



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

Notice of Decision

Decision Date: August 5, 2014

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000000301

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

On July 10, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's December 26, 2013 eligibility determination.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of the 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 the NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification Number at the top of this notice.

Legal Authority

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

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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[REDACTED]
[REDACTED]
[REDACTED]

Issue

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

Did the Marketplace properly determine that [REDACTED] is eligible for \$652.00 monthly of Advance Premium Tax Credit (APTC) as of December 26, 2013?

Did the Marketplace properly determine that [REDACTED] is eligible for Cost-Sharing Reductions (CSR) as of December 26, 2013?

Did the Marketplace properly determine that [REDACTED] is not eligible for Medicaid, APTC, or CSR or to enroll in a qualified health plan (QHP) at full cost as of December 26, 2014?

Procedural History

The Marketplace received your application on December 26, 2013.

On December 26, 2013, the Marketplace made a preliminary eligibility determination in your case. On December 27, 2013, you appealed that determination.

On December 28, 2013, the Marketplace issued eligibility determinations on the December 26, 2013 application. One determination said you were temporarily eligible to enroll in a QHP and receive tax credits, but must submit documentation of your immigration status. The other determination said that your son, [REDACTED], was not eligible for Medicaid, tax credits, or cost

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sharing reductions or to enroll in a QHP at full cost because his citizenship/immigration failed.

On January 30, 2014, your Marketplace application was updated to add Employment Authorization Document (EAD) details for you, your husband, and your son.

On March 5, 2014, the Marketplace issued an eligibility determination based on your updated application. It said that you, your husband, and your son are temporarily eligible to enroll in a QHP, to receive up to \$652.00 monthly of APTC, and to get CSR if you were enrolled in a silver level plan (NYSOH Exhibit 1). The notice also requested proof of immigration status from you, your husband, and your son, which could be in the form of an I-766 employment authorization card.

On May 15, 2014, you spoke with a representative of the Marketplace and requested an appeal of the March 5, 2014 determination.

On May 15, 2014, the Marketplace sent you a Notice of Telephone Hearing for a scheduled telephone hearing on June 2, 2014.

On June 2, 2014, you were contacted by a Hearing Officer but you said you could not participate. The hearing was continued by the Hearing Officer to July 10, 2014.

On July 10, 2014, a Hearing Officer contacted you to conduct the hearing. A Spanish interpreter [REDACTED] was present and helped interpret between Spanish and English. You agreed under oath to waive formal written notice of the rescheduled hearing and confirmed you wanted to have the hearing, which was then held by the Hearing Officer. The record was developed during the hearing and closed at the end of the hearing.

Findings of Fact

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

- 1) You and your husband live together with your three children in Orange County, New York (Testimony of 7/10/14; Marketplace Application).
- 2) You and your husband plan on filing your 2014 taxes as married filing jointly and claiming your three children as dependents (Testimony of 7/10/14).
- 3) You testified that your household's expected 2014 annual income will be \$46,022.00, as reported on your 1/30/14 and 3/5/14 Marketplace applications (Testimony of 7/10/14; Marketplace Application).

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- 4) Since only you, your husband, and your 19-year-old son applied for health insurance through the Marketplace, you stated on your application that your household had three people (Testimony of 7/10/14).
- 5) You testified that you did not include your two other children as household members or dependents on your Marketplace application because they did not need insurance. You further testified that you did not know that this was a mistake and that it would affect the amount of APTC to which your household was entitled (Testimony of 7/10/14).
- 6) You testified that you thought the \$652.00 tax credit meant you had to pay this amount every month until the Hearing Officer explained it was a credit toward your monthly premium, and not a cost (Testimony of 7/10/14).
- 7) As of January 30, 2014, you, your husband, and your 19-year-old son had submitted I-766 Employment Authorization Document (EAD) details as proof of lawful presence (Marketplace Application).

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

Applicable Law and Regulations

An advance premium tax credit (APTC) is available to a tax filer whose household income is not expected to be more than 400% of the Federal Poverty Level (FPL) for the benefit year in which coverage is requested (45 CFR § 155.305(f)(1)(i)). The 2013 FPL for a household of five was \$27,570.00, so a household of five people can qualify for APTC if their household income is not above \$110,280.00 (400%).

A tax filer's household income includes the modified adjusted gross income (MAGI) of all the individuals in the taxpayer's family who are required to file a federal tax return for the taxable year (26 CFR § 1.36B-1(e)(1)).

