



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

## Notice of Decision

Decision Date: July 28, 2014

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000614

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED],

On June 2, 2014, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's April 29, 2014 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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### Decision

Decision Date: July 28, 2014

NY State of Health Number: [REDACTED]  
Appeal Identification Number: AP000000000614

[REDACTED]  
[REDACTED]  
[REDACTED]

### Issue

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

Did the Marketplace properly determine [REDACTED] eligible as of April 29, 2014 for \$645.00 monthly of advance premium tax credits (APTC), and ineligible for cost-sharing reductions (CSR), on a household income of \$59,000.00?

### Procedural History

The Marketplace received your initial application on November 5, 2013. That same day, the Marketplace issued a preliminary determination in your case. It said that you and your spouse were eligible to enroll in a Qualified Health Plan (QHP) and receive up to \$626.00 per month in APTC. The Marketplace made this determination based upon your stated household income of \$34,050.00.

On December 5, 2013, you and your spouse enrolled in a platinum-level plan (EssentialCare Platinum).

Between January 3, 2014 and January 4, 2014, you uploaded to the Marketplace portal, copies of resident alien cards issued to both you and your spouse.

On April 29, 2014, your Marketplace application was updated to state that your expected income was \$20,800.00 and that your spouse’s expected income was \$28,200.00. You also updated your application to reflect that [REDACTED], one of your daughters, would be seeking health insurance through the Marketplace.

On April 29, 2014, the Marketplace prepared a preliminary eligibility redetermination, which stated that you, your spouse, and your daughter [REDACTED], were eligible to enroll (in the case of both you and your daughter, temporarily) in a QHP through the Marketplace and to receive up to \$645.00 monthly in APTC, but were not eligible for CSR.

The written notice of this preliminary determination was issued on April 30, 2014. In addition to stating the findings above, it asked you to provide proof of immigration status for yourself and your daughter so that your application could be made final.

On April 29, 2014, you spoke with Marketplace Customer Service and appealed that determination.

On June 2, 2014, you had a telephone hearing with a Hearing Officer from the Marketplace's 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) You are married to [REDACTED] and have two children, [REDACTED] (who is 19 years old) and [REDACTED] (who is 15 years old) (Appellant's Testimony 6/2/14).
- 2) [REDACTED] was enrolled in Child Health Plus (CHP), but that coverage ended when she turned 19 years old on April 3, 2014.
- 3) You testified that you revised your Marketplace application on April 21, 2014 to add [REDACTED] to the health insurance policy you purchased for yourself and your spouse.
- 4) You expect to file a U.S. Income Tax return for the 2014 tax year, file as "married filing jointly" and to claim both of your children as dependents (Appellant's Testimony 6/2/14).
- 5) You testified at the hearing that during 2014 you and your spouse expect to earn a total of \$55,000.00, not \$59,000.00 as stated on your Marketplace application. This figure equals \$17,800.00 (your wages) plus \$18,200.00 (your spouse's wages) plus \$19,000.00 (income from [REDACTED]) (Appellant's Testimony 6/2/14).

- 6) You further testified that the household's income figures you provided on the November 5, 2013 and December 5, 2013 applications inadvertently left out the business income received from [REDACTED] (Appellant's Testimony 6/2/14).
- 7) You and your family reside in Nassau County (NYSOH Exhibit A, pg. 1; Appellant's Testimony 6/2/14).
- 8) You testified that if you do not get more APTC, it will be hard for you to add your daughter to your health insurance policy because the premium payments, even with your APTC, will be too high to afford (Appellant's Testimony 6/2/14).

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

## **Applicable Law and Regulations**

A person may qualify for APTC if the household income is between 138% and 400% of the 2013 FPL (45 CFR § 155.305(f)). The 2013 FPL for a household of four is \$23,550.00, so a person in that household may qualify for APTC if the household income is between \$32,499.00 (138.00% of FPL) and \$94,200.00 (400.00% of FPL).

