the NYS Department of Health 2008-2012 Contract and Plan Manual.

A child who meets the eligibility requirements for CHP may be eligible to receive a subsidy payment if the child resides in a household with a household income at or below 400% of the federal poverty level (FPL) (NY PHL § 2511(2)(a)(iii)). To be eligible to enroll in CHP with subsidy payments, a child must not be “eligible for medical assistance”; that is, must not be eligible for Medicaid (NY PHL § 2511(2)(b)).

The amount of the premium payment, if any, that must be made on behalf of a child who enrolls in a CHP plan depends upon the child’s family household income (NY PHL § 2510(9)(d)). No payments are required for eligible children whose family household income is less than 160% of the FPL (NY PHL § 2510(9)(d)(1)). If the family household income is 160% or higher, premiums range from \$9.00 per month to \$60.00 per month (NY PHL § 2510(9)(d)).

The CHP premium is \$9.00 per month for a child whose family household income is between 160% and 222% of the FPL, but no more than \$27.00 per month per family (NY PHL § 2510(9)(d)(ii)).

The CHP premium is \$15.00 per month for a child whose family household income is between 223% and 250% of the FPL, but no more than \$54.00 per month per family (NY PHL § 2510(9)(d)(iii)).

The CHP premium is \$30.00 per month for a child whose family household income is between 251% and 300% of the FPL, but no more than \$90.00 per month per family (NY PHL § 2510(9)(d)(iv)).

The CHP premium is \$45.00 per month for a child whose family household income is between 301% and 350% of the FPL, but no more than \$135.00 per month per family (NY PHL § 2510(9)(d)(v)).

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).

The CHP premium is \$60.00 per month for a child whose family household income is between 351% and 400% of the FPL, but no more than \$180.00 per child (NY PHL § 2510(9)(d)(vi)).

In an analysis of CHP 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 was \$28,780.00 for a five-person household (82 Federal Register 8831).

## Legal Analysis

The issue under review is whether NYSOH properly determined that your children were eligible to enroll in a CHP plan at full cost, effective January 1, 2018.

According to the record, you expect to file your 2018 income taxes as married filing jointly and will claim your three children as dependents. Therefore, your children are in a five-person household for purposes of this analysis.

On November 29, 2017, NYSOH issued an eligibility determination notice stating in part, that your children were eligible for CHP at full cost based on NYSOH's calculation of your household income at \$216,088.00, which was over the \$115,120.00 allowable income limit for premium assistance for CHP. The record indicates that on November 28, 2017, NYSOH incorrectly counted your income of \$69,523.00 twice: once as income for [REDACTED], royalties, partnerships, S-Corps, trusts and, again, as business income. You also credibly testified that the \$59,076.00 you receive in 2016 as a 401K IRA distribution was a one-time hardship withdrawal of your entire IRA amount. Therefore, this amount should not be included in the calculation of your 2018 expected yearly income. You also testified that the \$15,000.00 in wages you listed from your business [REDACTED] would not be income for 2018.

However, you testified that, in October 2107, you started new employment with [REDACTED] and that you will earn a base salary in 2018, of \$20,000.00 paid in the amount of approximately \$1,600.00 monthly. You also testified that you reasonably expect to receive approximately \$30,000.00 in commissions in 2018 from this employment. You testified that you have not yet received any commission earnings because you just started working for the company. You also credibly testified that, in 2018, you expect to receive \$2,500 in taxable interest, \$3,526.00 in tax exempt interest, \$2,124.00 in qualified dividends and \$69,523.00 in rental real estate, royalties, partnerships, S corporations, trusts, etc. You testified that you will have a \$3,000.00 deduction for capital loss carry over in 2018. Therefore, according to your testimony and the documentation you submitted, your expected household income for 2018 is

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).



\$124,673.00 (\$20,000.00 + \$30,000.00 + \$2,500.00 + \$3,526.00 + \$2,124.00 + \$69,523.00 - \$3,000.00).

A child is eligible to enroll in CHP if they meet the non-financial requirements, are not eligible for Medicaid, and have a household income below 400% of the FPL. On the date of your application, the relevant 2017 FPL was \$28,780.00 for a five-person household. Households with an income above 400% of the FPL are not eligible to receive a CHP subsidy payment. Since \$124,673.00 is 433.19% of the 2017 FPL, which is the only FPL available and, therefore, applicable at the time of this Decision, your children are eligible to enroll in a full price CHP plan and ineligible for a CHP subsidy.

As such, that portion of the November 29, 2017 eligibility determination finding in part that your household income was \$216,088.00 was based on incorrect household income amounts entered by NYSOH. Therefore, that portion of the eligibility determination is MODIFIED to state that your household income is \$124,673.00. The remaining portion of the November 29, 2017 eligibility determination that states your children are eligible for CHP at full cost, because the income listed in your application is more than \$115,120.00 which is more than the allowable income range of 400% of the FPL to qualify for a CHP subsidy based on your household size, is correct and is AFFIRMED.

## **Decision**

The November 29, 2017 eligibility determination notice finding in part that your household income was \$216,088.00 was based on incorrect income amounts entered by NYSOH and is MODIFIED to state that your projected household income for 2018 is \$124,673.00.

That portion of the November 29, 2017 eligibility determination notice that states your children are eligible for CHP at full cost because the income listed in your application is more than \$115,120.00, which is more than the allowable income range of 400% of the FPL to qualify for a CHP subsidy based on your household size, is correct and is AFFIRMED.

**Effective Date of this Decision:** December 13, 2017

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

This decision does not change your children's eligibility for CHP or enrollment in a CHP plan.

Your children were properly determined eligible to enroll in a full price CHP plan as of January 1, 2018.

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).

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

This Decision is final unless you submit an appeal request to the Federal Marketplace or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the Federal Marketplace. This must be done within 30 days of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you have questions about appealing to the Federal Marketplace, you can contact them in any of the following ways:

- By calling the Customer Service Center at 1-800-318-2596
- By mail at:  
Health Insurance Marketplace  
Attn: Appeals  
465 Industrial Blvd.  
London, KY 40750-0061
- By fax: 1-877-369-0129

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

## **If You Have Questions about this Decision (Customer Service Resources):**

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:  
NY State of Health Appeals  
P.O. Box 11729

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).

Albany, NY 12211

- By fax: 1-855-900-5557

## **Summary**

The November 29, 2017 eligibility determination notice finding in part that your household income was \$216,088.00 was based on incorrect income amounts entered by NYSOH and is MODIFIED to state that your projected household income for 2018 is \$124,673.00.

That portion of the November 29, 2017 eligibility determination notice that states your children are eligible for CHP at full cost because the income listed in your application is more than \$115,120.00, which is more than the allowable income range of 400% of the FPL to qualify for a CHP subsidy based on your household size, is correct and is AFFIRMED.

This decision does not change your children's eligibility for CHP or enrollment in a CHP plan.

Your children were properly determined eligible to enroll in a full price CHP plan as of January 1, 2018.

## **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。我们可以为您免费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)**

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).

000 00 00000000000000 0000 000 00000 00000 000 0000000000 000000000 00 000000,  
00000000 000 1-855-355-5777 0000000 00 000000 00000 00 0000000 0000 00000 00000000000 00000  
0000000 00000 0000000 00000 000000

## **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. y&b&tumi 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.

## **שׂוֹדִישׁ (Yiddish)**

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).

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.

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).