The maximum amount of APTC that can be awarded equals

- 1) the cost of the health insurance premium for the taxpayer's coverage family in the second lowest cost silver plan offered through the NY State of Health in the county where the taxpayer resides

minus

- 2) the taxpayer's expected contribution amount

(see IRC § 36B, 26 CFR § 1.36B-3).

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The taxpayer's expected contribution amount is the amount that the taxpayer is expected to spend on health insurance premiums. The expected contribution towards the cost of health insurance premiums is set by Federal regulation at 2% to 9.5% of income, depending on household's income.

People who have the APTC to help pay health insurance premiums must file a federal tax return and reconcile their expected income (stated on the Marketplace application) with their actual income (stated on their income tax form). 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. Those who take more tax credit in advance than they can claim on their tax return will owe the extra amount as additional income taxes (26 CFR § 1.36B-4).

Cost-sharing reductions (CSR) are available to a person who is eligible to enroll in a qualified health plan (QHP) and:

- 1) is eligible for an advanced premium tax credit (APTC),
- 2) has a household income less than 250% of the FPL, and
- 3) enrolls in a silver level health plan

(45 CFR § 155.305(g)).

A household of five people is eligible for CSR if the household's income is from 138% to 250% of the 2013 FPL, which is from \$38,047 (138%) up to \$68,925 (250%).

The Marketplace provides special enrollment periods during which qualified individuals may enroll in a qualified health plan (QHP) or change from one QHP to another (45 CFR § 155.420(a)(1)). A special enrollment period can be approved when a person becomes newly eligible or newly ineligible for APTC or CSR (45 CFR § 155.420(d)(6)(i)). A special enrollment period also can be approved when a person's enrollment in the wrong QHP or non-enrollment in a QHP results from Marketplace error (45 CFR § 155.420(d)(4)).

Legal Analysis

You testified that there are five people in your household: you, your spouse, and your three children. When you filled out your application on December 26, 2013, you made a mistake and stated that there were three people in your household, because only three of you wanted health insurance in the Marketplace. When you updated your application on January 30, 2014, you again said that there were three people in your household. Since there are five, not three people, in

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your household, the determinations based on a household of three people are wrong and must be RESCINDED (cancelled).

You testified that you expect your household income to be \$46,022.00 for 2014. This matches the number that is on your January 30, 2014 application, but not on your December 26, 2013 application. The income for your spouse was higher on the December application, when he was listed as having an income. On the January application, you said that your husband was getting workers' compensation benefits. This explains the income difference between the two applications and supports your testimony that you expect your household income to be \$46,022.00 in 2014.

Now that the Marketplace has the correct household size (5 people) and expected household income for 2014 (\$46,022.00), it will look at your application again, figure out how much of an advance premium tax credit (APTC) you can get, and issue a new eligibility determination.

The Marketplace notices that have been issued may not take into account all of the immigration documents that you have provided, so the new determination should do that also.

The new eligibility determination will replace the notices that are dated December 28, 2013, and March 5, 2014.

If your household income increases, and will be higher than \$46,022.00 in 2014, your tax credit may go down. You can contact Marketplace customer services if your household income changes and you have questions about this.

Decision

The December 26, 2013 and March 5, 2014 eligibility determinations are RESCINDED.

The case is REMANDED to the Marketplace to redetermine eligibility based on a household size of five, the immigration documents in the record, and an expected 2014 household income of \$46,022.00.

Effective Date of this Decision: August 5, 2014

How this Decision Affects Your Eligibility

This Decision does not decide your final eligibility.

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It returns your case to the Marketplace to redetermine your eligibility based on the corrected household information that you provided to the Hearing Officer.

The Marketplace will redetermine your eligibility and issue a new notice of eligibility determination.

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.

If you do not agree with this Decision, you have the right to appeal outside the Marketplace and may:

- Make an appeal request to the U.S. Department of Health and Human Services appeals entity within 30 days of the date of the Decision Date, which appears on the first page of the Decision (45 CFR § 155.520[c]).

AND/OR

- Bring a lawsuit in state court in accordance with Article 78 of the Civil Practice Law and Rules within four months after the date of the Decision Date, which appears on the first page of the Decision.

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 for assistance.

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:
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- By fax: 1-855-900-5557

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Summary

The Marketplace's eligibility determinations made on December 26, 2013 and March 5, 2014, are RESCINDED.

This decision is returned to the Marketplace. It will redetermine your eligibility with a household size of five people, the immigration documents in the record, and an expected income of \$46,022.00. The Marketplace will then issue a new notice of eligibility determination.

Legal Authority

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

A Copy of this Decision Has Been Provided To:

[REDACTED]
[REDACTED]
[REDACTED]