Cost-sharing reductions (CSR) are available to someone whose household income is not expected to exceed 250% of the FPL for the plan year coverage is requested. Since the FPL for a four-person household is \$23,550.00, CSR is available only if the household income is no higher than \$58,875.00 (250%).

The highest amount of APTC that can be approved equals:

- 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*

- the taxpayer's expected contribution amount

(26 USC § 36B; 26 USC § 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 towards the cost of health insurance premiums is set by Federal regulation at 2% to 9.5% of income, depending on household's income. For household income in

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the range of at least 250% FPL but less than 300% FPL, the expected contribution is from 8.05% to 9.50% of the household income (26 USC § 36B(b)(3)(A)).

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

## Legal Analysis

There are four people in your household: you, your spouse, and your two daughters. You expect to file a U.S. Income Tax return for 2014 as “married filing jointly” and to claim both of your daughters as dependents. You purchased health insurance for yourself and your spouse, but now you also are interested in insurance for your elder daughter.

When you submitted your Marketplace application on April 29, 2014, you said your expected 2014 household income was \$59,000.00. When you testified, you explained that this number was a mistake and that you expect your household income to be \$55,000.00 this year. This information is credible, so your APTC should have been calculated on this lower number. Your case will be sent back to the Marketplace to figure out the amount of APTC you can get with an income of \$55,000.00.

Since you live in Nassau county, the Marketplace should determine the APTC you would get based on a policy for a “couple plus one dependent” in that county with a household income of \$55,000.00.

It is important to remember that your advance premium tax credit (APTC) will be based on the estimated 2014 income that you testified to but that your final tax credit will be based on your actual income as stated in your 2014 federal tax return.

Between January 3, 2014 and January 4, 2014, you uploaded to the Marketplace portal, copies of resident alien cards issued to both you and your spouse. The record does not include resident alien cards for either of your daughters.

The April 30, 2014 notice indicates that your spouse’s immigration document has been approved but that additional information is needed from you and [REDACTED]. The Marketplace should review the documents that you have already provided and make the result part of your new determination. A final

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determination on the eligibility status for [REDACTED] cannot be made until her immigration document is provided to the Marketplace.

## **Decision**

The April 29, 2014 eligibility determination is MODIFIED to change your expected household income to \$55,000.00 and otherwise affirmed.

Your case is REMANDED to the Marketplace to compute the advance premium tax credit as of April 29, 2014 for a four-person household in Nassau County that is seeking a “couple plus one dependent” insurance policy and has an expected 2014 income of \$55,000.00.

The Marketplace is also directed to review your alien resident card, which appears in the record.

**Effective Date of this Decision:** April 29, 2014

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

You, your spouse, and your daughter continue to be eligible to enroll in a qualified health plan through the Marketplace. The Marketplace will redetermine your eligibility based on your estimated household income of \$55,000.00 and issue a new notice of eligibility determination.

The eligibility for you and for [REDACTED] is temporary pending review of your proof of immigration.

The Marketplace will review your resident alien card.

If proof of immigration has not yet been provided for [REDACTED], it must be submitted before a final determination can be made for her. Such proof of immigration may include copies of:

- Letters to and from USCIS
- I-797 USCIS Notice of Action
- Other documents from the USCIS
- Proof that you lived continuously in the U.S. before 1972 (lease agreement, proof of employment)
- I-551 resident alien card (green card)
- I-94 arrival/departure record
- I-766 employment authorization card

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- Your application for Immigration Status.

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

## **Summary**

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The April 29, 2014 eligibility determination is MODIFIED to state that your expected household income is \$55,000.00 and is otherwise affirmed.

You, your spouse, and your daughter continue to be eligible to enroll in a qualified health plan through the Marketplace. The Marketplace will redetermine your eligibility based on your estimated household income of \$55,000.00 and issue a new notice of eligibility determination.

The eligibility for you and for [REDACTED] is temporary pending review of your proof of immigration. The Marketplace will review your documents submitted during January. Proof of immigration status is still needed for [REDACTED].

### **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]